

# SOME NEW POINTS ABOUT CONTRACTOR SELECTION

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On February 27, 2024, the Government issued Decree 24/2024/ND-CP providing guidelines for the Law on Bidding on contractor selection (**Decree 24**). This Decree repeals some legal documents and regulations related to bidding and centralized procurement, including Decree 63/2014/ND-CP providing details for the implementation of some articles of the Law on Bidding on contractor selection (**Decree 63**). The following are some new regulations of Decree 24 that may affect related enterprises.

*Firstly, amending and supplementing regulations related to incentives in bidding.* Previously, Decree 63 only provided incentives in 3 cases: (i) incentives for international biddings, (ii) incentives for domestic goods, and (iii) incentives for domestic biddings. Currently, Decree 24 supplements the following cases of incentives, including (i) incentives for domestic innovative startups, (ii) incentives for domestic contractors producing made-in-Viet Nam products, and (iii) incentives for products and services certified with eco-labels, energy labels, and other equivalent certificates. For each incentive, Decree 24 supplements/specifies the conditions for enjoying incentives, the form of incentives as well as the method of determining incentives. For example, when bidding on innovative products that meet one of the conditions for incentives for made-in-Viet Nam products, domestic innovative startups will not have to meet requirements on the revenue, number of years operating in the same industry within 6 years from the first time the product is produced and eligible for launching.

*Secondly, supplementing new regulations on online contractor selection.* Compared to Decree 63, Decree 24 supplements 2 contents: (i) online price offering, and (ii) online procurement, specifically:

- Online price offering: This is a repeated process where contractors use electronic means to offer new prices or new values for non-price factors that can be quantified according to evaluation standards in the bidding documents. The offering prices or values will be the basis for ranking or re-ranking bids on the National Bidding Network System. The online price offering can be implemented under the regular process or the simplified process on a case-by-case basis.



- Online procurement: This is the direct procurement of goods and services on the National Bidding Network System from the contractor who has won the contract to provide those goods and services through centralized procurement. Online procurement must be approved in the contractor selection plan and is applied to goods and services of the bidding package included in the procurement estimate and the bidding package price does not exceed 100 million Viet Nam dong; it is also applied to bidding packages for procurement of goods and services under investment projects of state-owned enterprises, enterprises with 100% charter capital owned by state-owned enterprises and investment projects under the Law on Public Investment and the bidding package price does not exceed 1 billion Viet Nam dong.

*Thirdly, regulating cases of adjusting contract price, volume, and other contents in a contract without having to amend the contract or sign any addendum to the contract* (when the adjustments meet the conditions regulated in clause 5, Article 70, the Law on Bidding 2023), including:

- Amending the contract price due to inflation and deflation in contracts based on adjusted unit prices, time-based contracts, and output-based contracts (if any) according to clause 2 and clause 3, Article 107, Decree 24;
- Increasing or decreasing the volume in contracts based on fixed unit price, contracts based on adjusted unit prices; regarding goods or non-consulting procurement packages of which the contracts are based on fixed unit price or adjusted unit prices, the supplement of volumes under the additional purchase option will require contract amendment according to point d, clause 2, Article 106, Decree 24;
- Increasing or decreasing the duration in time-based contracts; increasing or decreasing direct implementation costs for charge-plus cost-based contracts; increasing or decreasing the

base value to calculate the percentage of costs in percentage-based contracts; increasing or decreasing the level of payment deduction or the increase of payment value in output-based contracts;

- Other cases under legal regulations and agreements between the parties.

It should also be noted that in the case that the amendments above lead to failure to meet one or more conditions to adjust the contract price, volume, and other contents specified in the contract without having to sign an addendum to the contract, they must be reported to the authorized person to obtain the permit for such amendments.

## **COMMENTS AND RECOMMENDATIONS**

Decree 24 takes effect from February 27, 2024. Relevant enterprises and individuals need to research and update the provisions of the Decree for appropriate application during their participation in bidding for contractor selection. It should be noted that the request for expression of interest, invitation for prequalification, bidding documents, and request documents issued before January 1, 2024 will continue to be implemented according to the provisions of the Law on Bidding 2013; Decree 63, Decree 32/2019/ND-CP regulating the assignment of tasks, ordering or bidding to provide public products and services using the state budget from regular expenditure sources, Decision No. 17 /2019/QĐ-TTg dated April 8, 2019 of the Prime Minister regulating some bidding packages and procurement contents to maintain regular operations for which the form of contractor selection in special cases is applied under Article 26 of the Law on Bidding 2013 and Circulars guiding the implementation of the Decree.