

BIDDING PROCEDURES FOR SELECTION OF INVESTOR FOR IMPLEMENTATION THE LAND-USING PROJECTS

(Pursuant to Decree No. 25/2020/ND-CP as amended and supplemented in Decree No. 35/2021/ND-CP)

updated on September 9, 2021

(1) FORM OF INVESTMENT

The land-using projects mean the projects using land to construct urban area; construct civil works with one or more functions, including: commercial houses; headquarters, business office; commercial works, services¹.

Conditions for determining whether an investment project uses land ²:

- (a) The land-using investment project mentioned above but does not use public investment capital to construct works.
Projects on the construction of urban areas and commercial housing; office buildings; commercial and service works shall be classified in accordance with provisions of Law on Construction. In the case of a project having multiple functions, the determination of whether the project uses land shall be carried out based on its main works or main works at the highest level if the project has multiple main works in accordance with provisions of Law on Construction.
- (b) The project is listed in the approved list of projects on land that needs expropriating in accordance with provisions of law on Land, located in a land area that is currently being managed or used by the State but will be allocated or leased out by the provincial People's Committee or Economic Zone Management Department to the approved investor.
- (c) The project is listed in the residential housing development program or plan in accordance with provisions of Law on Housing; an urban development program (if any) under Law on Urban Development.

¹ Article 1.1.b of Decree No. 25/2020/NĐ-CP amended and supplemented under Article 108.1 of Decree No. 31/2021/NĐ-CP

² Article 11 of Decree No. 25/2020/NĐ-CP amended and supplemented under Article 108.4 of Decree No. 31/2021/NĐ-CP

- (d) The project is in line with the socio-economic development plan or construction planning on a scale of 1/2,000 or 1/5,000 (if any); or the urban zoning planning on a scale of 1/2.000 or 1/5.000 as prescribed by law.
- (e) The project is not qualified to hold a land use right auction under the Law on Land.
- (f) The project does not in any one of the cases (i) only one investor has the ability to do because it is related to intellectual property, trade secrets, technology or capital arrangement and (ii) selecting contractors, investors in special cases.³

(2) INVESTOR

The investor is responsible for preparing and submitting the application dossier to implement the project to the Department of Planning and Investment (or Economic Zones Management Department) and on the National Procurement Network⁴.

- (a) **The application dossier to implement the project:** (i) The application form for implementation of the project; (ii) The dossiers about the investor's legal status, capacity, experience; and (iii) The relevant documents (if any);
- (b) **Authority:** (i) Department of Planning and Investment; or (ii) Economic Zones Management Department (*for the projects implemented at economic zones*).
- (c) **Timeline for registration of project:** at least 30 days from the date the project list is posted, the specific time according to the disclosed information of the project.
- (d) **Timeline for posting information on their capacity and experience:** no later than 07 working days from the date the document is issued.

(3) BIDDING PROCEDURES FOR SELECTION OF INVESTOR IMPLEMENTING THE LAND-USING PROJECTS

³ As prescribed at Point b, Clause 4, Article 22 and Article 26 of the Law on Bidding

⁴ Article 6.2 of Decree No. 25/2020/ND-CP; Article 13 of Decree No. 25/2020/ND-CP amended and supplemented under Decree No. 35/2021/ND-CP

No.	Name	Main Contents	Authority	Legal basis
Step 1	Preparing to select an Investor	<p>(1) Preparation of the bidding dossiers <u>Contents of bidding dossiers include:</u></p> <p>(a) Overall information about the project;</p> <p>(b) Instructions for investors;</p> <p>(c) Requirements on project implementation, architecture, environment, safety, other contents;</p> <p>(d) Bid evaluation criteria;</p> <p>(e) Bid forms;</p> <p>(f) Duration of land allocation or land rental;</p> <p>(g) The land-use fees, land rent estimated;</p> <p>(h) Total cost of project execution;</p> <p>(i) Plan and cost of compensation, assistance and relocation;</p> <p>(j) Minimum state budget contribution (m²); and</p> <p>(k) The draft of the contract.</p> <p>(2) Evaluation of the bidding dossiers <u>The dossiers to be evaluated including:</u></p> <p>(a) The suggestion submission for approval for the bidding dossiers, request documents of the procuring party;</p> <p>(b) The draft bidding dossiers, request documents;</p> <p>(c) Photocopies of the approval decision about the investor selection plan; and</p> <p>(d) Other relevant documents.</p> <p><u>The contents to be evaluated including:</u></p> <p>(a) Inspecting the documents that are the basis for the preparation of bidding dossiers and required documents;</p> <p>(b) Inspecting the relevance of the bidding dossiers and required documents;</p>	<p>(i) The Department of Planning and Investment is responsible for holding the evaluation of the bidding dossiers;</p> <p>(ii) Chairman of the Province People's Committees is responsible for approving the bidding dossiers.</p>	<p>Article 46.1</p> <p>Article 47</p> <p>Article 49</p> <p>Article 75.2</p> <p>Article 77.2</p> <p>Article 79</p>

