



NEW LAW ON BIDDING OF VIETNAM 2023

After more than 10 years of implementation, the Law on Bidding 2013 has contributed significantly to the creation of Vietnam's economy in a public, transparent, and effective pathway. However, the practice arising during the Covid-19 epidemic has set an urgent requirement to amend and supplement the Law on Bidding to meet practical needs such as:

First, it needs to get mechanisms and legal frameworks to address the needs of bidding of drugs, medical equipment, equipment, and investment in construction works in urgent situations;

Second, effectively handle problems and inadequacies in regular procurement bidding using state budget;

Third, effectively prevent negatives and violations in the bidding process;

Fourth, meet new needs due to changes in Vietnam's socio-economic environment in the new era;

Accordingly, lawmakers have developed the Law on Bidding 2023 pursuant to the objectives and orientation that consist of the above practical requirements. Here, ATA Legal Services shall summarize the new points of the Law on Bidding 2023 on the basis of comparison with the provisions of the Law on Bidding 2013, and regard the impact, progress, and limitations of these regulations on the business community, Vietnamese organizations and individuals.

A. ANALYSING AND EVALUATING THE NEW POINTS

OF THE GENERAL PROVISIONS OF THE LAW ON BIDDING

1. Whether Law on Bidding 2023 enhances autonomy for enterprises by narrowing the scope of subjects to apply the Law compared to the Law on Bidding 2013 or not?

The determination of an enterprise, bidding package, or project subject to the compulsory application of the Law on Bidding is based on the status and type of the enterprise and capital source used for the bidding package or project. On that basis, according to ATA's assessment, the Law on Bidding 2023 has a "*narrowing*" and "*reduction*" of compulsory subjects to apply this Law. Specifically:

Firstly, the Law on Bidding 2023 applies to bid packages and projects using "state budget capital" instead of bidding packages and projects using "state capital" as in the Law on Bidding 2013. According to the Law on Bidding 2013, "state capital" has a very broad concept including: state budget capital; and other capital sources such as national public bonds, government bonds, local government bonds, state development investment credit capital; credit capital guaranteed by the Government; loans secured by State assets; development investment capital of state-owned enterprises; value of land use rights. Thus, it can be seen that state budget capital is only one type within the above-mentioned state capital.

In addition, the Law on Bidding 2023 only requires bidding packages for the purchase of drugs, chemicals, testing supplies, and medical equipment using state budget capital to mandatory application of the Law, while previously the Law on Bidding must be applied to packages using state capital or other sources of capital such as health insurance funds, revenues from medical examination and treatment services and other lawful revenues of public health establishments.

Secondly, the Law on Bidding 2013 applies to bid packages and projects using state capital of 30% or more or less than 30% but over VND 500 billion of the total investment amount of the project. It is understood that any enterprise, even non-state-owned enterprises, can be subject to the Law if investing or participating in investment for projects using state capital mentioned above. In Law on Bidding 2023, lawmakers have dropped the cases of bidding packages and projects using the aforementioned state capital.

Instead, the Law on Bidding 2023 "expands" the scope of application to all subjects such as state-owned enterprises and enterprises in which state-owned

enterprises hold 100% of charter capital. In our opinion, this is fully consistent with the legal provisions in the field of management of state capital and public assets.

By reducing the subjects of compulsory application of the process, the provisions of the Law will certainly help increase the autonomy and self-responsibility of enterprises in the process of procurement and implementation of projects for investment, production, and business activities.

A new and specific point of the Law on Bidding 2023 when *allowing organizations and individuals not in the compulsory cases of application of the Law to decide for themselves whether to apply all or specific articles, clauses and points of the Law*. Compared to requiring that if you choose to apply the Law, you must apply all provisions of the Law, this is really a very progressive regulation, facilitating and enhancing the initiative for businesses, organizations and individuals.

2. Business households are officially recognized as eligible to participate in bidding

The Law on Enterprise 2020 and Decree 01/2021/ND-CP define business households as a component of the economy, having the right to equally conduct business with enterprises and other economic sectors within the law framework. Therefore, in theory, business households are fully entitled to participate in bidding as contractors, take responsibility for their own experience, professional capacity, and other conditions as required by bidding dossiers, fully qualified and competent to participate in bidding.

