

DECREE

ELABORATION OF SOME ARTICLES OF THE LAW ON PUBLIC - PRIVATE PARTNERSHIP INVESTMENT

Pursuant to the Law on Government Organization dated June 19, 2015 and the Law dated November 22, 2019 on Amendments to the Law on Government Organization and the Law on Local Government Organization;

Pursuant to the Law on Public - Private Partnership Investment dated June 18, 2020;

At the request of the Minister of Planning and Investment;

The Government promulgates a Decree on elaboration of some Articles of the Law on Public - Private Partnership Investment

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This Decree elaborates the Law on Public - Private Partnership Investment ((hereinafter referred to as “PPP Law” regarding investment sectors, scales of PPP projects; PPP Project Assessment Boards; preparations for PPP projects; selection of investors executing PPP projects; confirmation of completion and transfer of works and infrastructure; termination of PPP project contracts; handling of various situations and violations during PPP investment.

Article 2. Investment sectors, size of PPP projects

1. Transportation

a) Sectors: Road transport; railway transport, inland waterways transport; maritime transport; air transport;

b) Size: total investment of at least 1.500 billion VND.

2. Electrical grid, power plants

a) Sectors: renewable energy; coal-fired power; gas-fired power (including liquefied natural gas - LNG); nuclear power; electrical grid; except the cases of state monopoly prescribed by Law on Electricity;

b) Size: total investment of at least 1.500 billion VND; for renewable energy projects: total investment of at least 500 billion VND.

3. Irrigation; clear water supply, water drainage and wastewater treatment; waste treatment: total investment of at least 200 billion VND.

4. Healthcare

a) Sectors: Medical examination and treatment facilities; preventive healthcare; testing;

b) Size: total investment of at least 100 billion VND.

5. Education - training

a) Sectors: infrastructure, facilities, equipment serving education – training and vocational education;

b) Size: total investment of at least 100 billion VND.

6. Information technology (IT) infrastructure

a) Sectors: digital information and digital economy infrastructure; modernization of IT in Communist Party and State agencies; application and development of information technology, databases, data centers; common national platforms, applications, services; network security; system of applications and services serving the people and enterprises; information and communication technology (ITC) infrastructure for smart cities;

b) Size: total investment of at least 200 billion VND.

Article 3. Document retention in PPP investment

1. Competent authorities shall retain documents of the following activities:

- a) Submission, appraisal, decision and revision (if any) of investment guidelines of PPP projects;
- b) Submission, appraisal, decision on approval and revision to the decision approval (if any) of PPP projects;
- c) Survey of interest of investors and lenders (if any);
- d) Conclusion of PPP project contracts and appendices thereof (if any);
- dd) Disbursement of state capital (if any) in PPP projects;
- e) Cost statement of works and infrastructure;
- g) Contract finalization and transfer of project assets;
- h) Other activities specified in project contracts.

2. The procuring entity shall retain the following documents:

- a) Submission, approval, decision on approval for pre-qualification documents, negotiation documents, bidding documents and clarifying documents;
- b) Evaluation, clarification (if any) of pre-qualification applications, negotiation applications, bids.c) Submission, appraisal, approval for the prequalification result, investor selection result.

3. Retention period:

- a) The documents mentioned in Points a, b, c, dd, e, h Clause 1 and Clause 2 of this Article shall be retained for at least 05 years after finalization of the PPP project contract;
- b) The documents mentioned in Point d and Point g Clause 1 of this Article shall be retained for at least 10 years after finalization of the PPP project contract.

Article 4. Publishing PPP-related information

1. Responsibility to publish information on Vietnam National E-Procurement System (VNEPS):

- a) Competent authorities shall publish information specified in Point a Clause 1 Article 9 and Article 25 of PPP Law, information about investors' interest survey specified in Article 25 of this Decree;
- b) The procuring entity shall publish the information specified in Point b Clause 1 Article 9 of PPP Law and information about changes of bid closing time (if any);
- c) Agencies contracted to publish the information specified in Points c, d, dd Clause 1 Article 9 of PPP Law;
- d) Regarding the information specified in Point e Clause 1 Article 9 of PPP Law, the Ministry of Planning and Investment shall publish the documents promulgated by the National Assembly, the Standing Committee of the National Assembly, the Government, the Prime Minister, Ministries and heads of ministerial-level agencies; Provincial Departments of Planning and Investment shall publish documents promulgated by the People's Councils, the People's Committees and Presidents of the People's Committees of provinces;
- dd) Bidders shall post and update information about their capacity and experience to the bidder database in accordance with Point g Clause 1 Article 9 of PPP Law;
- e) Complaint and denunciation settling authorities shall provide information about settlement of complaints, decisions on handling reported violations in accordance with Point h Clause 1 Article 9 of PPP Law for the Ministry of Planning and Investment for publishing. Published information shall comply with regulations of law on complaints and denunciations;
- g) Complaint and denunciation settling authorities shall publish their responses to proposals in investor selection and decisions on actions against violations in PPP investment in accordance with Point ah Clause 1 Article 9 of PPP Law.

2. Time for publishing information on VNEPS:

“

- a) The procuring entity shall decide the time for publishing the pre-qualification notice and invitation to bid prescribed in Point b Clause 1 Article 9 of PPP Law on VNEPS according to the progress of the project;
- b) The procuring entity shall publishing the shortlist and investor selection result prescribed in Point b Clause 1 Article 9 of PPP Law within 10 days from the issuance date of the documents;
- c) The information prescribed in Points a, c, d and dd Clause 1 Article 9 of PPP Law shall be published by the organization within 10 days from the issuance date of the documents.

3. Information on the list of state secrets shall be disclosed in accordance with state secret protection laws.

4. “International pre-qualification notices, international invitation to bid, information about changes of bid closing time (if any) prescribed in Point b Clause 1 Article 9 of PPP Law shall be published in both Vietnamese and English on VNEPS and the website of the ministry, central authority, other authorities and the People’s Committee of the province.

Article 5. PPP information system and databases

1. PPP information system is an IT system developed and managed by the Ministry of Construction for uniform management of PPP-related information, including information about PPP investment activities, PPP databases on VNEPS and relevant information.

2. PPP databases on VNEPS include:

- a) Database about PPP projects;
- b) Database about PPP project contracts;
- c) Database about PPP investors;
- d) Other relevant databases about PPP.

3. Development, management and use of PPP databases;

- a) PPP databases shall have information security and data integrity, ensure compatibility between information in PPP databases and other information systems and databases of state authorities;
- b) Regulatory authorities shall have access to PPP databases within their functions and tasks;
- c) Other organizations and individuals that need to access PPP databases shall follow instructions of the Ministry of Planning and Investment.

4. The budget for development, management and upgrade of the PPP information system and PPP databases shall be included in the annual state budget estimates of the Ministry of Planning and Investment and other lawful sources (if any).

Article 6. Reporting PPP investment activities

1. Annual PPP investment reports of ministries, central authorities, other authorities and the People’s Committees of provinces shall be submitted to the Ministry of Planning and Investment before March 31 of the succeeding year. The Ministry of Planning and Investment shall receive, manage, evaluate and consolidate information about PPP investment and submit annual reports to the Prime Minister.

2. The report mentioned in Clause 1 of this Article shall have the following contents:

- a) Progress of PPP projects: basic information about the PPP projects; preparations for the projects, investor selection; execution of PPP project contracts;
- b) Promulgation of guiding documents about PPP investment activities;
- c) Arrangement of staff in charge of PPP investment activities;
- d) Achievements, unresolved issues, difficulties, causes and proposed solutions.

3. The report mentioned in Clause 1 of this Article shall be:

- a) Sent physically; and
- b) Sent via VNEPS following the roadmap specified in Point b Clause 1 Article 93 of this Decrees.

4. On the basis of the investment evaluation and supervision reports prepared by PPP project enterprises in accordance with regulations of the Government on investment evaluation and supervision, the concluding authority shall submit PPP project contract execution reports to the Ministry, central authorities, other authorities, the People’s Committee of the province. A PPP project contract execution report shall have the following contents:

- a) PPP project contract execution progress with a timeline;
- b) Raising and disbursement of financing sources of the project, including: state capital in the project (if any), the investor’s equity, borrowed capital, capital derived from corporate bonds (if any);
- c) Fulfillment of obligations of the concluding authority, the investor and PPP project enterprise in the contract;
- d) Actual revenue of the PPP project; the part of additional revenue that is shared by the PPP project enterprise to the State (if any); the value of the decrease in revenue that the State has paid or plans to pay the PPP project enterprise (if any);
- dd) Estimated costs incurred by the State in the next 03 years after the reporting years;
- e) Difficulties that arise during the execution of the project, unexpected situations that impact the fulfillment of contractual obligations of the parties or might lead to changes to the project contract; proposed solutions for minimizing negative impacts on the project.

Chapter II

PPP PROJECT ASSESSMENT BOARDS, INSPECTION COUNSELLING, COSTS OF INSPECTION AND ASSESSMENT OF PPP PROJECTS

Section 1. PPP PROJECT ASSESSMENT BOARDS

Article 7. State Assessment Board

The establishment, organization, operation, responsibilities and entitlements of State Assessment Boards of PPP projects shall comply with regulations of the Government on projects of national importance.

Article 8. Establishment and organization of Interdisciplinary Assessment Boards

1. The Interdisciplinary Assessment Board of each project shall be established under decision of the Prime Minister at the request of the Ministry of Planning and Investment. Where necessary, the Ministry of Planning and Investment shall seek opinions from other ministries, ministerial agencies and relevant authorities on the draft decision on establishment of the Interdisciplinary Assessment Board before it is submitted to the Prime Minister.

2. A Interdisciplinary Assessment Board shall have a President, Vice Presidents and other members. The President of the Interdisciplinary Assessment Board shall be the Minister of Planning and Investment. The Vice Presidents and other members shall be representatives of relevant Ministries and authorities.

3. The Ministry of Planning and Investment shall act as the standing executive body of the Interdisciplinary Assessment Board and has the duties specified in Article 14 of this Decree.

4. An Interdisciplinary Assessment Board shall be dissolved after its duties have been fulfilled.

Article 9. Establishment and organization of Intramural Assessment Boards

1. Intramural Assessment Boards shall be established by Ministers, heads of central authorities, other authorities, Presidents of the People's Committees of provinces for each project at the request of the standing executive body.

2. An Intramural Assessment Board shall have a President, Vice Presidents and members.

3. The standing executive of an Intramural Assessment Board is a organization or unit specialized in management of PPP investment or planning – finance at the ministry, authority or the Department of Planning and Investment and have the duties specified in Article 14 of this Decree.

4. An Intramural Assessment Board shall be dissolved after their duties have been fulfilled.

Article 10. Responsibilities, entitlements and rules for operation of Interdisciplinary Assessment Boards and Intramural Assessment Boards

1. Interdisciplinary Assessment Boards and Intramural Assessment Boards have the duties specified in Point b and Point c Clause 1 Article 6 of PPP Law.

2. An Assessment Board is entitled to:

a) Consider and decide the assessment contents, plans and relevant issues during the process of assessment of the pre-feasibility study report and feasibility study report of the PPP project;

b) Request the competent authority to provide documents serving the assessment.

3. Rules for operation of the Assessment Board:

a) The Board shall work as a collective under the leadership of the President;

b) A meeting of the Board is considered valid when it is participated in by at least 50% of the members (including authorized persons);

c) A verdict shall be ratified when it is voted for by at least 50% of the members (including those who participate in the meeting and those who send their votes). In case of a tie, the President shall have the casting vote;

d) The final verdict that ratifies the assessment report must be voted for by at least 2/3 of the members (including those who participate in the meeting and those who send their votes).

Article 11. Responsibilities and entitlements of Presidents of Interdisciplinary Assessment Boards and Intramural Assessment Boards

1. Consider approving the assessment plans and relevant issues during the assessment process after the Board comment and vote; convene and chair meetings of the Board; assign tasks to Vice Presidents and members of the Board.

2. Decide establishment of expert teams and other assistance teams of the Board.

3. Where necessary, the President may authorize a Vice President to convene and chair meetings of the Board.

4. Decide the selection of PPP project validation counselors as prescribed in Article 15 of this Decree.

Article 12. Responsibilities and entitlements of Vice Presidents of Interdisciplinary Assessment Boards and Intramural Assessment Boards

1. Assist the President in operating the Board; monitor and perform the tasks assigned by the President; frequently report on assessments by the Board.

