

THE MINISTRY OF FINANCE

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

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CIRCULAR

GUIDING THE IMPLEMENTATION OF BIDDING FOR PROCUREMENT OF UTENSILS, MATERIALS, EQUIPMENT AND WORKING FACILITIES FOR STATE AGENCIES, ARMED FORCES, MASS ORGANIZATIONS AND STATE ENTERPRISES USING CAPITAL FROM THE STATE BUDGET SOURCES

Pursuant to the Government's Decree No. 88/1999/ND-CP of September 1, 1999 promulgating the Bidding Regulation; Decree No. 14/2000/ND-CP of May 5, 2000 on the amendments and supplements to a number of Articles of the Bidding Regulation issued together with the Government's Decree No. 88/1999/ND-CP of September 1, 1999; In order to enhance the management, and the economical and efficient use of State budget capital, the Ministry of Finance hereby guides the implementation of bidding for the procurement of utensils, materials, equipment, and working facilities, applicable to State agencies, armed forces, mass organizations and State enterprises, as follows:

I. GENERAL PROVISIONS:

1. Subjects of application: State agencies, mass organizations, armed forces and State enterprises (hereafter referred to as agencies and units for short) using State budget capital and capital originating from the State budget (called collectively the State budget sources), when procuring goods of types prescribed at Point 2 below, with the unit price or total value of VND100 (one hundred) million dong or more for each procurement (one bidding package) of goods of the same type, or in complete set, shall have to conduct such procurement according to the provisions in this guiding Circular.

For the procurement of goods valued at under VND100 million, the heads of agencies and units under the central government shall decide and select the proper and efficient procurement forms (the form of direct procurement or bidder appointment may apply, without having to meet the meeting conditions stated at Points 2 and 3, Section III of this Circular) and be responsible for their decisions. For locally-run agencies and units, the procurement shall comply with the regulations of the provincial/municipal People's Committees or the authorized bodies. Agencies and units are encouraged to apply the provisions of this Circular.

2. Scope of procurement:

- Stationery, wood and clothing for use in hospitals, costumes and uniforms of aviation branch, which are not commodities of special types;
- Raw materials, fuels and materials, spare parts; bio-products, drugs, chemicals and materials and supplies of other types;
- Machinery and equipment in complete sets or single items, fire prevention and fighting equipment; computers, photocopiers, fax machines, informatics application programs (including installation, test-run and warranty) and other office facilities;

- Means of transport such as: cars, trucks, boats, motorcycles, bicycles,
- Activities of printing and distribution of publications, cultural products, books, newspapers, documents, movies, etc in service of the work of propaganda, information, communication and education;
- Industrial property rights and technological copyrights;
- Other properties in service of professional operation;
- The armed forces' ordinary working devices and means of the above-mentioned types.

All the above-mentioned utensils, supplies, equipment, devices, and working facilities shall be called goods for short.

3. This Circular shall not apply in the following cases:

- Repair, renovation and expansion of offices and workshops;
- Procurement of supplies, equipment and devices in association with the investment and construction stipulated in Item 14 of the Government's Decree No. 12/2000/ND-CP of May 5, 2000 amending and supplementing Article 43 of the Government's Decree No. 52/1999/ND-CP of July 8, 1999 on investment and construction management;
- Procurement of peculiar equipment, supplies, means, raw materials and fuels used exclusively for national defense and security purposes.

4. Methods for selecting bidders: including bidding and non-bidding procurement forms. On the basis of the goods procurement plans already approved by competent authorities, the heads of agencies and units shall have to allocate funding and apply appropriate forms of selecting bidders under the detailed provisions in Sections II and III below. The fractionation of bidding packages for conducting the procurement in non-bidding form is strictly prohibited.

II. PROVISIONS ON THE IMPLEMENTATION OF BIDDING:

For bidding packages for the procurement of goods of the same types or in complete set, valued at VND200 million or more, if they fail to meet one of the conditions set for the implementation of procurement in forms of direct procurement and bidder appointment as specified at Points 2 and 3, Section III of this Circular, bidding must be organized to the select goods-supplying bidders according to the following regulations:

1. Bidding forms:

1.1. Unrestricted bidding:

Unrestricted bidding is the main form applied to bidding for goods procurement. The minimum number of bidders is 5 capable bidders. In cases where there are not enough bidders as required, the bid solicitors shall have to report such to competent persons or competent levels for decision.

1.2. Restricted bidding: is the bidding form in which the bid solicitors invite a number of capable bidders (at least 3) to participate therein. The list of participating bidders must be approved by competent persons or the competent levels. This form shall be considered for application only when one of following conditions is met:

- Only a number of bidders meet the requirements of the bidding package;

- Restricted bidding is requested by the donor providing capital sources for goods procurement;

- Restricted bidding is advantageous due to specific situation of the bidding package.

2. Conditions for the implementation of bidding for goods procurement: Agencies and units using State budget sources shall be allowed to organize bidding for goods procurement only when the following conditions are fully met:

- Having their plans on goods procurements (including plans on State budget allocation for goods procurement) approved by the competent level.