The Law on Bidding 2023 has officially recognized the right of business households to participate in bidding when they fully meet the following conditions:

- a) Having a business household registration certificate as prescribed by law;
- b) Not in the process of terminating operation or having the business household registration certificate revoked; business household owners are not being examined for criminal liability;
- c) Being named on the National Procurement Network before approving the results of selection of contractors and investors;
- d) To ensure competition in bidding according to regulations;
- e) Not being in the period of being banned from participating in bidding according to the decision of a competent person.

With this new regulation, bidding activities are expected to attract more participation of all economic sectors, creating a competitive, equal and transparent business environment.

3. Supplementing the form of bid security in bidding activities

Regarding the form of bid security, the Law on Bidding 2023 supplement a form of bid security compared to the Law on Bidding 2013 that the contractor and investor must submit the guarantee insurance certificate of the domestic non-life insurance enterprise, a branch of a foreign non-life insurance enterprise established under the law of Vietnam.

The supplementation of a bid security form also supplements an option for the tenderer/investor and bidders to actively select the appropriate form of security.

Bid guarantee limit for small-value bids

+ For bidding for investor selection, the bid guarantee level shall remain the same (from 0.5% to 1.5% of the total investment capital of the investment project);

+ For the bid guarantee level in bidding for contractor selection, the Law on Bidding 2023 clearly distinguishes 2 bid security levels for each corresponding bidding package value:

(i) From 1% to 1.5% of the bidding package price applied to (a) construction, installation and mixed packages not exceeding VND 20 billion; (b) Non-consultancy goods and services procurement packages not exceeding VND 10 billion;

(ii) From 1.5% to 3% of the bidding package price applied to bidding packages not falling into the above cases;

Shorten the time for refund or release of bid security

The Law on Bidding 2023 provides:

+ Contractors and investors who are not selected will be refunded or released bid security within 14 days from the date the results of selection of contractors and investors are approved (the Law on Bidding 2013 stipulates no more than 20 days).

+ Contractors and investors may select and ensure that bids are refunded or released when the contract takes effect (the Law on Bidding 2013 stipulates that bids are refunded after contractors and investors take measures to ensure contract performance).

4. Specific explanation of prohibited acts in bidding

In recent times, the practice of bidding activities has appeared many illegal acts, requiring the intervention of law to ensure fairness in bidding. Accordingly, compared to the Law on Bidding 2013, the Law on Bidding 2023 has concretized and explained more clearly the illegal acts in bidding, including acts of bidding, fraud, obstruction, failure to ensure fairness and transparency, disclosure of information documents on the contractor selection process, assign bidders in case of illegality, organize the selection of contractors when the source of capital has not been determined. Here, the ATA summarizes the new points on the inappropriate acts of the Law on Bidding 2023 compared to the Law on Bidding 2013:

Behavior	Procurement Law 2013	Procurement Law 2023
Tender Announcement	Include only the act of agreement to: <ul style="list-style-type: none"> + Withdraw from bidding; + Prepare bid documents for one party to win the bid; + Refusing to supply goods, not signing subcontracts, causing other difficulties with the parties not participating in the agreement. 	Includes acts: <i>settlement, agreement, coercion</i> to: <ul style="list-style-type: none"> + Withdrawing from bidding or preparing bid dossiers; or + Refusing to provide goods and services, not signing subcontracts ... <i>to limit competition</i> for one party to win the bid. Supplementing the act of competent and <i>experienced contractors and investors who have participated in bidding and met the requirements of bidding dossiers but intentionally fail to provide documents to prove their capacity and experience when requested by the tenderer to clarify bid dossiers... to create conditions for one party to win the bid.</i>
Fraudulent	These include: <ul style="list-style-type: none"> + Deliberately misrepresenting or falsifying information, dossiers, and documents of a party in the bidding...; + Individuals directly evaluate dossiers ... intentionally making false reports or providing 	Adjustment, including the following behaviors: <ul style="list-style-type: none"> + <i>Falsifying</i> or falsifying information, dossiers and documents in bidding; + Deliberately providing untruthful and unobjective information and documents in