2. Assist the President in examining and evaluating professional reports and other activities of the Board.

Article 13. Responsibilities and entitlements of members of Interdisciplinary Assessment Boards and Intramural Assessment Boards

1. Comment on the contents of the assessment plans approved by the President.

2. Mobilize human resources, equipment and facilities under their management to perform given tasks.

3. Participate in all meetings of the Board; comment on the assessment contents and vote on the verdicts of the Board. In case a member cannot participate in a meeting, he/she shall send written comments and authorized another person to participate in the meeting. Board members have the right have their opinions recorded.

4. Take responsibility for professional operations of the agency they represent as assigned by the President.

Article 14. Duties of standing executive bodies of Interdisciplinary Assessment Boards and Intramural Assessment Boards

1. Prepare the assessment plan according to Appendix I hereof and submit it to the President for approval.

2. Cooperate with relevant agencies and counselors in assisting the President in carrying out the assessment and other activities of the Board, including:

a) Receive and examine project documents; send documents to Board members, relevant units and agencies; make sure they have enough time to carry out the assessment as prescribed in Clause 1 Article 18 and Clause 1 Article 26 of this Decree.

b) Prepare and send assessment contents according to the assessment plans to Board members;

c) Prepare requests for addition or revision of documents as requested by Board members during the assessment process;

d) Select PPP project validation counselors where necessary;

dd) Collect comments of Board members and present them to the President for deciding the issues that arise during the assessment process.

e) Draft the assessment report;

g) Follow procedures for payment of assessment and validation costs;

h) Perform other tasks assigned by the Board.

Section 2. SELECTION OF ASSESSMENT COUNSELLORS, COSTS OF ASSESSMENT AND INSPECTION

Article 15. Selection of validation counselors

1. A validation counselor is a Vietnamese or foreign organization or individual or a partnership between domestic and foreign entities (hereinafter referred to as "validation counselor")

2. The selection of the validation counselor shall be carried out in accordance with bidding laws. To be specific:

a) In case an Assessment Board is established, the President of the Assessment Board shall act as the competent person, the standing executive body shall act as the investor and procuring entity;

b) In case an affiliated unit is assigned to perform assessment tasks, the Minister, head of the central authority or other authority, the President of the People's Committee of the province shall act as the competent person, the assessing unit shall act as the investor and procuring entity.

3. The counseling contract shall be concluded between the following parties:

a) The standing executive body if an Assessment Board is established, or the affiliated unit assigned to perform assessment tasks;

b) The unit that prepares the PPP project or the authority that receives the project proposal as prescribed in Point b Clause 2 Article 22 of this Decree;

c) The selected counseling contractor.

Article 16. Costs of assessment and validation

1. Validation costs:

a) The norms for validation costs shall comply with relevant laws. In case norms for inspection costs are not established by relevant laws, these costs shall be determined according to cost estimates;

b) The norms or estimates of the costs of validation of the pre-feasibility study report shall be the same as those of the costs of inspection of the feasibility study report as prescribed by law.

2. Assessment costs:

a) The assessment costs include remunerations for members of the Assessment Board, the standing executive body and assistant teams of the Assessment Board (if any), costs of meeting, site inspection (if any), relevant costs, backup costs other than the validation costs specified in Clause 1 of this Article;

b) The assessment costs shall be 20% of the validation cost norm or estimate;

c) The assessment costs include remunerations for members of the Assessment Board, the standing executive body and assistant teams of the Assessment Board (if any), costs of meeting, site inspection (if any), relevant costs, backup costs other than the inspection costs specified in Clause 1 of this Article;

3. The costs prescribed in Clause 1 and Clause 2 of this Article shall be covered by the public investment funds, other lawful financing sources and paid by the unit that prepares the PPP project in accordance with the counseling contract and at the request of the standing executive body of the Assessment Board.

Chapter III

PREPARATION OF PPP PROJECTS

Section 1. PREPARATION, ASSESSMENT OF PRE-FEASIBILITY STUDY REPORTS AND DECISIONS ON INVESTMENT GUIDELINES OF PPP PROJECTS

Article 17. Preparation, assessment of pre-feasibility study reports

1. Pre-feasibility study reports shall be prepared in accordance with Clause 3 Article 14 of PPP Law and Form No. 01 in Appendix II hereof.

2. In case the project has elements that require assurance of national defense and security, protection of state secrets or special elements that need innovations in order to shorten the duration of construction of the work or infrastructure, achieve high energy-saving rates, ensure a high level of environmental safety according to environmental protection laws, the pre-feasibility study report must specify these elements.

3. The report on assessment of a pre-feasibility study report shall be prepared in accordance with Clause 2 Article 15 of PPP Law and Form No. 02 in Appendix II hereof.

4. In case the PPP project uses public investment capital, the authority and content of assessment of financing sources and financial capacity shall comply with Article 19 and Article 20 of this Decree.

5. The use of the following financing sources shall comply with regulations of the Government on financial mechanism of PPP projects:

a) Funds for regular expenditures for paying PPP project enterprises;

b) Funds from lawful sources for paying PPP project enterprises;

c) State budget reserve for paying the decrease in revenue.

Article 18. Time and documentation for assessment of investment guidelines of projects

1. The time for assessment of a pre-feasibility study report begins from the day on which the Assessment Board or the assessing unit receives adequate and valid documents as prescribed in Clause 2 of this Article or from the day on which the validation report is received from the counselor. To be specific:

a) If the decision on investment guidelines of the project is issued by the Prime Minister: not more than 45 days;

b) If the decision on investment guidelines is issued by the Minister, head of a central authority, another authority or provincial People's Council: not more than 30 days.

2. 10 sets of the documents specified in Clause 1 Article 15 of PPP Law shall be sent to the Assessment Board or assessing unit; a competent authority may be requested to increase the number of documents where necessary.

Article 19. Authority to assess financing sources and capability to balance public investment capital in PPP projects

1. The Ministry of Planning and Investment shall preside over the assessment of financing sources and capability to balance investment capital of central government budget for:

- a) PPP projects whose investment guidelines are decided by the National Assembly;
- b) PPP projects whose investment guidelines are decided by the Prime Minister.

2. b) The Minister, head of a central authority or another authority shall assign the public investment authority to preside over the assessment of capability to balance investment capital for the project whose investment guidelines is decided by such authority.

3. b) The President of the People's Committee of the province shall assign the public investment authority of the same province to preside over the assessment of capability to balance investment capital of:

b) Local government budget in case the investment guidelines of the PPP project is decided by the National Assembly or the Prime Minister;

b) The PPP project if its investment guidelines are decided by the provincial People's Council.

4. In case a PPP project is funded by lawful sources of income of a public service provider, the head of the public service provider shall assign an affiliated unit to assess the capability to balance investment capital of these sources and send a report to the Assessment Board or assessing unit for consolidation.

Article 20. Contents of assessment of capability to balance public investment capital in PPP projects

1. Assessment of capability to balance public investment capital is part of the assessment of the PPP project's pre-feasibility study report of the.

2. The PPP Project Assessment Board or the unit assigned to assess the PPP project's pre-feasibility study report shall seek opinions from the authority assigned to assess the financing sources and capability to balance investment capital of the project during the assessment process.

3. Assessment of financing sources and capability to balance public investment capital in the PPP project includes assessment of conformity of:

a) Purposes of the capital;

b) Schedule for capital disbursement in the annual plan;

c) Financing sources and capability to balance investment capital in the total public investment capital in the medium-term public investment plan approved by National Assembly and the Prime Minister and assigned to Ministries, central authorities and local authorities in the medium term for execution of projects and limits of public investment capital in the later periods as prescribed by the Law on Public Investment; total public investment capital in the medium-term state budget plan and annual increase in state budget revenues (if any) decided by the provincial People's Council;

d) The capital that has to be disbursed according to the contract in order to pay the PPP project enterprise in case the project is under a BTL or BLT contract which is expected to be executed in more than 02 consecutive medium terms of public investment.

4. In case a PPP project is funded by lawful sources of income of a public service provider, the assessing units shall assess the criteria specified in Point a and Point b Clause 3 of this Article.

Article 21. Decisions on investment guidelines of PPP projects

1. The contents of a decision on investment guidelines of a PPP project shall comply with Article 17 of PPP Law and Form No. 03 in Appendix II hereof.

2. The authority having the power to approve the decision on investment guidelines shall carry out investor selection by f for:

a) Projects applying high technologies on the list of prioritized high technologies prescribed by high technology laws;

b) Projects applying advanced, new, clean technologies on the list of technologies encouraged for transfer prescribed by high technology laws (hereinafter referred to as "projects applying new technologies").

3. In case the PPP project has elements that require assurance of national defense and security, protection of state secrets or special elements that need innovations in order to shorten the duration of construction of the work or infrastructure, achieve high energy-saving rates, ensure a high level of environmental safety according to environmental protection laws, the decision on investment guidelines must specify these elements as the basis for survey investors' interests according to Article 25 of this Decree.

4. Except for the cases specified in Points a, b and c Clause 3 Article 4 of PPP Law, the decision on investment guidelines of a PPP project that involves more than one province shall be issued as follows:

a) The People's Committees of the provinces where the project is located shall submit a report to the People's Council of the same provinces, which will consider approving the execution of the project. The report shall specify the project's name, scale, location, type of PPP project contract, estimated total investment, state investment in the PPP project and funding from government budget of each province. on the basis of the written approval issued by the People's Council, the People's Committee of the same province shall reach an agreement with the relevant Ministry on assigning a local authority as competent authority;

b) The competent authority mentioned in Point a of this Clause shall organize the project preparation, propose issuance of the decision on investment guidelines according to Clause 2 Article 13 of PPP Law and the name of the competent authority according to Clause 3 Article 5 of PPP Law to the Prime Minister;

c) In case the funding for compensation, land clearance, assistance, relocation; construction of temporary works is provided by local government budget of each province, the People's Committee of these provinces shall submit a report to the Prime Minister on establishment of component projects to be executed in each province in accordance with the Law on Public Investment.

5. For PPP projects that allow division of decrease in revenue, the decision on investment guidelines shall specify that this cost is covered by backup central or local government budget.

6. Time limits for approving the decision on investment guidelines from the day on which valid documents specified in Article 16 of PPP Law are fully received:

a) If the decision on investment is issued by the Prime Minister: not more than 20 days;

b) If the decision on investment guidelines is issued by the Minister, head of a central authority, another authority or provincial People's Council: not more than 15 days.

7. For PPP projects funded by public investment capital, on the basis of the decision on investment guidelines approved by the competent authority, the public investment capital in the PPP project shall be aggregated with the medium-term public investment plan.

Article 22. Decisions on investment guidelines of PPP projects proposed by investors

1. The investor shall submit the written proposal of the PPP project to the competent authority prescribed in Clause 1 Article 5 of PPP Law. In case such a competent authority cannot be determined, the investor shall contact the local PPP investment authority for instructions. In case the competent authority still cannot be identified after contacting the local PPP investment authority, the investor shall contact the central PPP investment authority.

2. The written approval for the investor to prepare the pre-feasibility study report shall have the following contents:

a) Name of the investor assigned to prepare the pre-feasibility study report;

b) Deadline and location for submission of the project proposal; the presiding authority or unit shall receive the project proposal, submit the investment guidelines for assessment and approval;

c) Regulations that the investor incurs all the costs and risks in case the project proposal is rejected.

If the PPP project applies high technologies or new technologies (hereinafter referred to as "high-tech PPP project"), the written approval shall specify the cost of preparation of the pre-feasibility study report and what to do in case the selected investor is not the proposing investor. In this case, the cost of preparation of the pre-feasibility study report shall be paid by the selected investor to the proposing investor;

d) Responsibility, cooperation of relevant authorities in instructing the investor to prepare the pre-feasibility study report;

dd) Other relevant contents.

3. The accepted investor prescribed in Clause 2 of this Article shall prepare the pre-feasibility study report in accordance with Clause 1 and Clause 2 Article 17 of this Decree.

4. The project proposed by the investor shall be assessed and have a decision on investment guidelines issued in accordance with Clause 2 Article 27 of PPP law, Clause 3 and Clause 4 Article 17, Articles 18, 19, 20 and 21 of this Decree.

