

Law on Bidding in Capital Construction: Current Status of Regulations, Limitations and Proposed Solutions

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<p>Abstract: Bidding is part of procurement activities between businesses, between businesses and state agencies. This is a form of civilized competition in the market economy, a special transaction method for large-scale transactions that require efficiency and transparency. The nature of bidding is a form of civilized competition in a market economy. Bidding activities are carried out in many fields such as construction, equipment procurement, project implementation, etc. Therefore, all professional businesses, whether Vietnam or foreign, no matter what field, any model, if it has enough capacity, cannot be ignored in bidding. Laws on bidding in the field of capital construction play an important role in managing and regulating bidding activities in the construction industry. Currently, Vietnam law has documents regulating public procurement such as Bidding Law 2013 effective from July 1, 2014, Decree No. 63/2014/ND-CP stipulates detailed implementation of several articles of the Bidding Law on contractor selection, etc. Some issues related to the current status of provisions of Vietnam law on public bidding and procurement activities are the selection of bidding form, bidding process, healthy competition, openness, and transparency in public bidding activities. This study analyzes the regulations and limitations of the law on bidding in the field of capital construction, thereby proposing solutions to improve the law on this issue.</p> <p>Keywords: Bidding, bidding law, bidding process, basic construction.</p> <p>Copyright © 2024 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.</p>	<p style="text-align: center;">Research Paper</p>
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INTRODUCTION

After moving from a centrally planned, subsidized economy to a market economy, public bidding and procurement activities in Vietnam were gradually formed. Through many years of formation and development, to maintain and develop public bidding and procurement activities, a system of legal regulations must be established to regulate these activities. The first law regulating this field was Decree No. 43 - CP dated July 16, 1996, followed by the introduction of the Bidding Law in 2005 and currently the Bidding Law in 2013.

According to the provisions of Clause 12, Article 4 of the 2013 Bidding Law, amended and supplemented in 2022 (hereinafter referred to as the Bidding Law), bidding is the process of selecting contractors to sign and implement supply contracts, providing consulting services, non-consulting services, goods procurement, construction, and installation; selecting investors to sign and implement investment project contracts in the form of public-private partnerships, and investment projects using land on the

basis of ensuring competition, fairness, transparency, and economic efficiency. international. In the field of construction, implementing construction bidding packages means contributing to creating effective, fair, and transparent construction projects.

Today, building technical infrastructure is essential for the development of the national economy. Construction works are very diverse, including public works, housing, industrial works, transportation, irrigation, energy and other works. Construction works are products built according to design, created by the waste of human labor, construction materials, equipment installed in the project, etc. To carry out a construction investment project Basically, people can apply one of three main methods: self-employment, direct contractor appointment, and bidding, in which the bidding method is widely applied to most construction investment projects basic construction.

Through the process of formation and development of public bidding and procurement laws, our country has had remarkable achievements. However, with the change in the current socio-economic context of

our country, along with international integration, the practice of applying public bidding and procurement laws has arisen, revealing many legal issues that need to be resolved to further improve bidding and public procurement laws in Vietnam. Some issues related to the current status of provisions of Vietnam law on public bidding and procurement activities are the selection of bidding form, bidding process, healthy competition, openness, and transparency in bidding. bidding activities. In this article. The author analyzes the current status of legal regulations on bidding and public procurement and proposes recommendations to help improve Vietnam law to improve the efficiency of public bidding and procurement activities.

LITERATURE REVIEW

What is bidding?

According to the Law on Bidding (No. 43/2013/QH13) 2013: Bidding is the process of selecting contractors to sign and perform contracts to provide consulting services, non-consulting services, procurement of goods, build; Select investors to sign and implement investment project contracts in the form of public-private partnerships, investment projects using land on the basis of ensuring competition, fairness, transparency and economic efficiency international.

Simply put, bidding is the process by which the bidding party selects a contractor (or investor) that meets its requirements. After the bidding process, the contractor will be notified of the winning result from the bidding party if the contractor wins that bidding package. What is a winning bid? Winning bid means the contractor is selected by the bidding party to sign the contract.