	<p>untruthful information that falsifies the results of selection of contractors and investors; + Contractors and investors intentionally provide untruthful information in the dossier ... falsifying the results of selection of contractors and investors.</p>	<p>the dossier ... in order to distort the results of the selection of contractors and investors.</p>
Hinder	<p>These include: + Destroying, deceiving, changing, concealing evidence or making false reports; threatening, harassing or suggesting ... in order to prevent the clarification of acts of giving, receiving, brokering bribes, fraud or collusion with competent agencies in supervision, examination, inspection, and audit; + Acts of obstructing contractors, investors, competent agencies in supervision, inspection, inspection, and audit.</p>	<p>Additional two behaviors are: + <i>Deliberately making false complaints, denunciations or petitions to obstruct bidding activities;</i> + <i>Violating the law on network safety and security in order to interfere with and obstruct online bidding.</i></p>
Not ensuring fairness and transparency		<p>Supplement, concretize the following behavior: <i>Stating conditions in bidding dossiers in order to limit the participation of contractors or investors or to create advantages for one or several contractors or investors causing unfair competition;</i></p>
Disclosure of documents and information on the process of selecting contractors and investors		<p>There are no fundamental adjustments or changes compared to the Law on Bidding 2013</p>

<p>Assignment of tenders</p>	<p>A contractor who transfers to another contractor the work part of the bidding package with a value of 10% or more or less than 10% but over VND 50 billion (after deducting the work under the responsibility of the subcontractor) calculated on the signed contract price is a violation of bid assignment.</p>	<p><i>Irrespective of the value of the transferred work.</i> Accordingly, the Contractor assigns to another contractor the work part of the bidding package in addition to the maximum value for subcontractors and the workload for special subcontractors stated in the contract is a violation of the assignment of bidding</p>
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Accordingly, violations of the bidding law in the Law on Bidding 2023 have been strictly stipulated, perfected and updated to match the practice. However, in practice, these violations are often very sophisticated, difficult to detect and identify. In order to limit violations, lawmakers and management authorities need to supplement more regulations defining details of detailed manifestations, elements constituting each act and allowing mechanisms for contractors to inspect and supervise the bidding process, violations can be detected early.

5. Suspension of bidding when violations are determined

Suspension of bidding and non-recognition of the results of a selection of contractors and investors is a completely new provision of the Law on Bidding 2023. Accordingly, the suspension of bidding will be applied to suspend contractor and investor selection activities in order to immediately remedy violations that occurred before the contractor selection results were approved. The competent individuals, when suspending the bidding, must issue a document clearly stating the reasons, contents, measures and time for remedying violations. However, the Law has not specified the consequences of suspension of bidding as well as measures and time limit to remedy violations, nor has it clarified the options to handle and ensure the interests of contractors and investors who are not subject to violations but still want or do not want to continue participating in bidding.

6. Compulsory organization of online bidding

Implementing the National Program on Digital Transformation and Building E-Government is one of the important tasks promoted by the State in recent years. Not out of that strategy, the Law on Bidding 2023 sets out the roadmap for conducting online bidding as follows:

- a) From January 1, 2014 to December 31, 2024, online or non-online bidding shall comply with the Government's regulations;
- b) From January 1, 2025, apply online bidding to all bidding packages, except for the case of non-bidding on the National Procurement Network according to the Government's regulations.

In addition, the Law on Bidding 2023 also stipulates that information about contractors and investors is connected and shared from the National Information System on Business Registration, Tax Management Information System, Budget Management Information System, Treasury, and other systems. The national procurement network system is connected with other portals and information technology systems to exchange and share data and information for online bidding and state management of bidding.

The organization of online bidding is an important basis for bringing bidding activities to achieve the goal of ensuring fairness, openness and transparency. Organizing online bidding helps state authorities facilitate the supervision process, convenient for contractors/investors to participate in the bidding process, thereby contributing to limiting negatives that may occur in the bidding process. However, online bidding also imposes confidentiality requirements on all parties involved in the bidding process.

7. Supplementing regulations on handling situations and settling proposals in bidding activities

Previously, the handling of situations and settlement of proposals in bidding activities were stipulated in Decree 63/2014/ND-CP guiding the Law on Bidding 2013.

Compared to the provisions of Decree 63/2014/ND-CP, the Law on Bidding 2023 supplements a very notable provision that allows agencies and organizations interested in bidding activities (other than bidding contractors/investors) to also bring petitions to competent parties related to the contents of bidding dossiers (the submission of applications of agencies and organizations limited to the time of contractor/investor selection results). This will promote the role and professional capacity of organizations, professional associations, experts and advisors in the process of supervising bidding in the market, thereby strengthening the responsibility and prudence of bidders in the process of developing and implementing bidding packages.