		<p>(c) Considering the different opinions (if any) between the organizations and individuals participating in the preparation of the bidding dossiers, required documents; and</p> <p>(d) Other relevant contents.</p> <p>(3) Approval for the bidding dossiers The approval for the bidding dossiers shall be made in writing, pursuant to the submission on approval and the report on the evaluation of the bidding dossiers.</p>		
Step 2	Conducting the selection of an Investor	<p>(1) Invitation to bid The procuring party is responsible for posting the Notice of Invitation for Bids on the National Procurement Network.</p> <p>(2) Issuance, revision, clarification of the bidding dossiers:</p> <p>(a) Issuing the bidding dossiers: Bidding dossiers have to be widely distributed to investors participating in bidding and are released concurrently with the Notice of Invitation for Bids on the National Procurement Network.</p> <p>(b) Revising, clarifying the bidding dossiers The procuring party publishes the revising decision (<i>enclosed with amendment contents of the bidding dossiers</i>) or a clarification written on the National Procurement Network.</p> <p>(3) Preparation, submission, receipt, management, revision, withdrawals of bidding dossiers:</p> <p>(a) Investors are responsible for preparing and submitting the bidding dossiers as required by the bidding dossiers.</p>		<p>Article 4.1.d</p> <p>Article 5.1</p> <p>Article 46.2</p> <p>Article 50</p> <p>Article 51</p> <p>Article 51a</p> <p>Article 51b</p>

		<p>(b) In case of revision, replacement, or withdrawal of the submitted bidding documents, the investor must send a written request to the procuring party.</p> <p>(c) The procuring party will only accept the revision, replacement or withdrawal of the investor's bid if it receives a written request before the bid closing time.</p> <p>(4) Opening of technical proposals:</p> <p>(a) Conduct publicly and begin within 1 hour from the bid closing time.</p> <p>(b) Bidding dossiers or documents which are sent to the procuring party by investors after the bid closing time will not be opened, invalid and rejected, except for documents clarifying the bids at the request of the procuring party or clarifying and supplementing documents to prove the investor's eligibility, capacity and experience.</p>		
Step 3	Conducting the evaluation of technical proposals	<p>(1) Inspection, evaluation of the technical proposals:</p> <p>(a) Inspecting the validity:</p> <p>(i) Quantity of original copies and photocopies of the technical proposals;</p> <p>(ii) Composition of the technical proposals; and</p> <p>(iii) Consistency between the original copies and photocopies.</p> <p>(b) Evaluating the validity:</p> <p>(i) The technical proposal is the original copy;</p> <p>(ii) The letter of bid about the technical proposals;</p> <p>(iii) The effective period of the technical proposals;</p> <p>(iv) The valid bid security;</p>	<p>(i) <i>Department of Planning and Investment</i> are responsible for holding to appraise the list of investors meeting the technical requirements;</p> <p>(ii) <i>Chairman of the Province People's Committees</i> are responsible for approving the list of investors meeting the</p>	<p>Article 52 Article 77.2 Article 79</p>

		<ul style="list-style-type: none"> (v) The investor does not submit more than one technical proposal as an independent investor or partnership member; (vi) The partnership agreements are valid; (vii) The investor is not being banned from bidding as prescribed by bidding laws; and (viii) The investor is eligible. <p>(2) Detailed evaluation of technical proposals: The detailed evaluation of technical proposals shall be carried out according to the methods and standards for technical evaluation stated in the bidding dossiers.</p> <p>(3) Assessment and approval of the list of technically qualified investors:</p> <ul style="list-style-type: none"> (a) The list of technically qualified investors shall be approved in writing; and (b) The procuring party shall send the list of technically qualified investors to all investors and invite investors participating in the bid to open the financial - commercial proposal, clearly stating the time and place for opening the dossier. 	technical requirements.	
Step 4	Opening, evaluating the financial - commercial proposals.	<p>(1) Opening of financial - commercial proposals: Financial - commercial proposals will be opened publicly with time and place as recorded in the notice of the list of technically qualified investors. The bid opening minutes must be sent to the participating investors.</p> <p>(2) Inspection, evaluation of the validity of the financial - commercial proposals:</p> <ul style="list-style-type: none"> (a) Inspecting the validity: <ul style="list-style-type: none"> (i) Quantity of original copies and photocopies of proposals; 		Article 54 Article 55