Concepts and terms in bidding

The main contractor is the contractor responsible for participating in the bidding, bidding and directly signing and implementing the contract if selected. The main contractor can be an independent contractor or a member of a joint venture contractor.

A bidding party is an agency or organization that has the expertise and capacity to carry out bidding activities.

Bidding documents are all documents used for open bidding and limited bidding, including requirements for a project or bidding package, serving as a basis for contractors and investors to prepare documents bid documents and let the bid solicitor organize the evaluation of bid documents to select contractors and investors.

Bidding documents and proposal documents are all documents prepared by contractors and investors and submitted to the bidding party according to the requirements of bidding documents and request documents.

Bidding is a way for contractors to provide price quotes or human resources capacity to send to the bidding party to demonstrate their capacity and competitiveness for a certain bidding package.

Bidding is the way contractors/investors set bids (bid/no bid) when participating in bidding.

Winning the bid is the result of selecting the contractor after the bid opening, which is another way of saying that the participating contractor is selected to carry out the bidding package.

Construction Bidding

Bidding is the process of selecting construction contractors that meet the requirements of the bidding party to carry out bidding packages for providing consulting services, procurement of goods, construction, installation., etc. All activities are based on the basis of bidding competitive, fair, transparent, and economically efficient. Bidding is also a process in which the investor selects a contractor that meets his or her requirements.

In a market economy, buyers (investors) organize bidding for sellers (contractors) to compete with each other. The buyer's goal is to obtain goods and services that satisfy their technical and quality requirements at the lowest cost.

The seller's goal is to have the right to provide those goods and services at a price that covers input costs and ensures the highest possible profit.

Fully and accurately understanding bidding operations in current conditions will help managers and entities participating in bidding, in general, have a basis and legal foundation in the process of selecting contractors and implementing them. healthy social relations in the field of state capital and land use, while attracting and creating many sources of capital. Below is detailed information about the construction bidding process.

RESEARCH METHODS

Research legal documents on bidding, specifically: Law No. 61/2005/QH11 dated November 29, 2005, effective from April 1, 2006; Law No. 38/2009/QH 12 of the National Assembly of the Vietnam National Assembly, Session XII, May 5th meeting on June 19, 2009, on the work of construction and construction. Supplementing a number of relevant Laws on construction equipment will take effect from August 1, 2009. Accordingly, the Government issued Decree No. 85/2009/ND-CP dated October 15, 2009 (hereinafter abbreviated as Decree 85/CP) on guiding the implementation of the Bidding Law and selecting contractors according to the Law. Build; According to prescribed authority, the Ministry of Planning and Investment has issued Circulars guiding the implementation of bidding. Government. (2014). Decree

63/2014/ND-CP guiding the Bidding Law on contractor selection. Government. (2016). Decree 79/2016/ND-CP stipulates conditions for providing training services to foster professional knowledge, management, and operation of apartment buildings; knowledge of real estate brokerage practice, and real estate trading floor operation. Government. (2017). Decree 139/2017/ND-CP on penalties for administrative violations in construction investment activities; mining, processing, and trading in minerals used as building materials, production and trading in building materials; management of technical infrastructure works; real estate business, housing development, home, and office use management.

Interdisciplinary and interdisciplinary methods, specifically: Analysis - synthesis method, logical-historical method, comparison-contrast method, inductive-interpretation method, and some other methods.

Research some assessments of previous authors, inheriting reasonable and appropriate elements to clarify some content in the research.