5. In case the investor proposes to use state capital in the PPP project, the competent authority shall assign an authority or unit mentioned in Point b Clause 2 of this Article to instruct the investors to include the use of state capital in the pre-feasibility study report as the basis for assessment of financing sources and capability to balance investment capital as prescribed in Clause 4 and Clause 5 Article 17 of this Decree.

Article 23. PPP projects with works subject to architectural plan competition

1. In case the PPP project has a work subject to architectural plan competition as prescribed by architecture laws:

a) The pre-feasibility study report must describe the legality, necessity, selection method and relevant contents of the competition as the basis for issuance of the decision on investment guidelines;

b) The costs of architectural plan competition shall be determined in accordance with applicable regulations of the Ministry of Construction on projects funded by state budget and included in the project's total investment. In case the project is proposed by the investor, the investor shall be responsible for these costs.

2. After the decision on investment guidelines is issued, The competent authority shall carry out the competition in accordance with architecture laws:

Section 2. PREPARATION, ASSESSMENT OF FEASIBILITY STUDY REPORTS, APPROVAL FOR PPP PROJECTS

Article 24. Preparation, assessment of feasibility study reports

1. Feasibility study reports shall be prepared in accordance with Clause 2 Article 19 of PPP Law and Form No. 01 in Appendix III hereof.

2. In the case specified in Point a Clause 5 Article 70 of PPP Law, the feasibility study report shall determine sub-projects in the same manner as determination of contract packages as prescribed by regulations of law on construction and bidding. During the construction process, the infrastructure and selection of contractors for the sub-projects shall comply with regulations on contractor selection issued by the project management enterprise according to Article 55 of PPP Law.

3. The report on assessment of the feasibility study reports shall be prepared in accordance with Clause 2 Article 20 of PPP Law and Form No. 02 in Appendix III hereof.

Article 25. Survey of interest of investors in PPP projects

1. During the preparation of the feasibility study report of a PPP project, the competent authority shall survey the interest of investors and lenders (if any), except PPP projects approved by the Prime Minister for investor appointment as prescribed in Clause 2 Article 39 of PPP Law. The survey shall be carried out after the investor completes and sends the draft feasibility study report to the competent authority.

2. Procedures for survey of interest of investors in a PPP project:

a) The competent authority uploads the survey notice in both English and Vietnamese onto the VNEPS and the website of the Ministry, central authority, other authority or the People's Committee of the province; the notice shall be written in Vietnamese for the economic sectors and business lines with prohibited market access prescribed by investment laws, projects subject to requirements concerning national defense, security and state secrets prescribed in Point a and Point b Clause 3 Article 31 of PPP Law;

b) Interested investors apply for project execution on VNEPS. Before the deadline for submission of the expression of interest (EOI), the competent authority may hold a convention to provide information about the project for investors;

c) The interest survey result is the basis for the competent authority to decide whether to apply pre-qualification, selection of domestic or international investors. Before approving the project, the preparing unit, if necessary, shall request the competent authority to consider permitting pre-qualification as prescribed in Clause 2 Article 28 of PPP Law, determine the name of the procuring entity and pre-qualification time.

3. Except for the projects specified in Clause 4 of this Article, investors' interest survey shall be carried out in accordance with Clause 2 of this Article and Form No. 01 in Appendix IV hereof. The preparing unit (or the authority that receives the project proposal as the case may be) shall determine the number of investors that submit the EOI as the basis for deciding the investor selection method prescribed in Clause 2 Article 34 of this Decree.

4. In case the PPP project has special elements that need innovations in order to shorten the duration of construction of the work or infrastructure, achieve high energy-saving rates, ensure a high level of environmental safety according to environmental protection laws, the survey shall be carried out following the procedures specified in Clause 2 of this Article and Form No. 02 in Appendix IV hereof. The preparing or receiving unit shall assess investors' EOI responses in order to make a short list and decide on the investor selection method as prescribed in Point a Clause 3 r 34 of this Decree.

5. From the day on which the survey notice is posted on VNEPS as prescribed in Point a Clause 3 of this Article, the time limit for investors and lenders (if any) shall be that specified in the notice, which must be:

- a) At least 30 days for the projects specified in Clause 3 of this Article;
- b) At least 45 days for the projects specified in Clause 4 of this Article.

Article 26. Time and documentation for assessment of feasibility study reports

1. The time for assessment of a feasibility study report begins from the day on which the Assessment Board or the assessing unit receives adequate and valid documents as prescribed in Clause 2 of this Article or from the day on which the validation report is received from the counselor. To be specific:

- a) If the project is approved by the Prime Minister: not more than 90 days;
- b) If the project is approved by the Minister, head of a central authority, another authority or provincial People's Council: not more than 60 days.

2. 10 sets of the documents specified in Clause 1 Article 20 of PPP Law shall be sent to the Assessment Board or assessing unit; a competent authority may be requested to increase the number of documents where necessary.

Article 27. Approving PPP projects

1. The contents of a decision on investment guidelines of a PPP project shall comply with Article 23 of PPP Law and Form No. 03 in Appendix III hereof.

2. Time limit for approving a PPP project from the receipt of satisfactory documents prescribed in Article 22 of PPP Law:

- a) If the project is approved by the Prime Minister: not more than 20 days;
- b) If the project is approved by the Minister, head of a central authority, another authority or provincial People's Council: not more than 15 days.

3. For high-tech PPP projects:

a) After the investor selection result is approved, the competent authority shall assign the selected investor to prepare the feasibility study report as prescribed in Clause 1 Article 24 of this Decree. In case the project uses public investment capital as state assistance in construction and infrastructure development, the feasibility study report shall specify the method for management and use of this capital in accordance with Point b Clause 5 Article 70 of PPP Law;

b) There shall be a written agreement between the competent authority and the investor that prepares the feasibility study report mentioned in Point a of this Clause;

c) The written agreement shall have the following contents: purposes; requirements; costs of preparation of the feasibility study report; cost of hiring independent counselors to validate the feasibility study report; establishment of the project management enterprise; responsibility of the project management enterprise for preparation of the feasibility study report and rules for settlement of the costs of preparation of the feasibility study report in case it is not approved or negotiation and contract conclusion is not carried out;

d) The feasibility study report prepared by the investor shall be assessed in accordance with Clause 3 Article 24 and Article 26 of this Decree; approved in accordance with Articles 12, 22 and 23 of PPP Law, Clause 1 and Clause 2 of this Article.

Article 28. Approving PPP projects proposed by investors

1. After the decision on investment guidelines is issued, the competent authority shall assign the investor to prepare the feasibility study report in accordance with Clause 1 Article 24 of this Decree, except high-tech PPP projects.

2. b) There shall be a written agreement between the competent authority and the investor that prepares the feasibility study report mentioned in Clause 1 of this Article. The agreement shall have the following contents: purposes, requirements; costs of preparation of the feasibility study report; costs of hiring independent counselors to validate the report and rules for settlement in case:

a) The feasibility study report is not approved or the investor that executes the project cannot be selected, in which case the investor shall bear all risks and costs;

b) The proposing investor is not selected, in which case the costs of preparation of the pre-feasibility study report and feasibility study report shall be returned to the proposing investor.

3. The feasibility study report prepared by the investor shall be assessed in accordance with Point b Clause 3 Article 27 of PPP Law, Clause 3 Article 24 and Article 26 of this Decree.

4. The project proposed by the investor shall be approved in accordance with Point c Clause 3 Article 27 of PPP Law, Clause 1 and Clause 2 Article 27 of this Decree.

5. The selected investor shall reimburse the costs of preparation of the pre-feasibility study report and feasibility study report in accordance with Clause 6 Article 27 of PPP Law and Point b Clause 2 of this Article before concluding the PPP project contract.

INVESTOR SELECTION

Section 1. GENERAL PROVISIONS

Article 29. Assurance of competitiveness in investor selection

A bidder is considered legally and financially independent from the counseling contractor, the competent authorities, the concluding authority, the procuring entity, other investors prescribed in Article 30 of PPP Law when the following conditions are fully satisfied:

1. After the pre-qualification documents, negotiation documents or bidding documents are issued, the bidders must not hold shares or stakes of the following counseling contractors:

- a) The counseling contractor responsible for preparation of the pre-feasibility study report, feasibility study report, unless the project is proposed the investor;
- b) The counseling contractor responsible for validation of the pre-feasibility study, feasibility study;
- c) The counseling contractor responsible for preparation and validation of the prequalification documents, negotiation documents, bidding documents, assessment of prequalification applications, negotiation applications, bids, validation of prequalification result and investor selection result;
- d) The counseling contractor responsible for supervision of contract execution and PPP project inspection.

2. After the pre-qualification documents, negotiation documents or bidding documents are issued, the bidders and the counseling contractors specified in Clause 1 of this Article must not jointly hold over 30% of share capital total voting shares, stakes of another organization and individual of each side. In case the investor or counseling contractor is a partnership, holding shall be calculated as follows:

a) Holding in other organizations and individuals and partnership investors shall be calculated according to the following formula:

$$\text{Tỷ lệ sở hữu vốn} = \sum_{i=1}^n X_i \times Y_i$$

Where:

X_i : Holding of capita, voting shares of organizations and individuals by bidder i .

Y_i : ratio of equity contributed by partnership investor i under the partnership agreement.

n : quantity of members in the partnership.

b) Holdings of other organizations and individuals and counseling contractor that is a partnership shall be calculated according to the following formula:

$$\text{Tỷ lệ sở hữu vốn} = \sum_{i=1}^n X_i \times Y_i$$

Where:

X_i : Holding of capita, voting shares of organizations and individuals with the counseling contractors i under the partnership agreement.

Y_i : ratio of liability distribution under the partnership agreement i .

n : quantity of members in the partnership.

3. In case the investor applies the parent company – subsidiaries model as prescribed by enterprise laws:

a) The parent company, subsidiary company or the partnership of parent company and subsidiary companies may only participate in one pre-qualification application, negotiation application or bid if the project applies competitive bidding, competitive negotiation as prescribed in Clause 1 Article 38 of PPP Law;

b) The investor that bids for the PPP project and the consulting contractor shall carry out one of the counseling tasks specified in Clause 1 of this Article must not have the parent company – subsidiary company relationship since the issuance of the pre-qualification documents, bidding documents or when the counseling contractor signs the counseling contract, whichever comes first.

4. From the date of issuance of the pre-qualification documents, negotiation documents, the investor, the competent authority and contract-signing authority, the procuring entity must not over 50% of

shares, total voting shares and stakes of each other. In case the investor participates as a partnership, holding shall be calculated as follows:

$$\text{Tỷ lệ sở hữu vốn} = \sum_{i=1}^n X_i \times Y_i$$

Where:

X_i : Holding of voting shares of competent authority, contract-signing authority, procuring entity in partnership member i .

Y_i : ratio of equity contributed by partnership member i under the partnership agreement.

n : quantity of members in the partnership.

5. In case of investor appointment prescribed in Clause 1 Article 39 of PPP Law, the investor is not required to comply with the regulations on competitiveness assurance specified in Point a Clause 1 and Clause 4 of this Article.

Article 30. Incentives in investor selection

1. Eligibility and rates of incentives

a) The investor whose project proposal is approved will be eligible for 5% incentive during bid evaluation;

b) The investor that has a commitment to hire domestic contractors to participate in execution of the project with a value of works that makes up at least 25% of total investment in the project will be eligible for 3% incentive during bid evaluation;

c) The foreign investor that has a commitment to use domestic goods, supplies, materials, equipment for execution of the project with a value that makes up at least 25% of total investment in the project will be eligible for 2% incentive during bid evaluation.

2. Incentive principles:

a) In case an investor is eligible for more than one incentive, the highest one shall apply;

b) In case of a tie after incentives are applied, the investor whose project proposal is accepted will be preferred;

c) In case an investor that is eligible for incentives as prescribed in Point b and Point c Clause 1 of this Article is awarded the contract but fails to fulfill the commitments in the bid and PPP project contract, the investor will incur penalties in accordance with the PPP project contract. In this case, the PPP project contract shall specify the penalties corresponding to the incentives for which the investor is eligible during bid evaluation.

3. Calculation of incentives

a) If standard prices, fees of public services and products are used for comparing and ranking investors, the prices and fees of products and services provided by an investor eligible for incentives shall be calculated as follows:

$$G_{GTSS} = G_{GT} - G_{GT} \times M_{UD} \%$$

Where:

- G_{GTSS} : Prices, fees of products and services for comparing and ranking investors eligible for incentives;

- G_{GT} : Prices, fees of products and services proposed by of the investor eligible for incentives in the bid.