In addition, the Law on Bidding 2023 allows after the results of contractor selection, the contractor/investor has the right to choose to make the proposal according to 1 of 2 processes: (i) The proposal process 2 times: the 1st time for the investor and the 2nd time to the competent person if they do not agree with the results of the 1st proposal settlement or the investor/inviter the tender did not have a written settlement of the petition; or (ii) 1-time petition process to the competent person. The second process (ii) will have a shorter duration than the first.

Regulations on the order and procedures for settling petitions in the Law on Bidding are considered as an independent mechanism, separate from complaints and proceedings. However, according to our assessment, if the settlement of proposals in bidding activities only stops at competent individuals– who both approve the bidding plan and resolve the content of the proposal, it does not really ensure objectivity and efficiency. In particular, the current provision in the Law on Bidding 2023 shows that the petition procedure is being separated from the complaint procedure and there is no mechanism for administrative action against the petition settlement document. If the competent person does not agree with the conclusion, the contractor/investor then makes a complaint from the beginning or initiates a lawsuit according to civil procedures.

According to the ATA, a written settlement of a petition of a competent individuals must be identified as an administrative decision, which has a binding effect on the parties concerned, and at the same time, this document must also be identified as the subject of the complaint order and procedure, denunciations or administrative proceedings in accordance with current legal provisions.

B. SEPARATE PROVISIONS IN BIDDING FOR THE SELECTION OF CONTRACTORS

8. Expand the scope of preferential beneficiaries

Incentives in bidding activities under the Law on Bidding 2023 are prioritized to apply to subjects such as *"goods originating in Vietnam"* and *"environmentally friendly products and services in accordance with the law on environmental protection"*.

At the same time, the Law also expands the scope of preferential beneficiaries for *"enterprises employing ethnic minority workers"* in addition to enterprises with a high proportion of female employees or employing disabled workers.

9. Supplement more cases of bid appointment and shorten the process of carrying out procedures for cases of bid appointment

Comparing with the Law on Bidding 2013, the Law on Bidding 2023 supplements a number of cases in which bidders are appointed to select bidders including:

a) Bid package for renting a warehouse for storing impounded goods; bidding packages for hiring, transporting, loading and unloading goods temporarily at seaports, centralized cargo inspection locations in case there is only one service provider in the port; bidding package for importing sports weapons for clubs, schools, sports training centers for annual training and competition (previously included in Decision 17/2019/QD-TTg dated 08 Apr 2019 of the Prime Minister under the form of bid package applied in the form of selection of contractors in special cases);

b) Bid package included in the procurement estimate has a bidding package price within the limit from over VND 50 million to VND 100 million; bid packages belonging to investment projects of state-owned enterprises, enterprises in which state-owned enterprises hold 100% of charter capital and investment projects under the Law on Public Investment, including: bid packages for provision of consulting services with bid packages within the limit not exceeding VND 500 million, non-consultancy, goods, construction, installation and mixed bid packages have a bidding price within the limit of not exceeding VND 01 billion.

c) Bid packages for provision of consultancy, non-consultancy services, drugs, chemicals, testing supplies, medical equipment, components, accessories, means and construction and installation should be immediately deployed to serve the

prevention and control of epidemics or maintain the operation of medical examination and treatment establishments in urgent cases, avoid causing harm to people's lives and health; bid packages for purchase of drugs, chemicals, testing supplies, medical equipment, components and accessories for emergency treatment of patients in emergency conditions in accordance with the Law on Medical examination and treatment in case medical examination and treatment establishments do not have enough drugs, chemicals and testing supplies, medical equipment, components, accessories; Bid packages for purchasing drugs and medical equipment have only one manufacturer on the market.

d/ Bid package should be implemented to protect state secrets.

e) Bid packages of the nature of research, testing, purchase of intellectual property rights, purchase of broadcast program copyrights; a tender package for the transportation of national reserves for relief and aid in case of immediate delivery;

f) Bid packages belonging to projects of national importance may apply the form of bidding appointment according to resolutions of the National Assembly when deciding on project investment policies.

g) The bid package can be implemented by only one contractor in the market due to requirements on technological solutions.

In addition, the Law on Bidding 2023 clearly stipulates: for all cases of appointment of bidders under the Law on Bidding 2023, the appointment of bidders must be made within 45 days from the date of approval of the required dossier to the date of signing the contract; In case the bidding package is large-scale and complicated, it does not exceed 90 days.