- The bidding dossiers have been approved by competent persons or competent levels.

3. Conditions for participating in the bidding: Bidders participating in bidding shall have to ensure the following conditions:

- Having the business registration certificates granted by competent authorities, with the business lines compatible to the goods lines opened for bidding. For bidding for procurement of complicated goods as prescribed in bidding dossiers, apart from business registration certificates, permits for the sale of goods under the producers' licenses are also required.

For scientific research institutions, when participating in bidding for provision of goods in form of informatics application programs, etc, if they do not have business registration certificates, their functions and tasks inscribed in their establishment decisions must be compatible with the contents and requirements of the bidding packages.

- Having full technical and professional capabilities; being capable of goods supply and warranty (for goods which require warranty), and having financial capability to meet the requirements of bidding packages;

- Bids must strictly comply with the provisions in bidding dossiers.

- Being entitled to participate in the bidding with only one bid for a bidding package, whether it is unilateral or joint bid. Where a corporation registers its name for the bidding, all its attached units (dependent accounting) shall not be allowed to participate therein in the capacity as independent bidders in the same bidding package.

- The bid solicitors shall not be allowed to participate as bidders in the bidding packages organized by themselves.

- The consultants shall not be allowed to participate in the goods procurement bidding packages for which they act as consultants.

4. Expenses for organization of bidding:

The bid solicitors may sell the bidding dossiers at the price decided by competent persons or competent levels. For domestic bidding, the price of a set of bidding dossiers shall not exceed VND500,000. For international bidding, international practices shall apply.

Expenses organization of bidding and evaluation of bids incurred by the bid solicitors shall be covered by the proceeds from the sale of bidding dossiers and managed according to the current regulations. In cases where the collected amounts are not enough to cover expenditures, agencies and units may use their own fund and such cost shall be calculated into the value of the goods in the bidding packages.

5. Evaluation of bidding results:

5.1. Evaluation responsibility:

The agencies competent to evaluate the bidding results are stipulated as follows:

- For the results of bidding for the procurement of goods by centrally-run agencies and units, the ministers, the heads of ministerial-level agencies and agencies attached to the Government, and the heads of central committees of mass organizations shall decide the assisting bodies to perform the task of evaluating the bidding results.

In cases where the procurement is valued at under VND500 million, the heads of the units directly effecting the procurement, who are authorized to approve the bidding results, shall decide the assisting sections to perform the task of evaluating the bidding results.

- For the goods procurement bidding packages by local agencies and units, the presidents of the provincial/municipal People's Committees shall have to approve the bidding results and assign the provincial/municipal Finance-Pricing Services to evaluate the bidding results.

For the bidding packages for goods procurement, for which the responsibility to approve the results has been assigned or authorized by the presidents of the provincial/municipal People's Committees to the heads of lower-level units, the authorized persons shall decide the assisting sections to perform the task of evaluating the bidding results.

Particularly for the results of bidding for goods procurement of State enterprises, the competent persons of the enterprises shall decide the assisting sections to perform the task of evaluating the bidding results.

5.2. Evaluation time limits: The time limit for evaluation shall not exceed 10 days as from the date of receiving complete and valid dossiers.

6. Approval of bidding results:

6.1. Approval responsibility:

The bid solicitors shall have to submit the bidding results to the competent persons or the competent levels for consideration and approval. The competent persons or the competent levels shall have to approve the bidding results in writing. The responsibility for approval of bidding results is stipulated as follows:

- For the results of bidding for goods procurement by central agencies and units, the ministers, the heads of ministerial-level agencies and agencies attached to the Government, and the heads of central committees of mass organizations shall approve the bidding results.

In cases where the procurement is valued at under 500 million dong, the person competent to approve bidding results may authorize in writing the heads of the procuring units to approve them.

- For the results of bidding for goods procurement by locally-run agencies and units, the presidents of the provincial/municipal People's Committees shall have to approve or assign or authorize the heads of lower-level units (rural or urban districts, provincial towns; provincial/municipal services, departments, branches') to approve the bidding results.

- Particularly for results of bidding for goods procurement by State enterprises, the competent persons of such State enterprises shall have the right to approve the bidding results.

6.2. Approval time limits: Except for bidding packages where exist troubles to be settled, the time limits for the approval of bidding results shall not exceed 5 days as from the date of receiving reports from the evaluating agencies.

III. NON-BIDING PROCUREMENT FORMS

When the goods procurement meets the following conditions, bidding shall not be compulsorily organized, but one of the procurement forms such as competitive sale offers, direct procurement and bidder appointment may be selected.

1. Competitive sale offers: is the form of selecting bidders for goods supply on the basis of sale offers by bidders.

- Conditions for application: for the procurement of goods valued at between VND 100 and 200 million, which fails to satisfy the conditions for the application of bidder appointment as stipulated at Point 3 below.

- Each bidding package must have at least 3 sale offers of 3 different bidders on the basis of sale offer requirements set by the bid solicitors. In cases where there are not enough bidders as required, the bid solicitors shall have to submit the cases to the competent persons or the competent levels for decision. The sale offers may be sent directly, by facsimile, postal services or other means.