- M_{UD} : Incentives for which the investor is eligible as prescribed in Clause 1 of this Article.

b) If standards of state capital provided as assistance in construction of works and infrastructure system are used for comparing and ranking investors, the value of state capital provided for the investor eligible for incentives as assistance in construction of works and infrastructure system shall be calculated as follows:

$$V_{GTSS} = V_{GT} - V_{GT} \times M_{UD} \%$$

Where:

- V_{GTSS} : value of state capital provided as assistance in construction of works and infrastructure system used for comparing and ranking investors eligible for investors;

- V_{GT} : value of state capital provided as assistance in construction of works and infrastructure system proposed by the investor eligible incentives in the bid.

- M_{UD} : Incentives for which the investor is eligible as prescribed in Clause 1 of this Article.

c) If standards of social interests and state interests are used for comparing and ranking investors, the proposed payment to state budget of contract execution duration of the investor eligible for incentives shall be calculated using one of the two formulae below:

$$T_{GTSS} = T_{GT} + T_{GT} \times M_{UD} \%$$

Where:

- T_{GTSS} : value of payment to state budget for comparing and ranking investors eligible for incentives;
- T_{GT} : value of payment to state budget proposed by the investor eligible for incentives in the bid.
- M_{UD} : Incentives for which the investor is eligible as prescribed in Clause 1 of this Article.

Or:

$$T_{GTSS} = T_{GT} - T_{GT} \times M_{UD} \%$$

Where:

- T_{GTSS} : contract execution duration for comparing and ranking investors eligible for incentives;
- T_{GT} : contract execution duration proposed by the investor eligible for incentives in the bid.
- M_{UD} : Incentives for which the investor is eligible as prescribed in Clause 1 of this Article.

d) If mixed standards are applied, the incentives to which an investor is entitled shall be proportional to the applied standards but the total value of incentives must not exceed 5%.

Article 31. Points of time during investor selection process

1. The pre-qualification documents shall be issued as the same time as the pre-qualification notice on VNEPS.
2. The bidding documents (in case of competitive bidding without pre-qualifications) and negotiation documents (in case of competitive negotiation prescribed in Clause 2 and Clause 3 Article 38 of PPP Law) shall be issued together with the invitation to bid on VNEPS.
3. The bidding documents (in case of competitive bidding with pre-qualifications, competitive negotiation) shall be issued at the time specified in the invitation to bid sent to the shortlisted investors.
4. The bidding documents (in case of investor appointment) shall be issued at the time specified in the invitation to bid sent to the appointed investor.
5. The time limit for preparing the prequalification application shall be at least 30 days from the first day on which the prequalification documents are issued to the bid closing date.
6. For projects that apply competitive bidding competitive negotiation as prescribed in Clause 1 Article 38 of PPP Law, the time limit for preparation of bids shall be 60 days for selection of domestic investors or 90 days for selection of international investor from the first day on which the bidding documents are issued to the bid closing date.
7. For projects that apply competitive negotiation as prescribed in Clause 2 and Clause 3 Article 38 of PPP Law:
 - a) The time limit for preparation of negotiation applications shall be 30 days for selection of domestic investors or 45 days for selection of international investor from the first day on which the negotiation documents is issued to the bid closing date.
 - b) The time limit for preparation of bidding documentation shall be 45 days for selection of domestic investors or 60 days for selection of international investor from the first day on which the bidding documents are issued to the bid closing date.
8. For projects that apply investor appointment as prescribed in Point a Clause 1 Article 39 of PPP Law, the time limit for preparation of bids shall be 45 days for selection of domestic investors or 60 days for selection of international investor from the first day on which the bidding documents are issued to the bid closing date.
9. The effective period of pre-qualification applications, negotiation applications or bids shall be the number of days specified in the pre-qualification documents, negotiation documents and bidding documents; begins on when these documents are sealed and ends on the expiration date specified in the documents. The bid closing date shall be the deadline for receiving pre-qualification applications, negotiation applications or bids; the period from the bid closing time to 24:00 of the bid closing date shall be considered 01 day.
10. The notice of revisions to the pre-qualification documents shall be published at least 10 days before the bid closing date; The notice of revisions to the negotiation documents or bidding documents shall be published at least 15 days before the bid closing date for domestic investor selection and 25 days for international investor selection. If the notice of revisions is not published by the aforementioned deadline, the procuring entity shall defer the bid closing time accordingly in order to

ensure enough time for sending documents revising the pre-qualification documents, negotiation documents or bidding documents.

11. The procuring entity shall send the notice of prequalification result, shortlist or investor selection result to the bidders by post, fax or email within 05 working days from the day on which the prequalification result, shortlist or investor selection result is approved.

12. Other time limits during investor selection shall be proposed by the project-preparing unit in the pre-feasibility study report, feasibility study report. The competent authority shall be responsible for the progress and quality of investor selection activities.

Article 32. Investor selection costs

1. For domestic investor selection, the selling price (inclusive of tax) shall not exceed 20.000.000 VND for a set of bidding documents or request for proposals; For international investor selection, the selling price (inclusive of tax) shall not exceed 30.000.000 VND for a set of bidding documents or request for proposals.

2. Cost of preparing, validation pre-qualification documents; evaluation of pre-qualification application; validation of prequalification result.

a) The cost of preparing the pre-qualification documents shall be 0,02% of the total investment in the project but must not be smaller than 10.000.000 VND or exceed 100.000.000 VND;

b) The cost of validating the pre-qualification documents shall be 0,01% of the total investment in the project but must not be smaller than 10.000.000 VND or exceed 50.000.000 VND;

c) The cost of evaluation of pre-qualification applications shall be 0,02% of the total investment in the project but must not be smaller than 10.000.000 VND or exceed 100.000.000 VND;

d) The cost of validating the pre-qualification result shall be 0,01% of the total investment in the project but must not be smaller than 10.000.000 VND or exceed 50.000.000 VND.

3. The cost of preparing and validating negotiation documents, bidding documents; validation of negotiation applications, bidding documentation; validation of investor selection result:

a) The cost of preparing the negotiation documents or bidding documents shall be 0,05% of the total investment in the project but must not be smaller than 10.000.000 VND or exceed 200.000.000 VND;

b) The cost of validating the negotiation documents, bidding documents and investor selection result shall be 0,02% of the total investment in the project but must not be smaller than 10.000.000 VND or exceed 100.000.000 VND;

c) The cost of evaluation of negotiation applications or bids shall be 0,03% of the total investment in the project but must not be smaller than 10.000.000 VND or exceed 200.000.000 VND;

4. For re-selection of investors and similar projects of the same competent authority, contract-signing authority and procuring entity, the costs of preparation and validation of prequalification documents, preparation and validation of bidding documents shall not exceed 50% of the costs mentioned in Clause 2 and Clause 3 of this Article.

5. The costs prescribed in Clauses 2, 3 and 4 of this Article shall apply in case the competent authority, contract-signing authority and procuring entity directly perform those tasks. In case a counseling contractor is hired to perform the tasks mentioned in Clauses 2, 3 and 4 of this Article, the costs shall depend on the contents, scope, duration of those tasks, capacity and experience of the counselors, norms for salaries of experts and other factors. In case the norms for salaries of experts are not available, salaries of experts shall be paid on the basis of salaries of experts of similar projects

6. Fees of publishing information about investor selection and participation in VNEPS, the management and use of these revenues shall comply with guidance of the Ministry of Planning and Investment.

7. The costs mentioned in Clauses 2, 3, 4, 5 and 6 of this Article shall be included in the total investment in the project as prescribed in Clause 1 Article 73 of PPP Law.

8. The management and use of the revenues and expenditures mentioned in Clauses 1, 2, 3, 4 and 5 of this Article shall comply with guidance of the Ministry of Finance.

Article 33. Team of experts

1. A team of experts consists of capable and experienced individuals who are invited by the procuring entity to evaluate pre-qualification applications, negotiation applications, bids and perform other tasks during the investor selection process. Depending on the characteristic and complexity of the project, the team consists of experts in technology, finance, commerce, administration, law and relevant fields.

2. In order to participate in the team of experts, an individual shall:

a) Have the certificate of training in bidding as prescribed by bidding laws;

b) Have professional knowledge relevant to the project;

- c) Have foreign language skills suitable for the project;
- d) Be conversant with specific contents of the project;
- dd) Have at least 05 years' experience in the field relevant to the project.

3. In case participation of specialized experts, they are not required to have the certificate of training in bidding mentioned in Point a Clause 3 of this Article.

Article 34. Determination of investor selection method

1. According to the result of investors' interest survey mentioned in Clause 3 and Clause 4 Article 24 of this Decree, the competent authority shall decide on an investor selection method as prescribed in Clause 2 and Point d Clause 3 of this Article.

2. Competitive bidding shall be applied in the following cases:

- a) International competitive bidding with prequalification if at least 06 interested investors submit their EOI, at least 01 of which is established under foreign laws;
- b) Domestic competitive bidding with prequalification if at least 06 investors that are established under Vietnam's law submit their EOI;
- c) International competitive bidding with prequalification if fewer than 06 investors submit their EOI, at least 01 of which is established under foreign laws;
- d) Domestic competitive bidding with prequalification if fewer than 06 investors that are established under Vietnam's law submit their EOI.

3. Competitive negotiation shall be applied in the following cases:

- a) The project is surveyed in accordance with Clause 4 Article 25 of this Decree and there are not more than 03 qualified investors. In case there are more than 03 qualified investors, regulations of Clause 2 of this Article shall apply;
- b) The project applies high technologies or new technologies as prescribed in Clause 2 and Clause 3 Article 38 of PPP law.

4. Investor appointment shall be applied in the cases specified in Clause 1 Article 39 of PPP Law.

5. In case of domestic investor selection but application of advanced technologies, international management experience is necessary, the negotiation documents or bidding documents require the domestic investor to form a partnership with the foreign investor or hires foreign contractors, the domestic investor shall be the partnership leader; the language used in investor selection shall be Vietnamese.

Article 35. Ratios of performance guarantee of PPP projects

1. If the total investment in the project does not exceed 300 billion VND, the value of performance guarantee specified in the bidding documents shall be 1,5% - 3% of total investment in the project.

2. If the total investment in the project exceeds 300 billion VND, the value of performance guarantee specified in the bidding documents shall be 1% - 1,5% of total investment in the project.

Article 36. Detail procedures for investor selection in case of competitive bidding and competitive negotiation

The detailed procedures for investor selection are specified in the diagrams in Section I, II and III Appendix V of this Decree. To be specific:

1. Shortlisting:

a) For projects that apply competitive bidding with prequalification prescribed in Point and Point b Clause 2 Article 34 of this Decree, the shortlist shall be made according to the prequalification result prescribed in Article 38, 39, 40, 41 and 42 of this Decree;

b) For projects that apply competitive negotiation prescribed in Clause 1 Article 38 of PPP Law, the shortlist shall be made according to the result of investors' interest survey prescribed in Clause 4 Article 25 of this Decree;

b) For projects that apply competitive negotiation prescribed in Clause 2 and Clause 3 Article 38 of PPP Law, the shortlist shall be made according to Article 43, 44, 45 and 46 of this Decree.

Competitive negotiation shall be carried out according to the shortlist as prescribed in Article 47 of this Decree, which is the basis for preparation of bidding documents.

2. Preparation for investor selection includes: preparing, validating, approving the bidding documents as prescribed in Article 49 and Article 50 of this Decree. For projects that apply competitive negotiation as prescribed in Clause 1 Article 38 of PPP Law, during the preparation of bidding documents, the procuring entity shall discuss with the shortlisted investors to complete the bidding documents as prescribed in Article 48 of this Decree.

3. Organization of investor selection:

- a) Inviting bids, issuing, clarifying, revising bidding documents; extending bid closing time as prescribed in Article 51 of this Decree;
- b) Preparing, submitting, receiving, managing, revising, withdrawing bids as prescribed in Article 52 of this Decree.

