

NEW REGULATIONS ON INVESTOR SELECTION FOR IMPLEMENTATION OF PROJECTS SUBJECT TO BIDDING

PHUONG NAM

On February 27, 2024, the Government issued Decree 23/2024/ND-CP providing details for several articles and measures for implementation of the Law on Bidding on investor selection for implementation of projects subject to bidding as prescribed by specialized laws (**Decree 23**). Decree 23 is issued to complete the legal framework on investor selection to implement business investment projects in accordance with new regulations of the Law on Bidding 2023. The following are some new regulations of Decree 23 that may affect related enterprises:

Firstly, detailing the projects subject to bidding for investor selection as prescribed by specialized laws, some of which include:

- (i)** Investment projects for the construction of domestic solid waste treatment works under the laws on environmental protection;
- (ii)** Investment projects for renovation and reconstruction of apartment buildings as prescribed by the laws on housing;
- (iii)** Investment projects for the construction of water supply source works, and water supply systems as prescribed by the laws on the production, supply, and consumption of clean water;
- (iv)** Projects with two or more interested investors registering for implementation, including projects in the fields of education, vocational training, health, culture, sport and environment under the law on promotion of private sector involvement (*except investment projects for construction of domestic solid waste treatment works, water supply source works, and water supply systems*); investment projects for construction of social housing.

It is noticeable that the projects within the governance of Decree 23 must be subject to the cases where the project land is recovered by the State or belongs to the



land managed and used by the State as prescribed by the laws on land and are not eligible for auction of land use rights and public properties as prescribed by the laws on land as well as the laws on management and use of public properties.

Secondly, detailing the procedures for investor selection in Article 46 of the Law on Bidding 2023 (from project announcement, and bidding organization to contract signing and project implementation). The procedures applied to several forms of bidding in Decree 23 include:

- For projects applying open bidding, limited bidding according to the single-stage, one-envelope method and open bidding according to the single-stage, two-envelope method: the procedures for investor selection include (1) Announcing business investment projects; (2) Preparing bidding for investor selection; (3) Organizing bidding for investor selection; (4) Evaluating bids; (5) Submitting, appraising, approving, and publishing the investor selection result; (6) Negotiating, finalizing and signing contracts.
- For projects applying open bidding according to the two-stage, one-envelope method: In accordance with the Law on Bidding 2023, this method applies to business investment projects with specific sectoral, regional, or local socio-economic development requirements but of which specific and complete technical requirements for bidding packages have not yet been accurately determined at the time of bidding. The investor selection procedures in this case consist of (1) Announcing business investment projects; (2) Preparing bidding for investor selection in the first stage; (3) Organizing bidding for investor selection in the

first stage; (4) Preparing and organizing bidding for investor selection in the second stage; (5) Evaluating bids in the second stage; (6) Submitting, appraising, approving, and publishing the investor selection result; (7) Negotiating, finalizing and signing contracts.

Among the above steps, step 1 (Announcing business investment projects) is regulated by Decree 23 to ensure compatibility with the Law on Bidding 2023 (this step is supplemented in this law, as compared to the Law on Bidding 2013). Procedures to announce project information are applied in 2 cases: (i) projects subject to investment policy approval and (ii) projects not subject to investment policy approval. Specifically, for case (i), the competent authority shall post the decision on investment policy approval on Vietnam National E-Procurement System within 5 working days from the date of the approval decision. For case (ii), the competent authority shall post the business investment project information (e.g., project name, project implementation location) in accordance with relevant regulations within 5 working days from the date of the document approving the project. The announcement of the business investment projects will serve as a basis for the competent authority to organize and prepare the documents to call for expression of interest and bidding documents for investor selection.

Thirdly, regulating the method and criteria for evaluation of bids. Decree 23 specifies Article 62 of the Law on Bidding 2023 on investors' bids evaluated according to the method of social and state interests. Accordingly, this method is applied to evaluate and rank investors' bids on a general scale of 100 or 1,000 with specific standards including:

- Capacity and experience, including (i) evaluation criteria for financial capacity and capital financing capability, (ii) evaluation criteria for experience in implementing similar projects based on the field, investment scale, duration and level of completion of works and projects, ratio of equity held by the investors in similar projects.
- Business investment plans, including (i) technical evaluation criteria, (ii) social evaluation criteria, and (iii) environmental evaluation criteria.
- Investment efficiency in developing the industries, fields, and localities, including (i) value in the sum paid to the state budget for projects dredging seaport waters and inland waterways combined with product recovery, (ii) minimum value in the amount paid to the state budget based on specific requirements and criteria specified in specialized laws, and (iii) price bracket and maximum price as prescribed by the law on prices and specialized laws, etc.

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 23 has contributed to completing the legal framework on bidding with the aim of removing obstacles and improving the quality of investor selection bidding activities. Individuals and organizations need to continue to research and update the provisions of this Decree to ensure compliance with the law while participating in investor selection for implementing projects subject to bidding. In addition, as of the effective date of Decree 23 (February 27, 2024), Decree 25/2020/ND-CP's regulations related to investor selection as prescribed by specialized laws, laws on promotion of private sector involvement, which are amended and supplemented by Decree 31/2021/ND-CP, shall no longer be effective.