2. Direct procurement: is the form of selecting bidders for goods supply on the basis of the results of bidding already organized in the year by the units

This form shall apply to cases where the units have the demand to procure goods regularly or procure goods additionally due to the following arising requirements:

2.1. Direct procurement shall apply to units which have the demand to procure goods and supplies in service of their regular operation in the year with stable quantity and categories such as curative medicines for use in medical establishments; teaching aids and means for use in schools; accessories of radio and video broadcasting machines; raw materials, fuels and materials for production in enterprises, etc.

When procuring the above-mentioned goods, based on the results of the bidding already opened in the year, which include bidding packages of goods for regular use, units shall conduct the direct procurement at specific time points in the year, ensuring that the goods' unit prices shall not exceed the unit prices in the contracts signed earlier.

2.2. Direct procurement shall also apply in cases where the contracts already performed in the year or the contracts being performed are supplemented, provided that the bid solicitors have the demand to increase the goods quantity, which were previously opened to bidding, but it must be ensured that the unit prices shall not exceed the unit prices in the contracts signed earlier.

Where the market prices fluctuate, making it unable to ensure the price requirements, or the prices in the signed contracts are no longer reasonable for the direct procurement, the units shall have to organize bidding as for a new bidding package.

3. Appointment of bidders: is the form of directly selecting bidders who satisfy the requirements of the bidding packages. Conditions for the application of appointed bidding are concretely as follows:

3.1. For bidding packages valued at under VND1 billion, the bidder appointment shall be applied in the following cases:

- Urgent procurement due to natural calamities, enemy sabotage, accidents, epidemics, which need to be immediately overcome, and other cases of special procurement (purchase of medicines and chemicals in service of epidemic prevention and fight, as well as for

elimination of dangerous social evils-related diseases and epidemics; purchase of rice, textbooks, furniture, etc for flood-stricken areas);

- For the bidding packages, at the donors' requests, the bidder appointment shall be decided by the competent persons based on the written opinions of the donors and other relevant agencies;
- Goods to be procured are produced solely by domestic enterprises and sold at uniform price throughout the country;
- Goods to be procured are produced solely by foreign firms (companies) and distributed by the producers' sole agents in Vietnam.
- Special bidding packages being goods closely related to other goods, which have been supplied by one bidder, and there are evidence proving that only this bidder can implement such bidding packages with the best quality and at the most reasonable costs.

When applying the bidder appointment for the above-mentioned cases of goods procurement, the competent persons or the competent levels shall decide and immediately appoint capable bidders to promptly perform the work, and at the same time, be responsible for their decisions.

3.2. In special cases where a bidding package is valued at over VND 1 (one) billion, if deeming it necessary to appoint bidders, the ministries, branches, localities and corporations shall file their written opinions to the Ministry of Finance for the latter to appraise and submit them to the Prime Minister for consideration and decision.

3.3. Particularly for the following cases, the form of bidder appointment shall apply without limitation on bidding packages' value:

- Purchase of goods for national reserves for which the bidder shall be appointed with the Prime Minister's permission.
- Purchase of domestically-produced or -assembled motorcycles and cars; domestically-produced equipment, with registered copyrights and uniform sale prices throughout the country.

3.4. When effecting the procurement of the above-mentioned goods, if agencies and units deem it unnecessary to appoint bidders, they shall report such to the competent persons for permission to organize bidding.

In cases of bidder appointment according to the above-prescribed contents, the bid solicitors shall have to clearly determine the following contents:

- The reasons for bidder appointment;
- The technical and financial experiences and capability of bidders recommended for the appointment;
- The value of the goods procurement bidding packages already approved.

IV. IMPLEMENTATION ORGANIZATION

1. This Circular takes effect 15 days after its signing. The previous regulations which are contrary to this Circular are now annulled.

Other contents not stipulated in this Circular shall comply with the provisions in the Bidding Regulation issued together with the Government's Decree No. 88/1999/ND-CP of September

1, 1999 on the promulgation of the Bidding Regulation; Decree No. 14/2000/ND-CP of May 5, 2000 amending and supplementing a number of articles of the Bidding Regulation issued together with Decree No. 88/1999/ND-CP of September 1, 1999;

The form of bidding dossiers for goods procurement shall comply with the provisions in Appendix II to Circular No. 04/2000/TT-BKH of May 26, 2000 of the Ministry of Planning and Investment guiding the implementation of the Bidding Regulation.

2. Annually, the ministries, the ministerial-level agencies, the agencies attached to the Government, the central bodies of mass organizations, the State corporations established by the Prime Minister, and the provincial/municipal People’s Committees shall have to sum-up and send reports on bidding activities to the Ministry of Finance before December 31 for the latter to synthesize and report thereon to the Government.

3. In the course of implementation, if any problems arise, units are requested to promptly report them to the Ministry of Finance for consideration and settlement.

**FOR THE MINISTER OF FINANCE
VICE MINISTER**

Nguyen Thi Kim Ngan