4. Bid evaluation tasks include:

- a) For projects that apply competitive bidding or competitive negotiation as prescribed in Clause 1 Article 38 of PPP Law: opening, evaluating technical proposals and financial - commercial proposals in accordance with Articles 53, 54, 55, 56, 57, 58 and 59 of this Decree;
- b) For projects that apply competitive negotiation prescribed in Clause 2 and Clause 3 Article 38 of PPP Law: opening bids and evaluating bids as prescribed in Article 60 and Article 61 of this Decree.

5. Submission, validation, approval and disclosure of investor selection result as prescribed in Article 62 and Article 63 of this Decree.

6. Negotiation, completion, conclusion of the PPP project contract, disclosure of information about the PPP project contract as prescribed in Article 64 and Article 65 of this Decree.

Article 37. Detail procedures for investor appointment

The detailed procedures for investor selection are specified in the diagrams in Section IV and Section V Appendix V of this Decree. To be specific:

1. For the projects specified in Point a Clause 1 Article 39 of PPP Law, investor appointment shall adhere to the principles specified in Article 66 of this Decree and the following regulations:

a) Preparation for investor appointment include: preparing, validating, approving the bidding documents. The competent authority shall determine the investor that satisfies the requirements specified in Article 29 of PPP Law and Clause 5 Article 29 of this Decree.

b) Organization of investor appointment:

- Issuance of bidding documents: bidding documents shall be issued to the investor proposed for appointment;
- Preparing, submitting, receiving, managing, revising, withdrawing bids;
- Opening bids.

c) Bid evaluation.

d) Submission, validation, approval and disclosure of investor selection result.

dd) Negotiation, completion, conclusion of the PPP project contract, disclosure of information about the contract.

2. For the projects specified in Point b Clause 1 Article 39 of PPP Law, investor selection shall be carried out following the procedures specified in Article 67 and Article 68 of this Decree.

Section 2. SHORLISTING

Sub-section 1. PREQUALIFICATION IN COMPETITIVE BIDDING

Article 38. Preparing, validating and approving pre-qualification documents

1. The procuring entity shall prepare the pre-qualification documents on the basis of the following documents:

- a) the decision on investment guidelines of the project and the decision to approve the PPP project (if any);
- b) The pre-feasibility study report, feasibility study report of the PPP project (if any) and relevant documents;
- c) Relevant regulations of law and policies of the State.

2. Contents of pre-qualification documents:

The pre-qualification documents shall have the following basic information:

- a) Instructions for investors: general information about the project and instructions for bidding investors;
- b) Requirements for investors' lawful status prescribed by Article 29 of PPP Law;
- c) Requirements that investors propose preliminary plans for project execution and making commitment to execute the project;

d) Requirements that the investors declare past disputes and lawsuits over completed and ongoing contracts;

dd) Criteria for evaluation of capacity and experience of investors, including:

- Financial – commercial capacity: ability to raise equity and loan capital; ability to implement the business plan, operate the project works, provide public services and products;

- Required capacity and experience of key personnel (if necessary);

- Experience of operating works and infrastructure system for provision of similar public services and products if the project is executed under an O&M contract, Experience of operating works and infrastructure system for provision of similar public services or agreement to cooperate with a partner that is experienced in operating works and infrastructure for provision of similar public services and products if the project is executed under a BOT, BTO, BOO, BTL, BLT or mixed contract.

In case of a partnership, the investor that is partnership leader shall have a commitment to contribute equity of at least 30%; each partnership member shall have a commitment to contribute equity of at least 15% under the partnership agreement. At least one partnership member has experience of operating works and infrastructure system for provision of public services and products, or the partnership leader has an agreement to cooperate with a partner that is experienced in operating works and infrastructure for provision of similar public services and products.

Depending on the characteristics and requirements of the project, the pre-qualification documents may specify that investors that have experience of executing similar PPP projects in an OECD country.

e) Evaluation methods

Investors' capacity and experience shall be evaluated on the scale of 1 to 100 or 1 to 1000. The passing score shall not be at least 60% of the maximum overall score, and the passing score for an item shall be at least 50% of the maximum score for that item.

g) Prequalification application forms

The pre-qualification documents may only contain the requirements that have the purpose of selecting a qualified investor; must not contain any conditions that restrict participation of investors or bring one or certain investors advantages, thus cause unfair competition.

3. Validating, approving pre-qualification documents:

a) The procuring entity shall submit the draft pre-qualification documents and relevant documents to the competent authority and the unit assigned by the competent authority to validate investor selection documents (hereinafter referred to as "validating unit");

b) The validating unit shall validate the pre-qualification documents in accordance with Clauses 1, 3, 4 and 5 Article 71 of this Decree;

c) The competent authority shall decide whether approve the pre-qualification documents on the basis of the validation report and the request for approval;

d) The competent authority may authorize the procuring entity to approve the pre-qualification documents. In this case, the procuring entity shall organize validation of the pre-qualification documents in accordance with Clauses 1, 3, 4 and 5 Article 71 of this Decree before approval.

Article 39. Pre-qualification notice; issuing, revising, clarifying pre-qualification documents; extending deadline for submission of pre-qualification applications

1. The pre-qualification notice shall be published in accordance with Point b Clause 1 and Point a Clause 2, Clause 4 Article 4 of this Decree, sent by the procuring entity to investors that submit their EOI as prescribed in Article 25 of this Decree.

2. Issuing, revising, clarifying the pre-qualification documents

a) The procuring entity shall publish the physical and electronic pre-qualification documents on VNEPS free of charge;

b) In case the pre-qualification documents have to be revised after issuance, the procuring entity shall publish the revision decision and the revisions on VNEPS;

c) In case the pre-qualification documents have to be clarified, the investor shall send a written request to the procuring entity or via VNEPS at least 05 working days before the bid closing date. The pre-qualification documents shall be clarified by the procuring entity in one of the following manners:

- a) Publishing the clarifying document on VNEPS;

- If necessary, a pre-bid meeting may be held to discuss the contents that need clarifying in the pre-qualification documents. The minutes of the meeting prepared by the procuring entity shall be used as the clarifying document and published on VNEPS.

The clarifying contents must not contradict the contents of the approved pre-qualification documents. In case the pre-qualification documents have to be revised after clarification, they shall be revised in accordance with Point b of this Clause.

d) The revision decision and clarifying document shall be part of the pre-qualification documents.

3. Extending deadline for submission of pre-qualification applications

In case the deadline for submission of pre-qualification applications is extended, the procuring entity shall post the deadline extension notice and the decision to approve deadline extension on VNEPS, specifying the reason for extension and the new bid closing time.

Article 40. Preparing, submitting, receiving, managing, revising, withdrawing pre-qualification application; bid opening

1. Preparing, submitting, receiving, managing, revising, withdrawing pre-qualification applications

a) The investor shall prepare and submit the pre-qualification application to the procuring entity according to requirements of the pre-qualification documents;

b) The procuring entity shall receive all pre-qualification applications submitted by investors before the bid closing time and treat them as secret documents until the prequalification result is disclosed; Do not reveal information in one investor's pre-qualification application to any other investor, except the information that is disclosed during bid opening;

c) In case the submitted pre-qualification application has to be revised or withdrawn, the investor shall send a written request to the procuring entity. The procuring entity shall only allow the revision or withdrawal if the written request is received before bid closing time;

d) The pre-qualification applications and documents sent by investors to the procuring entity after the bid closing time shall not be opened, considered invalid and eliminated, except documents clarifying pre-qualification applications requested by the procuring entity or clarifying, revising or supplementary documents prescribed in Point a and Point b Clause 3 Article 41 of this Decree.

2. Bid opening

a) Pre-qualification applications that are submitted in accordance with regulations of the pre-qualification documents shall be publicly opened within 01 hour from the bid closing time;

b) The bid opening record shall be sent to bidding investors and contain the following information: names of investors, information in the application submission forms; other relevant information.

Article 41. Evaluation of pre-qualification applications

1. Evaluation of validity of a pre-qualification application

A pre-qualification application shall be considered valid when:

a) There is the original copy of the pre-qualification application;

b) There is a valid prequalification application form;

c) There is a valid partnership agreement in case of a partnership;

d) The effect of the pre-qualification application is conformable with regulations of the pre-qualification documents;

dd) The investor does not submit more than one pre-qualification application as independent investor or partnership member;

e) The investor is not being banned from PPP investment as prescribed by PPP laws; not being banned from bidding as prescribed by bidding laws;

g) The investor has lawful status as prescribed in Article 29 of PPP Law.

2. Evaluation of capacity and experience

a) The investor's capacity and experience shall be evaluated according to the criteria and method specified in the pre-qualification documents;

b) The score of an investor must not be smaller than the passing score for shortlisting; Investors shall be ranked according to their scores. The investor with the highest score shall be ranked first. In case 03 or more investors receive the passing scores, 3 – 6 investors with the highest ranks shall be shortlisted.

3. During evaluation, if a pre-qualification application lacks documents or information proving the investor's capacity and experience, it shall be clarified, revised, supplemented by the deadline specified in the pre-qualification documents. The clarification and supplementation of the pre-qualification application does not change the bidding investor's status and name.

Article 42. Submission, validation, approval of the prequalification result and disclosure of the shortlist

1. On the basis of the prequalification result report, the procuring entity shall submit the prequalification result to the competent authority and validating unit.
2. The validating unit shall validate the pre-qualification result in accordance with Clauses 1, 4 and 5 Article 72 of this Decree before approval.
3. The competent authority shall decide whether approve the pre-qualification result on the basis of the validation report and the request for approval.
4. The competent authority may authorize the procuring entity to approve the pre-qualification result. In this case, the procuring entity shall organize the validation in accordance with Clauses 1, 4 and 5 Article 72 of this Decree.
5. The written approval for the prequalification result shall contain the names of shortlisted investors and unsuccessful investors, reasons for their disqualification, notes (if any). In case of no investor is shortlisted, the written approval shall specify the reasons.
6. The procuring entity shall send the prequalification result notice to investors who submitted valid pre-qualification applications before the bid closing time, upload the shortlist to VNEPS in accordance with Point c Clause 1 and Point c Clause 2 Article 4 of this Decree.

Sub-section 2. Compilation of list of investors invited to competitive negotiation for projects prescribed in Clause 2 and Clause 3 Article 38 of PPP Law

Article 43. Preparing, validating and approving negotiation documents

1. The procuring entity shall prepare the negotiation documents on the basis of the following documents:

- a) The decision on investment guidelines of the PPP project;
- b) The pre-feasibility study report and relevant documents;
- c) Regulations of law on PPP investments and relevant laws.

2. Contents of negotiation documents:

Negotiation documents are all documents used for competitive negotiation for projects that apply high technologies or new technologies, including requirements for the projects, and are the basis for investors to prepare their negotiation application and the procuring entity to evaluate negotiation applications and prepare the shortlist. Negotiation documents shall have the following basic information:

- a) General information about the project: basic information about the project and instructions for investors;
- b) Requirements for investors' lawful status prescribed by Article 29 of PPP Law;
- c) Requirements that the investors declare past disputes and lawsuits over completed and ongoing contracts;
- d) Criteria for evaluating capacity and experience of investors, including the requirements specified in Point dd Clause 2 Article 38 of this Decree; required documents proving technological solutions and lawful rights to use high technologies that are given priority as prescribed by high technology laws or technologies encouraged for transfer as prescribed by technology transfer laws.

Method for evaluating capacity and experience of investors as prescribed in Point e Clause 2 Article 38 of this Decree;

- dd) Minimum requirements of technological solutions, quality of public services and products; operation, management, maintenance; environmental protection;
- e) Preliminary financial - commercial requirements: The investor must propose one of the following values: maximum prices of public services and products; state capital provided as assistance in construction of works and infrastructure system; minimum social interests and state interests;
- g) Bidding forms;
- h) Negotiation contents;
- i) Other necessary contents (if any).

The negotiation documents may only contain the requirements that have the purpose of selecting a qualified investor that has feasible solutions for execution of the project; must not contain any conditions that restrict participation of investors or bring one or certain investors advantages, thus cause unfair competition.

3. Validating and approving negotiation documents

- a) The procuring entity shall submit the draft negotiation documents and relevant documents to the validating unit;
- b) The validating unit shall validate the negotiation documents in accordance with Clauses 1, 3, 4 and 5 Article 71 of this Decree;
- c) The competent authority shall decide whether approve the negotiation documents on the basis of the validation report and the request for approval;
- d) The competent authority may authorize the procuring entity to approve the negotiation documents. In this case, the procuring entity shall organize validation of the negotiation documents in accordance with Clauses 1, 3, 4 and 5 Article 71 of this Decree before approval.