RESEARCH RESULTS AND DISCUSSION

Current legal situation

Bidding subject

In the process of integration and development, investment in basic construction projects is highly emphasized by our government. Construction makes an important contribution to the development of socio-economic infrastructure systems, supports the development of production and business, and contributes to promoting economic growth. The increase in projects in the field of capital construction has led to the development of bidding activities. In order for bidding activities in the field of capital construction to take place objectively and transparently, the law specifically regulates the entities eligible to participate in bidding in the field of capital construction bidding. Domestic and foreign organizations and individuals participating in bidding activities for bidding packages under projects specified in Article 1 of the 2013 Bidding Law amended and supplemented in 2019 (the Law on Investment) must ensure the following conditions, following event:

For contractors that are domestic organizations, it is necessary to have: (1) Have registration of establishment and operation issued by a competent authority of the country in which the contractor or investor is operating; (2) Independent financial accounting; (3) Not in the process of dissolution; not be found to be in a state of bankruptcy or unable to pay debts according to the provisions of law; (4) Registered on the national bidding network system; (4) Ensuring competition in bidding according to the provisions of Article 6 of the Investment Law; (5) Not being banned from bidding; (6) Being on the shortlist in cases where the shortlist has been selected; (7) Must enter into a joint

venture with a domestic contractor or use domestic subcontractors for foreign contractors when participating in international bidding in Vietnam, unless the domestic contractor is not qualified to participate in any contract any part of the bidding package.

In addition, the Investment Law has specific regulations on professional bidding organizations. Accordingly, an organization is considered professional bidding when it meets two conditions: (i) Professional bidding organization includes bidding agents and public service units established with the function of conducting bidding. professional; (ii) The establishment and operation of bidding agents shall comply with the provisions of law on enterprises.

For individual contractors, the following conditions are required: (1) Have full civil act capacity according to the laws of the country of which the individual is a citizen; (2) Have appropriate professional certificates according to the provisions of law; (3) Register legal activities according to the provisions of law; (4) Not being prosecuted for criminal liability; (5) Not being banned from bidding.

For individuals participating in bidding activities who are not contractors, investors must have a bidding training certificate and have professional qualifications, capacity, experience, and foreign language in accordance with the requirements of the contractor. bidding packages and projects. Individuals directly involved in preparing the request for expression documents, prequalification documents, bidding documents, and request documents; evaluate expressions of interest, prequalification applications, bids, and proposals belonging to professional bidding organizations, businesses, bidding consulting units, and professional project management boards. Have a certificate of practice in bidding activities.

Thus, the law stipulates quite strict conditions for subjects participating in bidding, including both organizations and individuals. In addition, to ensure bidding activities, the law allows entities that satisfy the conditions to enter into joint ventures with each other. However, to determine the responsibilities of each party in the bidding process, Clause 3, Article 5 of the Investment Law stipulates that in case of a joint venture, there must be a written agreement between the members, clearly defining the responsibilities of each party the leading member of the joint venture and the general and individual responsibilities of each member of the joint venture. Entities participating in bidding must meet legal conditions. With the above regulations, the law ensures that entities participating in bidding have the ability to complete well and with quality the basic construction works for which they bid.

Bidding form

According to the provisions of the Investment Law, there are currently many different forms of bidding. However, in the field of capital construction, only the following bidding forms are applied to select contractors:

Open bidding:

Open bidding is a form of selecting contractors and investors in which the number of participating contractors and investors is not limited. The bidding party must publicly announce the bidding conditions and time on the mass media before releasing the bidding documents. Open bidding is the main form used in bidding. This form of bidding has the outstanding advantage of being highly competitive in bidding, limiting negativity in bidding, and stimulating contractors to regularly improve their capacity. Due to its widespread nature, the number of participating contractors is large. Therefore, the bidding party has the opportunity to choose a contractor with sufficient qualifications and capacity to carry out the bidding package.

However, due to the large number of participating contractors, the cost of evaluating bids is also very expensive. This form of bidding cannot be applied to bidding packages with high technical requirements and advanced technology. In principle, once a bid is made, there must be open bidding. In some cases, it is necessary to organize bidding in another form. If the necessary conditions for bidding in another form cannot be proven, then it must be organized public bidding. Open bidding is a form of bidding that does not limit the number of participating bidders. Before releasing bidding documents, the bidding party must announce bidding information and post it on bidding newspapers and bidding websites of state management agencies on bidding for at least 10 days before distributing bidding documents to contractors wishing to participate in bidding. In the bidding documents, no conditions must be stated to limit the participation of contractors or to create an advantage for one or several contractors, causing unfair competition.