The law allows the implementation of bid packages without approval of the results of contractor selection or without signing a contract:

Specifically, in some of the following cases, the Law on Bidding 2023 allows the parties to complete the procedures for appointing bidders (including the following steps: preparing and sending the draft contract to the contractor; completing the contract; submitting, approving and publicizing the results of contractor selection; signing and managing contract performance) within 15 days from the date of commencement of the package implementation bid:

+ The urgent bid package needs to be implemented for the purpose of protecting national sovereignty and security; the bid package should be implemented for immediate remedy or for timely handling of consequences caused by natural

disasters, fires, unexpected accidents, incidents, disasters or other force majeure events;

+ Bid packages for provision of consultancy, non-consultancy, goods, construction and installation services should be implemented immediately to avoid causing harm to the life and property of the local community or so as not to seriously affect adjacent works;

+ Bid packages for provision of consultancy, non-consultancy services, drugs, chemicals, testing supplies, medical equipment, components, accessories, vehicles, construction and installation need to be deployed immediately to serve the prevention and control of epidemics or maintain the operation of medical examination and treatment establishments in urgent cases, avoid causing harm to people's lives and health; bid packages for purchase of drugs, chemicals, testing supplies, medical equipment, components and accessories for emergency treatment of patients in emergency conditions in accordance with the Law on Medical examination and treatment in case medical examination and treatment establishments do not have enough drugs, chemicals and testing supplies, medical equipment, components, accessories; bid packages for purchasing drugs and medical equipment with only one manufacturer on the market;

Accordingly, the cases applied to implement the bid package without the results of contractor selection, or the bidding contract are really urgent and really urgent cases, directly related to national security and public health and need specific mechanisms for implementation; This regulation creates a legal framework that allows competent authorities to flexibly handle when urgent issues arise. In our opinion, this regulation is a timely supplementation and update of legal regulations, legislating practical issues that have occurred during the recent Covid-19 epidemic.

Regarding self-implementation, the Law on Bidding 2023 additionally stipulates that in case the investor or the accounting unit depends on the investor, the organization may not transfer to other organizations or individuals the amount of work with a value of 10% or more or more or more of VND 50 billion on the value of the work specified in the work assignment agreement.

Regarding the selection of contractors in special cases, in order to create a corridor and legal framework for the implementation of regulations in practice, creating initiative for competent agencies, the Law on Bidding 2023 has stipulated special cases of organizing the selection of contractors including:

- a) Bid packages for purchase of drugs and vaccines during testing, with specific requirements of manufacturers on conditions for purchase, payment, guarantee, guarantee and other conditions during contract performance;
- b) Bid packages for purchase of drugs, vaccines and medical equipment through international organizations;
- c) Bid package requires ensuring national defense, security, foreign relations and territorial border;
- d) To select lawyers to provide legal services to protect the rights and interests of the Vietnamese State, state agencies in foreign or international jurisdictions;
- đ) Bid packages for intensive training for state agencies and public non-business units directly implemented by foreign training institutions in foreign countries; buy air tickets for domestic and international business trips; bid packages for specific specialized professional training and fostering for cadres and civil servants due to the necessity of inviting competent agencies or units or having professional training functions and tasks assigned by competent agencies;
- f) Bid packages for the implementation of political tasks assigned by the Party and the State, including: propaganda in print, electronic newspapers, radio, television and other mass media in cases where agencies or units assigned propaganda funds directly sign contracts with these agencies for implementation; organization of special art programs; co-production of films;
- g) Bid packages for production and installation of stages for the production of broadcasts associated with the implementation idea; rent a place to organize the production and recording of highly artistic programs;
- h) Bid packages for provision of printing services, supply of stamps, receipts and seals in accordance with the law on tax and customs administration; bid packages for the purchase of working dogs, training of working dogs, purchase of drugs, explosives, samples impregnated with drug vapors and explosives for training working dogs;
- i) In case the project or bid package has specific conditions on the process, procedures, criteria for contractor selection, conditions for signing and performing the contract not specified in the above-mentioned points, the Government shall submit to the National Assembly Standing Committee for decision the addition of cases of application of the form of contractor selection in special cases.