Article 44. invitation to bid; issuance of negotiation documents

1. The invitation to bid shall be published in accordance with Point b Clause 1, Point a Clause 2 and Clause 4 Article 4 of this Decree.
2. The procuring entity shall publish the physical and electronic negotiation documents on VNEPS free of charge.

Article 45. Preparing, submitting, receiving, managing, revising, withdrawing negotiation applications

1. Preparing, submitting negotiation applications

The investor shall prepare and submit negotiation application to the procuring entity according to the negotiation documents. The negotiation application includes documents about the investor's capacity and experience, preliminary technical proposals, financial – commercial proposals that are separately sealed. To be specific:

- a) Documents about the investor's capacity and experience include: documents about the investor's lawful status; documents proving investor's capacity and experience; documents proving the investor's lawful right to use the technological solutions;
- b) preliminary technical proposals and financial – commercial proposals include: preliminary technical plan; preliminary financial – commercial plans and comments on the project (if any).

2. Receiving, managing, revising, withdrawing negotiation applications

- a) The procuring entity shall receive all negotiation applications submitted by investors before the bid closing time and treat them as secret documents until the shortlist is disclosed;
- b) In case the submitted negotiation application has to be revised or withdrawn, the investor shall send a written request to the procuring entity. The procuring entity shall only allow the revision or withdrawal if the written request is received before bid closing time.

Article 46. Shortlisting

1. Documents about the investors' capacity and experience that are submitted in accordance with regulations of the negotiation documents shall be publicly opened within 01 hour from the bid closing time. The bid opening record shall be sent to the bidding investors.

2. Evaluation of capacity and experience:

- a) Evaluation of validity of a negotiation application

A negotiation application shall be considered valid when:

- There is the original copy of the negotiation application;
- There is a valid application form;
- The effect of the negotiation application is conformable with regulations of the negotiation documents;
- The investor's is not included in more than one negotiation application as independent investor or partnership member;
- In case of a partnership, the partnership agreement shall bear the signature and seal (if any) of each partnership member and specify the duties of each partnership member;
- The investor is not being banned from PPP investment as prescribed by PPP laws; not being banned from bidding as prescribed by bidding laws.

- b) Evaluation of capacity and experience

- The investor's capacity and experience shall be evaluated according to the criteria and method specified in the negotiation documents;
- The investors that have suitable capacity, experience, are able to prove that their technological solutions are suitable for the projects shall be shortlisted.

c) During evaluation of validity, capacity and experience, if a negotiation application lacks documents or information, it may be clarified, revised, supplemented by the investor. The clarification and supplementation of the negotiation application does not change the bidding investor's status and name.

3. On the basis of the result of capacity and experience evaluation, the procuring entity shall approve the shortlist of investors invited to competitive negotiation and the negotiation plan. In case more than 03 investors satisfy the requirements, 3 – 6 investors shall be shortlisted.

4. Publishing the shortlist

The procuring entity shall publish the shortlist on VNEPS as prescribed in Point b Clause 1 and Point h Clause 2 Article 4 of this Decree.

5. Shortlisted investors shall be invited to the competitive negotiation according to the plan, time and location specified in the decision to approve the shortlist.

Article 47. Organization of competitive negotiation

1. Competitive negotiation principles

a) Ensure fairness, transparency, objectivity. Adhere to requirements of the negotiation documents, negotiation applications and clarifying documents provided by investors;

b) Do not reveal information in one investor's negotiation application to any other investor, except the information that is disclosed during opening of capacity and experience documents;

c) Allow investors to revise their technical, financial – commercial proposals for the sole purpose of introducing more effective solutions;

d) Competitive negotiation must not lead to changes to the decision on investment guidelines prescribed in Clause 2 Article 17 of PPP Law, except in the cases in which the investment guidelines are revised as prescribed in Point a and Point b Clause 1 Article 18 of PPP Law;

dd) The competent authority and procuring entity are not responsible for any contents proposed by investors during negotiation; investors shall not be eliminated during negotiation.

2. Organization of competitive negotiation

a) A competitive negotiation shall have 2 rounds, each stage includes direct and independent discussions with each investor. The discussions about the same negotiation contents shall take place within the same period of time. The procuring entity must not change the representative that participates in the negotiation throughout the negotiation process, except in force majeure events.

In case the negotiation documents have to be revised or clarified during the negotiation process, the procuring entity shall send these contents to all shortlisted investors.

b) First round of negotiation

The procuring entity shall open technical, financial – commercial proposals and discuss with each investor about negotiation contents. At the end of the first round, the procuring entity shall adjust the technical, financial – commercial requirements if necessary and inform the investors.

c) Second round of negotiation

On the basis of adjusted technical, financial – commercial requirements, investors shall complete their technical, financial – commercial proposals and submit them to the procuring entity. The procuring entity shall receive and open the technical, financial – commercial proposals submitted by the investors and carry on the second round of negotiation with each investor to determine the detailed technical, financial – commercial requirements, which are the basis for the procuring entity to complete the bidding documents and for investors to prepare their bids.

dd) The result and contents of each round of negotiation shall be made into written records bearing the signatures of the procuring entity's representative and the investors. The procuring entity shall retain separate physical record and audio recording of each round of negotiation. The negotiation records shall be sent to all investors that participated in the negotiation. Do not send the negotiation record of one investor to any other investor.

Section 3. PREPARATION OF INVESTOR SELECTION

Article 48. Organization of negotiation and discussion about contents of bidding documents for projects specified in Clause 1 Article 38 of PPP Law

1. According to the result of investors' interest survey mentioned in Article 5 of this Decree, the shortlist shall be approved in the decision to approve the PPP project.

2. The procuring entity shall invite shortlisted investors to negotiate and discuss contents of the bidding documents. The negotiation and discussion must not lead to changes to the decision on investment guidelines prescribed in Clause 1 Article 7 of PPP Law, except in the cases in which the investment guidelines are revised as prescribed in Point a and Point b Clause 1 Article 18 of PPP Law.

3. The result of negotiation and discussion shall be made into a written record bearing the signatures of the procuring entity's representative and the participating investors. The records shall be directly sent to the investors.

Article 49. Preparing, validating and approving the bidding documents

1. The procuring entity shall prepare the bidding documents on the basis of the following documents:

- a) The decision to approve the PPP project, except the projects specified in Point d of this Clause;
- b) The prequalification result if the project applies competitive bidding with prequalification;
- c) The result of negotiation and discussion about contents of the bidding documents for the projects specified in Clause 1 Article 38 of PPP Law;
- d) The decision on investment guidelines of the PPP project and negotiation results for the projects specified in Clause 2 and Clause 3 Article 38 of PPP Law;
- dd) The pre-feasibility study report (for the projects specified in Clause 2 and Clause 3 Article 38 of PPP Law), the feasibility study report of the PPP project and relevant documents;
- e) Relevant regulations of law and policies of the State.

Where necessary, the competent authority shall decide whether to prepare the bidding documents according to the design after the fundamental design and cost estimate are approved, provided this does not reduce competitiveness of the investor selection process, does not limit the investors' right to change or make their own fundamental design, and does not extend the project duration.

2. For projects that apply competitive bidding without prequalification and competitive negotiation prescribed in Clause 1 Article 38 of PPP Law, the bidding documents shall have the following basic contents:

- a) Instructions for investors: general information about the project, including technical requirements of the project, public services and products to be provided and instructions for bidding investors;
- b) Requirements for investors' lawful status prescribed by Article 29 of PPP Law;
- c) Requirements that the investors declare past disputes and lawsuits over completed and ongoing contracts;
- d) Criteria for bid evaluation, including criteria for evaluating capacity, experience, technical, financial – commercial proposals and evaluation method, rules for settlement of capital invested in works and infrastructure system;
- dd) Bidding forms;
- e) Requirements about bid security, performance security as prescribed in Clause 4 Article 3 of PPP law. In case bid security or performance security is provided in the form of guarantee letter, the investor may submit the guarantee letter or certificate of insurance for guarantee. The guarantee letter or certificate of insurance shall bear the signature and seal of the legal representative of the Vietnamese credit institution, non-life insurer or foreign bank branch or foreign non-life insurer branch that is established in accordance with Vietnam's laws;
- g) The type of project contract; conditions of the contract and the draft contract.

The bidding documents may only contain the requirements that have the purpose of selecting a qualified investor what has feasible solutions for execution of the project; must not contain any conditions that restrict participation of investors or bring one or certain investors advantages, thus cause unfair competition.

3. For projects that apply competitive bidding with prequalification and competitive negotiation prescribed in Clause 2 and Clause 3 Article 38 of PPP Law, the bidding documents shall have the contents specified in Points d, dd, e and g Clause 2 of this Article.

4. If the PPP project has sub-projects funded by public capital as prescribed in Point a Clause 5 Article 70 of PPP Law, the competent authority shall organize the preparation and validation of the design following fundamental design and cost estimate (including costs of construction supervision and acceptance testing of work items and construction works) of the sub-projects in accordance with construction laws, as the basis for approving these contents together with the bidding documents.

5. Validating and approving the bidding documents:

- a) The procuring entity shall submit the draft bidding documents and relevant documents to the competent authority and the validating unit;
- b) The validating unit shall validate the bidding documents in accordance with Clauses 2, 3, 4 and 5 Article 71 of this Decree;
- c) The competent authority shall decide whether approve the bidding documents on the basis of the validation report and the request for approval.

Article 50. Methods and criteria for bid evaluation

1. Method and criteria for evaluation of capacity and experience

a) For projects that apply competitive bidding with prequalification and competitive negotiation prescribed in Clause 2 and Clause 3 Article 38 of PPP Law, the bidding documents are not required to contain the method and criteria for evaluation of capacity and experience but shall require investors to update information about their capacity and experience;

b) For projects that apply competitive bidding without prequalification and competitive negotiation prescribed in Clause 1 Article 38 of PPP Law, the method and criteria for evaluation of capacity and experience shall comply with Point dd and Point e Clause 2 Article 38 of this Decree.

2. Method and criteria for technical evaluation

a) On the basis of the scale, characteristics and specific type of contract of the project, technical evaluation criteria include:

- Criteria for technology, quality of works and infrastructure system;
- Criteria for quality of public services and products, including requirements for continuity of provision of public services and products;
- Criteria for organization of operation, maintenance or works and infrastructure system;
- Criteria for environmental protection plan as prescribed by environmental protection laws;
- Other technical criteria (if necessary).

When preparing the bidding documents, detailed technical evaluation criteria shall be established according to the criteria specified in this Point for each specific project.

If the PPP project has items funded by public investment capital as prescribed in Point b Clause 5 Article 70 of PPP Law, the bidding documents shall specify that the investor is responsible for determining the items funded by public investment capital in the bid.

b) Method for technical evaluation

Technical evaluation criteria shall be evaluated on the scale of 1 to 100 or 1 to 1000, or using the "pass-fail" system".

When using the scale of 1 to 100 or 1 to 1000 for technical evaluation, passing score for each overall criterion and detailed criterion shall be specified. The passing score shall be at least 70% of the maximum technical score; the passing score of each item shall be at least 60% of the maximum score for that item.

When applying the "pass-fail" system, the requirements for each criterion must be specified. Overall criteria shall be evaluated as "passed" or "failed". Basic sub-criteria shall be evaluated as "passed" or "failed". Non-basic sub-criteria shall be evaluated as "passed", "failed" or "acceptable" provided they do not make up more than 30% of total sub-criteria in the same criterion. An overall criterion shall be evaluated as "passed" if all basic sub-criteria are "passed" and all non-basic sub-criteria are "passed" or "acceptable".

3. Method and criteria for financial – commercial evaluation

e) Financial – commercial evaluation shall be carried out according to the comparison and ranking method specified in the bidding documents. The bidding documents shall specify one or a combination of criteria for prices, fees of public services and products; state capital provided as assistance for construction of works and infrastructure system; social interest, state interest prescribed in Clause 3 Article 42 of PPP Law in order to compare and rank investors according to their financial – commercial capacity. The first-ranked investor will be considered for contract awarding.