Limited bidding:

If open bidding has the participation of a large number of contractors, then limited bidding only has a certain number of contractors. Limited bidding is applied in cases where the bidding package has high technical requirements or specific techniques where only a few contractors meet the requirements of the bidding package. Before issuing bidding documents, the investor needs to approve the list of contractors considered to have enough capacity and experience to invite to participate in the bidding. However, when conducting limited bidding, a minimum of five contractors who are determined to have sufficient capacity and experience must be invited to participate in the bidding; in case there are actually fewer than five contractors, the investor must submit competent to consider. Decide to continue

holding limited bidding or apply another form of selection. For civil engineering and construction investment projects using State capital, two or more enterprises belonging to the same corporation with member companies, parent companies, subsidiaries, and enterprises are not allowed. joint venture with a party contributing capital in the joint venture to participate in three-way bidding in one bidding package.

Appoint contractors:

According to the provisions of Article 23 of the Bidding Law, the form of contractor appointment is applied in many cases. However, for bidding in the field of capital construction, the form of contractor appointment can only be applied in the following cases: (i) The bidding package needs to be implemented to immediately overcome or to promptly handle the consequences. caused by force majeure events; Bidding packages need to be implemented to ensure state secrets; The bidding package needs to be deployed immediately to avoid causing direct harm to the lives, health and property of the local community or to not seriously affect adjacent projects; (ii) Urgent bidding packages need to be deployed to protect national sovereignty, national borders and islands; (iii) Bidding packages for the construction of monuments, reliefs, monumental paintings, and works of art associated with copyright from the stage of creation to construction; (iv) Bidding package for relocation of technical infrastructure works directly managed by a specialized unit to serve site clearance work; bidding package for clearance of bombs, mines, and explosives to prepare construction sites; (v) Bidding packages for providing public products and services, bidding packages with bidding package prices within the limit applicable to contractor appointment according to the Government's regulations in accordance with socio-economic conditions in each period.

In addition, the implementation of contractor appointment for bidding packages specified in the cases from Monday, Tuesday, Wednesday, Thursday must fully meet the following conditions: (1) There is an investment decision approved, except for project preparation consulting packages; (2) Have an approved contractor selection plan; (3) Capital has been allocated according to the progress requirements of the bidding package; (4) Have an approved estimate according to regulations, except for EP, EC, EPC bidding packages, and turnkey bidding packages; (5) The time to implement contractor appointment from the date of approval of the request dossier to the date of contract signing is no more than 45 days; In case the bidding package is large-scale and complex, it should not exceed 90 days; (6) The contractor proposed to be appointed must have its name in the contractor database of the state management agency on bidding activities. For bidding packages in the case of contractor appointment in the first case, the above-mentioned conditions must not only meet the conditions for contractor appointment specified in Clause 2, Article 22 of the Bidding Law but also apply

other forms of contractor selection specified in Articles 20, 21, 23 and 24 of the Bidding Law.

Do it yourself:

The form of self-implementation is applied in cases where the investor is a contractor with sufficient capacity and experience to carry out the bidding package under the project under his management and use. However, when applying the form of self-implementation of estimates for a bidding package, it must be approved according to regulations. The unit supervising the implementation of the bidding package must be independent of the investor and the financial institution.

Choosing a contractor in special cases:

In cases where the bidding package has unique characteristics and cannot apply forms of contractor selection such as open bidding, limited bidding, contractor appointment, or self-implementation, the investor must prepare a contractor selection plan. Bidding, ensuring competitiveness and economic efficiency for the Prime Minister to consider and decide. Reality shows that currently the number of projects with open bidding only accounts for the smallest percentage, followed by limited bidding, and most are in the form of contractor appointment and self-implementation. Because the party calling for bids in some cases is not knowledgeable about the subject and has little experience: the quality of bidding consultancy is still limited and sanctions are not clear and specific, causing many bidding packages to be abused. Limited bidding is often carried out, creating conditions for negative actions such as bid rigging and contractor appointment to arise.