		<ul style="list-style-type: none"> (ii) Composition of proposals; and (iii) Consistency between the original copies and photocopies. <p>(b) Evaluating the validity:</p> <ul style="list-style-type: none"> (i) The financial - commercial proposal is the original copy; (ii) The valid letter of bid about the financial-commercial proposal; (iii) The value in the letter of bid must be specific, fixed in numbers and words and must be appropriate and logical, not suggest different values for the same content or be accompanied by unfavorable conditions to the competent state agency, the procuring party; and (iv) The effective period of the financial - commercial proposal satisfies the requirements. <p>(3) Detailed evaluation of financial - commercial proposals and ranking investors:</p> <p>(a) The detailed evaluation of financial-commercial proposals and rating of investors shall be carried out according to the evaluation methods and criteria specified in the bidding dossiers.</p> <p>(b) After investors are ranked and listed, the expert team shall send a report to the procuring party for consideration. The report shall contain:</p> <ul style="list-style-type: none"> (i) The list of ranked investors; (ii) List of investors who do not meet the requirements and are eliminated; reason for elimination; and (iii) Comment on competitiveness, fairness, transparency and economic efficiency in the process of investor selection. In case of competition, fairness, transparency and 		
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		economic efficiency are not guaranteed, the reason must be clearly stated and the handling measures proposed.		
Step 5	Submitting, appraising, approving, and publishing the selection results of an Investor	<ul style="list-style-type: none"> (1) The procuring party shall submit the results of investor selection, clearly stating the opinions of the procuring party on the evaluation contents of the expert group. (2) Competent authority appraises the result of investor selection. (3) Competent authority approves investor the result of selection in writing. (4) The procuring party publicizes the result of investor selection: <ul style="list-style-type: none"> (a) Post the result of investor selection on the National Procurement Network no later than 07 working days from the date which investor selection results are approved; and (b) Sent the notice on results of investor selection to investors participating in the bidding by post or fax no later than 05 working days from the date which investor selection result is approved. (5) After the approving decision on the result of investor selection is issued, the investor decides to establish the project enterprise for implement of the project or directly implement the project. 	<ul style="list-style-type: none"> (i) The Department of Planning and Investment holds the evaluation the selection results of Investor; (ii) Chairman of the Province People's Committees are responsibility for approving the selection results of Investor. 	<p>Article 46 Article 57 Article 77 Article 79</p>
Step 6	Negotiating, finalizing, and signing the contract	<ul style="list-style-type: none"> (1) Negotiation and finalization of the contract: According to the result of investor selection, the first ranked investor is invited to negotiate and finalize the contract. In case the investor is invited to negotiate and finalize the contract but does not come or refuses to negotiate and finalize the contract, the bid security will not be refunded. (2) Conclusion of the contract and publishing of contract information: <ul style="list-style-type: none"> (a) Rules for contract conclusion: 		<p>Article 58 Article 59</p>

		<p>(i) The bid-winning proposal price is the contract signing price; Project implementation costs, compensation, support and resettlement expenses proposed by the bid-winning investor in the bid documents are recorded in the contract;</p> <p>(ii) In the case of changes in planning, policies or laws affect these costs, the provisions of the law on investment, construction, land, planning, housing and real estate business and other relevant laws shall be complied with;</p> <p>(iii) The land-use fees, the land rent shall be submitted and determined according to the provisions of the law on land plus the payment to the state budget of the proposed winning investor, which shall be recognized as the market price at the time of land allocation, land rental in the contract.</p> <p>(b) Public the information of the contract: The procuring party is responsible for publishing information on the project contract on the National Procurement Network within seven (07) working days from the signing day of the project contract.</p>		
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Note:

For other timelines not stipulated in the bidding process, the competent authority shall decide such issues according to the form in Appendix I attached to Decree No. 25/2020/ND-CP and take responsibility for the progress and quality with respect to the selection of Investor⁵.

For further details and in-depth advices on this legal issue, please do not hesitate to contact us through:

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⁵ Article 6.8 of Decree No. 25/2020/NĐ-CP