If the PPP project has sub-projects funded by public investment capital as prescribed in Point a Clause 5 Article 70 of PPP Law, the bidding documents shall not apply the criteria for state capital provided as assistance in construction of works and infrastructure system.

b) On the basis for the scale, characteristics, type of the project contract, the evaluation criteria mentioned in Point a of this Clause, the bidding documents shall specify the evaluation contents, including:

- Financial – commercial feasibility, including the costs of design, construction, operation, management, maintenance;
- Rationality of proposed financial agreements;
- Acceptability of proposed terms and conditions of the contract relevant to risk distribution or compensations;
- Other financial – commercial contents if necessary.

Section 4. ORGANIZATION OF INVESTOR SELECTION

Article 51. Inviting bids, issuing, revising, clarifying bidding documents; extending bid closing time

1. Inviting bids:

- a) For projects that apply competitive bidding with prequalification or competitive negotiation prescribed in Article 38 of PPP Law, the invitation to bid shall be sent to the shortlisted investors and shall specify the time and location of issuance of the bidding documents, bid closing time and bid opening time;
- b) For projects that apply competitive bidding without pre-qualification, the invitation to bid shall be published in accordance with Point b Clause 1, Point a Clause 2 and Clause 4 Article 4 of this Decree, sent by the procuring entity to investors that submit their EOI as prescribed in Article 25 of this Decree.

2. Issuing bidding documents

- a) For projects that apply competitive bidding with prequalification or competitive negotiation prescribed in Article 38 of PPP Law, the bidding documents shall issued to the shortlisted investors. The investors shall pay an amount equal to the selling price for a set of bidding documents when submitting their bids;
- b) For projects that apply competitive bidding without prequalification, the procuring entity shall publish the files of bidding documents free of charge on VNEPS.

3. Revising bidding documents

If the bidding documents have to be revised after issuance, the revision decision and the revisions shall be sent by the procuring entity to the shortlisted investors (for projects applying prequalification or competitive negotiation) or published on VNEPS (for projects without prequalification).

4. Clarifying bidding documents

a) For projects that apply competitive bidding with prequalification or competitive negotiation prescribed in Article 38 of PPP Law, the investor shall send a written request to the procuring entity at least 07 working days (for domestic investor selection) or 15 days (for international investor selection) before the bid closing date. The bidding documents shall be clarified by the procuring entity in one of the following manners:

- Sending clarifying documents to the shortlisted investors;

- If necessary, a pre-bid meeting may be held to discuss the contents that need clarifying in the bidding documents. The minutes of the meeting prepared by the procuring entity shall be used as the clarifying document and sent to the shortlisted investors.

b) For projects that apply competitive bidding without prequalification, the investor shall send a written request to the procuring entity or via VNEPS at least 07 working days (for domestic investor selection) or 15 days (for international investor selection) before the bid closing date. The bidding documents shall be clarified by the procuring entity in one of the following manners:

- Publishing the clarifying document on VNEPS;

- If necessary, a pre-bid meeting may be held to discuss the contents that need clarifying in the bidding documents. The minutes of the meeting prepared by the procuring entity shall be used as the clarifying document, which shall be published on VNEPS.

c) The clarifying document must not contradict the approved bidding documents. In case the bidding documents have to be revised after clarification, the revision shall be carried out in accordance with Clause 3 of this Article.

5. The revision decision and clarifying document shall be part of the bidding documents.

6. Extending bid closing time

- a) For projects that apply competitive bidding with prequalification or competitive negotiation, the extension notice and extension decision shall be by the procuring entity to the shortlisted investors;
- b) For projects that apply competitive bidding without prequalification, the procuring entity shall publish the extension notice and extension decision on VNEPS.
- c) the extension notice shall specify the reason for extension and the new bid closing time.

Article 52. Preparing, submitting, receiving, managing, revising, replacing withdrawing bids

1. Investors shall prepare and submit the bids in one of the following cases:

a) For projects that apply competitive bidding without prequalification or competitive negotiation as prescribed in Clause 1 Article 38 of PPP Law, the bid shall include the technical proposal and the financial – commercial proposal that are separately sealed and submitted to the procuring entity

before the bid closing time specified in the bidding documents as prescribed in Clause 2 Article 49 of this Decree;

b) For projects that apply competitive bidding with prequalification, the bid shall include the technical proposal and the financial – commercial proposal that are separately sealed and submitted to the procuring entity before the bid closing time specified in the bidding documents as prescribed in Clause 3 Article 49 of this Decree;

c) For projects that apply competitive negotiation as prescribed in Clause 2 and Clause 3 Article 38 of PPP Law, the bid shall include the technical proposal and the financial – commercial proposal that are separately sealed and submitted to the procuring entity before the bid closing time specified in the bidding documents. The investors must not change their technical solutions and fundamental technology throughout the negotiation process.

2. The procuring entity shall receive all bids submitted by investors before the bid closing time and treat them as secret documents until the investor selection result is disclosed; Do not reveal information in one investor's bid to any other investor, except the information that is disclosed during bid opening.

3. In case the submitted bid has to be revised, replaced or withdrawn, the investor shall send a written request to the procuring entity. The procuring entity shall only allow the revision, replacement or withdrawal if the written request is received before bid closing time.

4. The bids and documents sent by investors to the procuring entity after the bid closing time shall not be opened, considered invalid and eliminated, except documents clarifying bids requested by the procuring entity or clarifying, supplementary documents proving the investors' lawful status, capacity and experience.

Article 53. Rules for bid evaluation

1. Bid evaluation shall be carried out on the basis for criteria for bid evaluation and other requirements in the bidding documents, the submitted bids, bid-clarifying documents provided by the investors in order to select a qualified investor with feasible technical, financial – commercial plans for execution of the project.

2. Photocopies shall be used for evaluation. The investor shall be responsible for the consistency between the original copies and photocopies. In case of minor discrepancies between the original copies and photocopies which do not affect the investor's rank, the original copies shall be used for evaluation. In case of serious discrepancies between the original copies and photocopies which affect the evaluation result and the investor's rank, the bid of that investor will be eliminated.

3. During bid evaluation, the procuring entity shall inspect the technical, financial – commercial contents of the bids to make sure the bids do not contain discrepancies, additional conditions or omitted basic contents. To be specific:

a) Discrepancies are contents that are different from those specified in the bidding documents;

b) Additional conditions are those imposed by the investor that are restrictive or express partial consent to the requirements in the bidding documents;

c) Omitted contents are the information or documents that are not fully provided by the investor as required by the bidding documents.

4. If the bid fulfills the basic requirements in the bidding documents, the procuring entity may accept the flaws that are not the aforementioned discrepancies, additional conditions or omitted contents, which, if accepted by the procuring entity or revised, supplemented or replaced by the investor, will:

a) Significantly affect the scope and requirements in terms of technology, quality of works, infrastructure system, public services and products;

b) Cause significant restrictions and inconsistency between the bidding documents and entitlements of the procuring entity, the contract-signing authority, competent authority or obligations of the investor and PPP project enterprise in the contract;

c) Unfairly affect competitiveness of other investors whose bids satisfy the basic requirements in the bidding documents.

5. A bid that fails to satisfy the basic requirements in the bidding documents will be eliminated; revisions to the discrepancies, additional conditions or omitted contents to make a bid satisfactory are not permitted.

Article 54. Rules for bid clarification

1. After bids are opened, the investors shall clarify their bids if requested by the procuring entity.

2. If the project does not apply prequalification, after bid closing, the procuring entity shall receive clarifying documents, supplementary documents proving the investors' lawful status, capacity and experience in case the investors find that their existing information and documents about their capacity

and experience are not submitted together with the bidding documentation. These documents shall be considered part of the bids.

3. The clarification of contents about the investor's lawful status, capacity and experience must not change the nature of the investor's lawful status, capacity and experience. The clarification of technical, financial - commercial contents in the bid must not change the basic contents of the submitted bid.

4. The clarification shall be carried out between the procuring entity and the investor whose bid has to be clarified. The clarification shall be made into a written document and retained by the procuring entity as part of the bid.

Section 5. BID EVALUATION

Sub-section 1. BID EVALUATION FOR PROJECTS THAT APPLY COMPETITIVE BIDDING OR COMPETITIVE NEGOTIATION PRESCRIBED IN CLAUSE 1 ARTICLE 38 OF PPP LAW

Article 55. Opening technical proposals

1. Technical proposals shall be publicly opened within 01 hour from the bid closing time. The bid opening record shall be sent to all bidding investors.

2. The procuring entity's representative shall sign the original copy of the bid form, power of attorney of the investor's legal representative (if any); the partnership agreement (if any); the bid guarantee; important contents of each technical proposal.

3. Financial – commercial proposals of all investors shall be sealed by the procuring entity in a separate bag. The seal shall be signed by the procuring entity's representative and the investors that participate in the technical proposal opening ceremony.

Article 56. Evaluation of technical proposals

1. Inspection of validity of technical proposals, including:

a) Inspection of the quantity of original copies and photocopies of the technical proposal;

b) Inspection of components of the technical proposal, including: the bid form, partnership agreement (if any), letter of authorization to sign the bid form (if any); bid guarantee; documents proving the signor's lawful status (if any); documents proving the investor's lawful status, capacity and experience (if the project does not apply prequalification); the technical proposal; other components of the technical proposal;

c) Inspection of consistency between the original copies and photocopies serving evaluation of the technical proposal.

2. Inspection of validity of technical proposals

A technical proposal shall be considered valid when:

a) There are original copies of the documents;

b) There is a valid bid form;

c) The effect of the technical proposal is conformable with regulations of the bidding documents;

d) There is a valid bid guarantee;

dd) There is a valid partnership agreement in case of a partnership;

e) The investor does not submit more than one technical proposal as independent investor or partnership member;

g) The investor is not being banned from PPP investment as prescribed by PPP laws; not being banned from bidding as prescribed by bidding laws;

h) The investor has lawful status as prescribed in Article 29 of PPP Law.

3. Evaluation of capacity and experience:

a) For projects that apply competitive bidding that have undergone prequalification prescribed in Clause 2 and Clause 3 Article 38 of PPP Law, the investor shall have a written commitment that the project execution requirements are still fulfilled. In case there are changes to information in the pre-qualification application, the investor shall update information about the investor's capacity and the procuring entity shall organize re-evaluation according to the evaluation method and criteria specified in the pre-qualification documents;

a) For projects that apply competitive bidding without prequalification prescribed in Clause 1 Article 38 of PPP Law, the investor's capacity and experience shall be evaluated according to the evaluation method and criteria specified in the bidding documents.

4. The investor whose technical proposal is valid and satisfactory will undergo detailed technical evaluation.

5. Detailed evaluation of technical proposals

Detailed evaluation of technical proposals shall be carried out according the criteria and method specified in the bidding documents.

Article 57. Validating, approving the list of technically qualified investors

1. The validating unit shall validate the list of technically qualified investors as prescribed in Clauses 2, 4 and 5 Article 72 of this Decree.

2. The competent authority shall consider approving the list of technically qualified investors.

The competent authority may authorize the procuring entity to approve the list of technically qualified investors. In this case, the procuring entity shall organize the validation on the basis of the report on technical proposal evaluation prepared by the team of experts.

3. The procuring entity shall send the list of technically qualified investors to all bidding investors and invite them to participate in the opening of financial – commercial proposals, specify the opening time and location.

Article 58. Opening financial – commercial proposals

1. Financial – commercial proposals of the investors on the list of technically qualified investors shall be publicly opened within at the time and location specified in the notification of the list of technically qualified investors. The bid opening record shall be sent to all bidding investors.

2. The procuring entity's representative shall sign the original copy of the bid form, power of attorney of the investor's legal representative (if any); the partnership agreement (if any); the bid guarantee; important contents of each financial – commercial proposal.

Article 59. Evaluation of financial – commercial proposals

1. Inspection of validity of financial - commercial proposals, including:

- a) Quantity of original copies and photocopies of the financial – commercial proposal;
- b) Components of the financial – commercial proposal, including: the bid form, other components of the financial – commercial proposal;
- c) Consistency between the original copies and photocopies.

2. Inspection of validity of financial - commercial proposals

A financial – commercial proposal shall be considered valid when:

- a) There is the original copy of the financial – commercial proposal;
- b) There is a valid bid form;
- c) The total investment, prices and fees for public services and products (if any); state capital provided as assistance in construction of works and infrastructure system (if any); payment to state budget or contract execution duration written in the bid form are specific, expressed in number and words, logical and appropriate for the investor's financial plan; the proposed values and time periods are not different for the same content or associated with conditions that are disadvantageous to the competent authority or the procuring entity;
- d) The effect of the financial – commercial proposal is conformable with regulations of the bidding documents.