Bidding process

Choosing a contractor depends greatly on the bidding process. Because this is an important activity that determines who wins the construction bid. The law strictly regulates the bidding process for bidding activities in the field of capital construction. According to the provisions of the Commercial Law and the Bidding Law, the bidding process is carried out through the following steps: (1) Invitation to bid; (2) Bidding; (3) Bid opening; (4) Comparative evaluation of bid documents; (5) Ranking of contractor selection; (6) Announcement of bidding results and contract signing.

Tenderer:

Inviting bids is the first stage to prepare for project bidding. To conduct bidding invitations, the bidding party must prepare the following tasks: Pre-qualification of contractors and preparation of bidding documents and bidding notices.

Pre-qualification of contractors: According to the provisions of Article 217 of the Commercial Law, the bid solicitor can organize pre-qualification of bidders to select bidders capable of meeting the conditions set forth by the bid solicitor. Pre-qualification of contractors is to

ensure that invitations to bid will be limited to contractors with sufficient capacity and experience to carry out the bidding package.

For basic construction bidding packages, contractor evaluation standards must be consistent with the requirements on capacity conditions for each type of construction project according to the provisions of the Construction Law.

Prepare bidding documents: Bidding documents are all documents provided by the bidding party to contractors to invite contractors to participate in bidding. This document can be prepared by the bidding party itself or by a consulting organization. This dossier must be approved by the investment decision maker or authorized by the investor to review based on the appraisal report of the appraisal agency or organization before release. Accordingly, the bidding documents include a notice of invitation to bid; requirements related to bidding goods and services; methods of valuation, comparison, ranking, and contractor selection; and instructions related to bidding. To ensure transparency and maximum competitive opportunities for contractors, bidding documents need to be clear. In case the procuring party amends some contents in the bidding documents, the procuring party amends some contents in the bidding documents, the procuring party must send the revised content in writing to the bidders, at least 10 days before the deadline for submitting bids so that bidders have time to complete their bids. The bidding party may collect a fee for issuing bidding documents, and the cost of providing documents to the bidder is determined by the bidding party.

Notice of invitation to bid: Notice of invitation to bid is applied to the form of open bidding. To ensure competition in bidding, all bidding packages when organizing bidding must be widely publicized in the mass media in cases of open bidding or send notices inviting registration, bids to qualified bidders in case of limited bidding. The notice inviting bids must contain all the following elements: Name and address of the party calling for bids; summary of bidding content; time limit, location, and procedures for receiving bidding documents; instructions for understanding the bidding documents.

Bid:

After the notice inviting bids is made public, contractors who are interested in the bidding package or are already on the pre-qualification list will go through the bidding procedures. At this time, bid documents must be submitted directly to the bidding party or sent by post to the address stated in the bidding documents before the bid closing time.

The bidding party is responsible for instructing bidders on the conditions for participating in bidding, procedures applied during the bidding process,

answering bidders' questions as well as managing bid documents. The bidding party must keep the bid documents confidential. When bidding, the bidder may have to pay a bid security amount (expressed in the form of deposit, deposit or bid guarantee) at the request of the bidding party to ensure the validity of the documents. bid. The soliciting entity may require the bidder to submit a deposit, deposit, or bid guarantee when submitting the bid. The rate of deposit, deposit, and bid guarantee must not exceed 3% of the total estimated value of the bidding goods and services. In case of deposit or deposit, the deposit and bidding deposit will be returned to the unsuccessful bidder within 7 working days from the date of announcement of bidding results.