The Law on Bidding 2023 allows the selection of bidders in special cases for the above-mentioned tenders when the above-mentioned tenders cannot select bidders under the provisions of broad bidding, limited bidding, tender designation, competitive offers, direct procurement, etc self-realization, participation in implementation of the community, price negotiation. Currently, the Law on Bidding 2023 only stipulates the competence to decide on the selection of contractors in special cases (the authority belongs to the Prime Minister, the Minister of Health, the Minister, the Head of the ministerial-level agency, the chairman of the People's Committee of the province, etc.) without specific provisions, details of dossiers, processes and procedures for selecting contractors in special cases. In this regard, the Law on Bidding 2023 assigns the Government to detail regulations. Therefore, up to now, there is no mechanism to apply to these cases.

10. Supplementing regulations on the master plan for contractor selection for the project and pre-bidding

Accordingly, the Law on Bidding 2023 allows the investor or the project preparation agency to submit to competent individuals for consideration and decision the organization of formulation and approval of the master plan for contractor selection on the basis of the scale and nature of the bidding work of the project. In principle, a contractor selection plan is drawn up for the entire project, procurement estimates.

The contractor selection master plan can be viewed as the framework for the entire contractor selection activity of the project. This will partly help investors/bidders increase their initiative in the implementation process. At the same time, it is also required that investors/tenderers must strengthen their long-term planning capacity, be ready to respond to situations that may arise.

However, according to our assessment, in another aspect, having to issue a master plan for the entire project sometimes becomes a burden for units, especially for large-scale projects, many phases, many work items, products and services. The implementation process is likely to have many changes, especially with a volatile market. At that time, the investor/tenderer may have to adjust the contractor selection plan for the whole project or for each stage and item of the project. Having to adjust the master plan before adjusting the detailed plan will give rise to more work and responsibilities for the investor/bidder.

11. Addition of additional purchase options in the contractor selection plan

Additional purchase option is the ability of the investor to purchase additional goods, consulting services and non-consulting services of the bidding package in addition to the volume stated in the contract. The option of additional purchases is made when all conditions are met:

- + The contractor has won the bidding through extensive bidding, price negotiation;
- + The additional purchase volume does not exceed 30% of the corresponding item volume stated in the contract; have an approved estimate for the volume of additional purchases;
- + The unit price of additional purchased goods and/or services must not exceed the unit price of the corresponding goods and/or services in the contract; applicable only during the validity period of the contract.

Thus, with this regulation, the investor/bidding unit will be proactive in procuring additional volumes of goods in addition to the volume of goods approved for winning bids. However, attached to the additional purchase volume are conditions that the unit price of goods and/or services must not exceed the corresponding unit price in the contract and the limit on the volume of additional purchases. According to ATA, this regulation is only suitable for cases where the procurement of goods and services takes place in a short time and there is not much fluctuation in prices of goods and services. In the opposite case, the investor/tenderer will not be able to buy goods if the old terms and prices are maintained.

12. Supplementing types of contracts with contractors

The Law on Bidding 2023 provides for the addition of a number of tender contracts on a practical basis including:

- a) Cost-plus-cost contract: applied to jobs and services for which at the time of selection of the contractor there are insufficient grounds to determine the scope of work, the necessary demand for elements and input costs to perform the expected works of the contract.
- b) Contract according to outputs: applied to jobs and services for which payment is based on the contract performance results accepted in terms of quality, quantity and other factors.
- c) A percentage contract can only be applied to a work insurance package whose contract value is accurately determined on the basis of the actual value of the work being accepted.

d) Mixed contract means a contract with the content of combining types of contracts as prescribed by the Law on Bidding 2023.

The addition of more types of contracts with contractors will create more framework, legal basis and flexibility for the implementation of bidding packages between investors and contractors.

C. SEPARATE PROVISIONS IN BIDDING FOR INVESTOR SELECTION

13. Additional incentives in investor selection

The Law on Bidding 2023 additionally stipulates that the beneficiaries of incentives in investor selection are "*Investors with technology application solutions to reduce environmental pollution for projects in groups with high risk of adverse environmental impacts in accordance with the law on environmental protection*" and "*Investors commit to transfer transfer of technologies on the list of technologies prioritized for development investment under the law on high technologies or on the list of technologies encouraged for transfer under the law on technology transfer*".

The addition of two preferential objects aims to concretize national strategies on promoting technology transfer and environmental protection in the process of socio-economic development of the country.