Bid opening:

Bid opening is when the bidding party opens bids at the time specified in the bidding documents. The bid opening must be conducted publicly immediately after the bid closing time for bids submitted according to the requirements of the bidding documents. On-time bids must be publicly opened by the bid solicitor, and bidders have the right to participate in the bid opening. Bids that are not submitted on time will not be accepted and will be returned to the bidder unopened. Bidders are not allowed to edit their bids after bid opening. Bidding parties have the right to attend the bid opening. The bid solicitor may request the bidder to explain unclear contents in the bid documents. The explanation of the bid must be made in writing. When opening bids, the party calling for bids and the bidders present must sign the document. The bid opening record must have the following content: Name of goods and services; date, time, and location of bid opening; name and address of the party opening the bid or bidding; bidding price of the bidder; amendments, supplements and related contents, if any. The Contractor is responsible for the accuracy of the records.

Evaluate and compare bid documents:

After the bid opening, the bid solicitor conducts a bid evaluation. During this process, the bidding party conducts detailed research and evaluation and ranks contractors based on the requirements of the bidding documents. These evaluation criteria are approved by competent authorities before bid opening. Depending on each different bidding package, the criteria for evaluating and ranking contractors are different but must comply with certain principles, standards, and sequences. Bids are evaluated and compared for each address, as a basis. complete assessment. The above standards are evaluated using the scoring method on a scale or another method determined before bid opening.

During the process of evaluating and comparing bid documents, the bid solicitor may request the bidder to clearly explain issues related to the bid documents. The request of the bidding party and the bidding party's opinions must be made in writing. In case the bidding party amends some of the bid documents, the bid

solicitor must send the revised content in writing to all bidders at least 10 days before the deadline for submitting bids. so that bidding parties have the opportunity to further complete their bid documents.

Ranking and selecting contractors:

Based on the results of bid evaluation, the bidding party must rank and select bidders according to the prescribed method. In case there are multiple bidding parties with equal scores and winning criteria, the bidding party has the right to choose the contractor.

Notification of bid results and contract signing:

Immediately after the bidding results are available, the bidding party is responsible for notifying the bidding results to the bidder. The bidding party completes and signs the contract with the winning bidders on the following basis: bidding results; requirements in bidding documents; content stated in the bid documents. When negotiating after winning the bid, the parties may require the winning bidder to make a deposit, escrow or guarantee to ensure contract performance. The deposit and escrow amount is specified by the bidding party but must not exceed 10% of the contract value.

The contract performance security measure is valid until the time the winning bidder completes its contractual obligations. Unless otherwise agreed, the winning bidder will receive back the deposit and security deposit to ensure contract performance if it refuses to perform the contract after the contract is signed. After paying the deposit and deposit to ensure contract performance, the winning bidder will receive a refund of the deposit and deposit.

Some limitations prescribed by law

The legal system on bidding has created a fairly complete legal framework for bidding work. Therefore, the domestic bidding process has gradually transformed in the direction of becoming more open and transparent. However, besides the above advantages, the law on bidding in the field of capital construction still has certain disadvantages. Specifically:

Firstly, the process and procedures for selecting contractors are still complicated, the contractor selection time is long, affecting the progress of implementation of investment, construction and public procurement projects. Regulations on decentralization, decentralization, and determination of powers and responsibilities of entities in the bidding process and contractor selection process are in some cases incomplete and unclear. In addition, regulations on inspection, supervision, and sanctions for handling violations are not complete and cannot prevent fraud, negativity, and corruption in bidding from complicated developments.

Secondly, regulations on inspection, supervision, and sanctions to handle violations are incomplete, and corruption, fraud, negativity, and collusion in bidding are complicated. The Bidding Law does not fully regulate the process of inspection, supervision, and handling of violations, especially the inspection of results of implementation of inspection, examination, and supervision conclusions, and only focuses on regulating regulations. Handling violations of contractors and investors. There are no specific regulations on sanctions for handling violations for bidding parties, investors, and competent persons. The law also does not have regulations on sanctions for cases where competent agencies are lax in inspecting, supervising, and resolving complaints in bidding, leading to the implementation of inspection, supervision, and resolution work. Resolving proposals on bidding in recent times has not been highly effective. Reality shows that the inspection, inspection and supervision work of some ministries, branches, and localities is still formal and the quality is not guaranteed; inspection and examination agencies belong to the same locality and industry, so there is still a situation of being respectful, not wanting to do things or not daring to do them to the end. The sanctions on bidding are not strict, the sanctions are not deterrent enough, the fines are not strong enough, especially the responsibility of the leader is not attached to detecting and handling violations in the bidding of individuals, the violating organization.

Thirdly, the order and procedures have been relatively fully regulated, but there are still problems in the valuation and unit price adjustment stages. Valuation is a service, so in reality, there is a current situation where the higher the price, the higher the commission rate. Sometimes, there are even places where units join hands to raise prices compared to the actual price. Besides issues with norms, in some cases unit prices have not been updated according to market prices, causing difficulties for construction businesses. According to preliminary data compiled by contractors of the Vietnam Construction Contractors Association, there are currently about 60 types of work related to construction activities that need to develop new norms and over 80 norms and unit prices that do not need to be established. Reasonable, needs to be amended and supplemented to suit reality.

Fourthly, the problems between the law on bidding and the law on construction also lead to difficulties and inadequacies in implementing the order and procedures for construction bidding. According to the provisions of the law on bidding, the technical design documents approved by the investor are one of the important bases for developing bidding documents. In fact, design documents for equipment systems are built on the basis of the type and technical characteristics of the specific product code. Therefore, when preparing bidding documents, if these design documents specifically include the above technical requirements, it

may limit the participation of contractors; If these design documents do not include approved technical requirements, they will not fully comply with the law on bidding, etc.

Fifthly, currently, some documents guiding the implementation of the Bidding Law and the Construction Law are no longer consistent with practice, such as circulars on people authorized to decide on investment, investors, and management boards of construction projects. project; Circulars guiding on price adjustment of package contracts... In addition, there is no consensus among legal documents. There are contents of the law and guiding documents that are not really appropriate, so it is difficult to apply in real life. The Bidding Law stipulates that consulting contractors preparing feasibility study reports are not allowed to participate in bidding to provide technical design consulting services or design survey consulting services, and are not allowed to participate in bidding for construction or consulting services. Construction supervision consultancy. According to the opinions of some agencies, organizations, and businesses, this regulation is not really reasonable and consistent with Vietnam practice, increases costs unnecessarily, and loses the continuity of the project planning process - survey - design by design authors. Regulations on the application of designated contractors for consulting service bidding packages worth less than 500 million VND and construction goods procurement bidding packages worth less than 01 billion VND are low compared to the reality of rapid price fluctuations. Hard regulations in law are inappropriate.

Some solutions to perfect the law and improve the effectiveness of law application

To overcome the above limitations and inadequacies and improve the efficiency of construction bidding, the author makes a number of proposals to improve the law on order and procedures in construction bidding, specifically as follows:

Firstly, develop anti-closing solutions in bidding to limit bid rigging. As analyzed above, to overcome the phenomenon of bid collusion between construction enterprises, between the bid solicitor and the bidder, to ensure transparency and objectivity in the bidding process, the law must stipulate Anti-closing solutions in limited bidding to limit bid rigging.

Secondly, build a mechanism for inter-sectoral coordination and decentralization to localities in a clear way in bidding for capital construction projects. It is necessary to create a coordination mechanism between National Assembly agencies (promulgate laws), Government agencies (guide law enforcement), and localities in implementing bidding activities for construction projects. basic construction. Regulating responsibilities, powers, and necessary sanctions to handle violations in the management of investment projects.

Thirdly, amend and supplement regulations on time in bidding to ensure openness and transparency in bidding activities, creating initiative and flexibility for competent people, investors, and bidding parties. In carrying out bidding activities, contributing to shortening the bidding time for each project and bidding package. Accordingly, only the minimum time is specified for contractors and investors to prepare bid documents and clarify bid documents; As for the time to perform other tasks (such as time to evaluate bids, and approve contractor selection results, etc.), the competent person, investor, and bidding party can determine it themselves. based on ensuring compliance with the scale and nature of each specific project and bidding package. Specify the maximum time for competent persons, investors, and bidding parties to post information in bidding. In addition, along with promoting the online bidding roadmap shortly, the time for organizing bidding will continue to be shortened because many tasks and operations will be carried out on the International Bidding Network System.