14. Specify cases in which international bidding is not organized to select investors

The Law on Bidding 2013 only stipulates that investment projects using land will hold international bidding, except for cases where investment is restricted in accordance with the law on investment. However, the Law on Bidding 2023 has specified cases in which international bidding is not held to select investors, including:

- a) The project on the list of industries and trades that have not yet had market access for foreign investors;
- b) The project needs to be bidding domestically due to requirements on ensuring national defense and security, social order and safety;
- c) The project shall be implemented in areas restricted from land use, sea areas restricted from use by foreign investors, foreign-invested economic organizations according to regulations;
- d) The project has a total investment capital of less than VND 800 billion;
- đ) The project does not fall into the above cases and has announced and notified the invitation to organize international bidding but no foreign investors participate.

These regulations are in line with regulations on cases in which foreign investors are not allowed to invest in Vietnam for reasons of national defense, security, or market access industries of foreign investors as prescribed in the Law on Investment 2020.

15. Forms of investor selection

The Law on Bidding 2023 only stipulates two forms of investor selection, broad bidding and limited bidding. Compared to the Law on Bidding 2013, the Law on Bidding 2023 has abolished two forms of bidding appointment and investor selection in special cases.

With this regulation, the competitiveness in bidding activities to select investors is expected to be improved and enhanced, contributing to the selection of really capable investors with seriousness in the project implementation process; Overcoming the situation of "hanging" projects that have taken place a lot in recent times.

Corresponding to the two forms of bidding for investor selection, the Law on Bidding 2023 supplements and adjusts the method of investor selection compared to the Law on Bidding 2013, including the one-stage one-bag method, the two-stage method, the two-bag dossier method; The application of which investor selection method is determined on the basis of the nature and complexity of the investment project.

16. Explain in detail the method of evaluating bids

The method of social and state benefits is one of the methods of evaluating bid dossiers prescribed by the Law on Bidding 2013, but the Law on Bidding 2013 has no specific explanation or guidance on this assessment method. The Law on Bidding 2023 has specified the method of social and state benefits to be applied to assess the capacity and experience of investors and the effectiveness of business investment plans proposed by investors, including land use efficiency, efficiency of investment in development of industries, domains and localities.

This regulation aims at the efficient use of land in investment projects, limiting speculation and illegal profiteering from land; promote and make the most of and effectively use all resources from the land; do not allow land waste and inadequate consequences from inefficient land use.

D. SEPARATE REGULATIONS ON THE PURCHASE OF DRUGS, CHEMICALS, MEDICAL EQUIPMENT, LABORATORY SUPPLIES, PROVISION OF PUBLIC PRODUCTS AND SERVICES

17. Method of choose a supplier

The Law on Bidding 2023 allows medical examination and treatment establishments to select contractors to supply chemicals, testing supplies and medical equipment in one of the following methods:

- a) Select contractor to implement the package of supply of chemicals and testing supplies and the winning contractor shall be responsible for supplying medical equipment for the use of such chemicals and testing supplies at the request of the investor; the contractor does not transfer ownership, only the right to use medical equipment to medical examination and treatment establishments;
- b) Select contractors according to the quantity of technical services.

The Law on Bidding 2023 supplements a very important provision that the Contractor only transfers the right to use, not the ownership of medical equipment to the investor. In fact, this form of supply and use of materials in the form of "lease" and "loan" has been implemented quite a lot in hospitals but in a spontaneous form, there is no mechanism to regulate issues related to the order and procedures and protect the interests of contractors as well as medical facilities. Recently, many medical facilities have had to terminate these transactions, leading to lack of supplies, equipment, and inability to serve patients. This recognition in the Law on Bidding 2023 shall help stakeholders solve problems early and help medical facilities to solve the problem of shortage of supplies and equipment soon.

However, to truly achieve these goals, lawmakers will need to study more regulations to regulate the rights and obligations of stakeholders as well as resolve problems arising from previous cases.

Above are the contents, important and outstanding new points of the Law on Bidding 2023. It can be said that the Law has partly solved the needs set out from practice, creating a legal corridor to regulate issues arising in bidding. However, there are still many points that according to our assessment are "blurred", unclear, even two-sided. Hopefully, in the coming time, the guidance documents will clarify, detail and be more specific about the "blurred" points and provide implementation mechanisms to create more favorable conditions for businesses, organizations and individuals.

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