Fourthly, eliminate some appraisal and approval procedures at the intermediate level (such as approving the list of contractors that meet technical requirements; list of contractor rankings; and contract negotiation, except for large bidding packages, complicated). Instead, the competent person, the investor, only approves 03 contents, including (i) Contractor selection plan; (ii) Bidding documents; and (iii) Contractor selection results.

Fifthly, supplement regulations allowing investors to pre-deploy several activities to prepare for contractor selection and organize contractor selection (such as preparing, appraising, approving bidding documents, and organizing the selection of contractors) to shorten project implementation time.

Sixthly, add regulations on procedures for making a list of investment projects to ensure synchronization of procedures for approving investment policies and approving project lists according to the provisions of investment law and the law on bidding, at the same time eliminating procedures for preliminary assessment of investors' capacity and experience to create a basis for competent agencies to organize bidding immediately after the project's investment policy is approved or approved project list.

Seventhly, consider eliminating procedures for preparing, appraising, and approving investor selection plans to integrate some investor selection contents into the investment policy approval decision (for projects subject to investment policy approval) or project list approval (for projects not subject to investment policy approval).

Eighthly, add regulations on connection and information sharing between the National Bidding

Network System and other systems (such as business registration management system, and electronic tax declaration system, etc.) to serve the state management of bidding, improve the effectiveness and efficiency of implementing online bidding activities, and at the same time enhance openness, transparency, and prevent acts of collusion and fraud in bidding.

Ninthly, amend and supplement regulations on types of contracts and conditions for contract application in a way that allows investors and competent persons, depending on the scale, nature, and conditions of each bidding package, to decide to apply the appropriate type of contract instead of stipulating that a package contract is the basic type of contract as prescribed by the current Bidding Law to resolve inadequacies in applying this type of contract, especially package contract.

Tenthly, specify regulations on cases of contract amendments, supplements, and adjustments to be consistent with the principles stipulated in the 2015 Civil Code and construction law, and at the same time supplement Supplementing regulations allowing contract adjustments during implementation when raw material prices fluctuate greatly to ensure the interests of the contractor.

Eleventh, amend and supplement regulations on conditions for applying each contractor selection method to limit the situation where investors take advantage of the one-stage, two-envelope method to eliminate contractors right in the first step. After technical evaluation, at the financial evaluation step, there is only one contractor left, leading to not ensuring transparency and economic efficiency. Complete regulations on criteria to ensure competition in the content of bidding documents to limit the situation of "implantation" of evaluation criteria, causing unfair competition.

CONCLUSION

Currently, the law on bidding has regulations to ensure openness in public bidding and procurement activities, but whether the level of openness ensures full fairness for participating parties remains to be seen. There must be thorough research comparisons on this issue. To ensure fairness in bidding and public procurement activities, the most important factor that can be mentioned is information disclosure. Accordingly, information disclosure must be clear, accurate, and timely, and disclosure must be considered an obligation to make an important contribution to the effectiveness of special and related public procurement and bidding activities. to information about winning bid results. This is a very important issue and is of concern to contractors, especially those that do not win the bidding package. Therefore, Vietnam law on bidding has regulated this public issue in Clause 6, Article 20 of Decree No. 63/2014/ND-CP. The above regulations show that lawmakers have tried to increase the information disclosure element of the public bidding and

procurement process. But comparing with the EVFTA Agreement, which stipulates that if requested, the bidding organization will have to send an explanation about the relative advantage of the selected bid, it can be seen that our country's current law still does not stipulate about this issue. Thereby, it can be seen that the openness according to international practices is stricter than the corresponding provisions of Vietnam law.

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