3. The investor whose financial – commercial proposal is valid will undergo detailed financial – commercial evaluation. Detailed evaluation of financial – commercial proposals and investor ranking shall be carried out according the criteria and method specified in the bidding documents.

4. After bid evaluation is complete, the team of experts shall submit a report to the procuring entity for consideration. The report shall have the following contents:

- a) The list of ranked investors;
- b) The list of disqualified investors and reasons for disqualification;
- c) Remarks on the competitiveness, fairness, transparency and efficiency of the investor selection process. In case competitiveness, fairness, transparency or efficiency is not ensured, provide explanation and propose solutions.

Sub-section 2. FOR PROJECTS APPLYING COMPETITIVE NEGOTIATION AS PRESCRIBED CLAUSE 2 AND CLAUSE 3 ARTICLE 38 OF PPP LAW

Article 60. Opening bids

1. Bids of the shortlisted investors shall be publicly opened within 01 hour from the bid closing time. The bid opening record shall be sent to the shortlisted investors.

2. The procuring entity's representative shall sign the original copy of the bid form, power of attorney of the investor's legal representative (if any); the partnership agreement (if any); the bid guarantee; important contents of each bid.

Article 61. Bid evaluation

1. The procuring entity shall not inspect the validity of bids. Each investor shall have a written commitment that they do not submit more than one bid as an independent investor or partnership member; are not being banned from PPP investment according to PPP laws; are not being banned from bidding according to bidding laws; have lawful status as prescribed in Article 29 of PPP Law.

2. Evaluation of capacity

Each investor shall have a written commitment that the project execution requirements are still fulfilled. In case there are changes to information in the negotiation application, the investor shall update information about the investor's capacity and the procuring entity shall organize re-evaluation according to the evaluation method and criteria specified in the negotiation application.

3. Detailed bid evaluation

a) Detailed technical evaluation shall be carried out according the criteria and method specified in the bidding documents. Technically qualified investors shall undergo financial – commercial evaluation;

b) Detailed financial – commercial evaluation and investor ranking shall be carried out according the criteria and method specified in the bidding documents;

c) Clarification of bids shall be carried out according to Article 54 of this Decree. The list of technically qualified investors shall not undergo validation and approval.

4. After bid evaluation is complete, the team of experts shall submit a report to the procuring entity for consideration. The report shall have contents specified in Clause 4 Article 59 of this Decree.

Section 6. SUBMISSION, VALIDATION, APPROVAL AND DISCLOSURE OF INVESTOR SELECTION RESULT

Article 62. Submission, validation, approval and publishing of investor selection result

1. On the basis of the bid evaluation result report, the procuring entity shall submit the investor selection result to the competent authority and validating unit, specifying the comments of the procuring entity on the evaluation by the team of experts.

2. The validating unit shall validate the investor selection result in accordance with Clauses 3, 4 and 5 Article 72 of this Decree before approval.

3. The competent authority shall decide whether approve the investor selection result on the basis of the validation report and the request for approval.

4. When a successful investor is selected, the document approving the investor selection result shall have the following contents:

a) The project's name, location and scale;

b) Name of the successful bidder (the selected investor);

c) Type of contract;

d) Time limit for preparation of the feasibility study report and project approval for high-tech PPP projects;

dd) Total investment, capital structure of the project;

e) Prices and fees for public services and products (if any); state capital provided as assistance in construction of works and infrastructure system (if any); payment to state budget or contract execution duration (if any); revenue distribution details (if any);

5. In case of bid cancellation prescribed in Point a Clause 1 Article 34 of PPP Law, the bid cancellation document shall specify the reasons for bid cancellation and responsibilities of relevant parties.

6. For PPP projects funded by state capital:

a) On the basis of the decision on approval for the investor selection result and the project approval, the medium-term public investment plan and public investment capital in the PPP project will be included in the annual public investment plan;

b) On the basis of the decision on approval for the investor selection result, project approval and investment guidelines, the contract-signing authority shall prepare the annual budget estimate for regular capital of state agencies and public service providers for payment to the PPP project enterprise in accordance with state budget laws.

Article 63. Disclosure of investor selection result

1. The procuring entity shall publish information about the investor selection result in accordance with Point b Clause 1 and Point b Clause 2 Article 4 of this Decree.
2. The procuring entity shall send the notice of investor selection result to the bidding investors by the deadline specified in Point b Clause 2 Article 4 of this Decree. The notice shall have the following contents:
 - a) The information specified in Clause 4 Article 62 of this Decree;
 - b) The list of unsuccessful investors and reasons for their disqualification (for projects applying competitive bidding, competitive negotiation);
 - c) The plan for negotiation and conclusion of the contract with the selected investor.

Section 7. NEGOTIATION, COMPLETION, CONCLUSION OF THE CONTRACT AND DISCLOSURE OF INFORMATION ABOUT THE PPP PROJECT CONTRACT

Article 64. Contract negotiation and conclusion

1. On the basis of the investor selection result, the selected investor shall be invited to negotiate and conclude the contract. In case the investor does not come or refuse to negotiate and conclude the contract, that investor's bid security will not be refunded, except in force majeure events prescribed by law.
2. Basis for contract negotiation and conclusion:
 - a) The decision to approve the investor selection result;
 - b) The report on bid evaluation;
 - c) The bid and documents revising or clarifying the bid (if any) of the selected investor;
 - d) The bidding documents and documents revising or clarifying the bidding documents (if any).
3. The contract negotiation and conclusion must not change the basis contents of the bid.
4. Contents of contract negotiation and conclusion:
 - a) Negotiation and completion of contents that are not detailed, clear, appropriate or consistent between the bidding documents and the bid, different contents in the bid that may lead to issues, disputes or affect responsibility of the parties during contract execution;
 - b) Negotiation of the errors other than discrepancies, additional conditions or omitted contents in the bid, in which case the investor will be required to provide necessary information or documents within a reasonable time limit to rectify these errors;
 - c) Negotiation on the issues that arise during the process of investor selection (if any) in order to complete detailed contents of the project;
 - d) Apart from the contents specified in Point a and Point b of this Clause, the procuring entity shall request the competent authority to consider deciding other negotiation contents that are appropriate for the type of contract.
5. The selected investor must not change, withdraw or refuse to fulfill the basic proposals in the bid, except for the changes that are proposed by the investor to be more efficient.
6. During the process of contract negotiation and completion, the parties shall complete the draft contract.
7. In case the contract negotiation is not successful, the procuring entity shall request the competent authority to consider cancelling the investor selection result and invite the investor ranked second to negotiate the contract. In case the contract negotiation with all the shortlisted investors is not successful, the procuring entity shall request the competent authority to consider issuing a decision on bid cancellation as prescribed in Point a Clause 1 Article 34 of PPP Law.

Article 65. Contract conclusion and disclosure of information about the PPP project contract

1. The PPP project contract shall be concluded by the parties prescribed in Article 46, 47, 48 and 49 of PPP Law and the Guidelines for Preparation of PPP Project Contract in Appendix VI hereof.
2. The contract-signing authority shall disclose information about the contract on VNEPS as prescribed in Point c Clause 1 and Point c Clause 2 Article 4 of this Decree. Disclosed information includes:
 - a) The project's name; contract number; contract conclusion time;
 - b) Names and addresses of the competent authority and contract-signing authority;
 - c) Names and addresses of the investor and the PPP project enterprise;

d) The project's location, land area used;

dd) Basic specifications for supervision of quality of works, infrastructure system public services and products provided by the PPP project enterprise during the project's operation;

e) Total investment; structure of capital in the project; state capital in the project (if any); payment to state budget or contract execution duration (if any); prices and fees for public services and products, collection method and location (if any); revenue distribution details (if any);

g) Type of contract; contract duration; expected transfer time (if any);

h) Other necessary information.

3. In case of revisions or addition of project contract appendices that change the information mentioned in Clause 2 of this Article, the contract-signing authority shall update on the VNEPS within 07 days from the day on which the appendix is signed.

4. The information mentioned in Clause 2 of this Article should be posted on the websites of the Ministry, central authority, other authorities, the People's Committee of the province or other means of mass media.

SECTION 8. INVESTOR APPOINTMENT AND SPECIAL INVESTOR SELECTION PROCESS

Sub-section 1. INVESTOR APPOINTMENT FOR PROJECTS PRESCRIBED IN POINT A CLAUSE 1 ARTICLE 39 OF PPP LAW

Article 66. Rules for investor appointment

1. Contents of the documents for investor appointment; organization of investor appointment; submission, validation, approval and disclosure of investor selection result; contract negotiation, completion, conclusion and disclosure of information about the project contract are similar to those of competitive bidding. The contents that are state secrets shall be disclosed in accordance with regulations of law on protection of state secrets.

2. During the investor appointment process, the procuring entity shall exchange information and documents with the appointed investor. Do not prescribe investor ranking; do not validate and approve the list of technically qualified investors. During bid evaluation, the procuring entity may invite the investor to clarify or revise the bid.

3. After bid evaluation is complete, the team of experts shall submit a report to the procuring entity for consideration. The report shall have the following contents:

a) Remarks on the fairness, transparency and efficiency of the investor selection process. In case fairness, transparency or efficiency is not ensured, provide explanation and propose solutions.

b) The contents of the bid that are not conformable with PPP laws and cause ambiguity or conflicting interpretation during execution or may lead to incorrect investor selection result (if any); proposed solutions.

4. In case the contract negotiation with the appointed investor is not successful, the procuring entity shall request the competent authority to consider issuing the decision on bid cancellation as prescribed in Point a Clause 1 Article 34 of PPP Law.

Sub-section 2. INVESTOR APPOINTMENT FOR PROJECTS PRESCRIBED IN POINT B CLAUSE 1 ARTICLE 39 OF PPP LAW

Article 67. Determination of appointed investor

1. On the basis of the works that need to be done in order to ensure continuity of the project execution, the contract-signing authority shall cooperate with the lender in:

a) Determine the required capacity, experience and lawful status of the appointed investor;

d) Draft the contract as prescribed in Article 47 of PPP Law and the Guidelines for Preparation of PPP Project Contract in Appendix VI hereof according to the remaining scope of the project;

c) Evaluate the appointed investor's capacity, experience and lawful status in accordance with Article 29 of PPP law and Clause 5 Article 29 of this Decree.

2. On the basis of the report submitted by the contract-signing authority, the competent authority prescribed in Clause 2 Article 39 of PPP Law shall decide:

a) The method of investor appointment and name of the procuring entity;

b) The draft contract;

c) Name of the appointed investor.

Article 68. Investor appointment process

1. Within 30 days from the day on which a decision is issued by the competent authority, the procuring entity, the investor and relevant parties (if any) shall negotiate, complete and conclude the contract.

2. On the basis of the result of contract negotiation and completion, the competent authority shall approve the investor selection result.

3. The PPP project contract shall be concluded by the parties prescribed in Article 46, 47, 48 and 49 of PPP Law and the Guidelines for Preparation of PPP Project Contract in Appendix VI hereof.

4. The investor selection result and information about the project contract shall be disclosed in accordance with Points b and c Clause 1 and Clause 2 Article 4 of this Decree.

Sub-section 3. SPECIAL INVESTOR SELECTION PROCESS

Article 69. Procedures for validating and approving the plan for special investor selection process

1. In case of a special PPP project where competitive bidding, competitive negotiation, investor appointment cannot be applied or the application of which may affect national interests, after the decision on investment guidelines is issued, the competent authority shall submit a proposal for initiation of special investor selection process as prescribed in Clause 40 of PPP Law to the Prime Minister and the Ministry of Planning and Investment for validation.

2. Within 45 days from the day on which adequate documents, the Ministry of Planning and Investment shall validate the investor selection plan and submit a report to the Prime Minister for consideration and decision.

3. On the basis of the proposal submitted by the competent authority and the validation report submitted by the Ministry of Planning and Investment, the Prime Minister shall consider issuing the decision on investment guidelines for special investor selection process.

Article 70. Implementation of the plan for special investor selection process

1. Pursuant to the Prime Minister's decision, the authority that has the power to approve the project shall decide the special investor selection process and approve the detailed plan.

2. The competent authority shall carry out the investor selection in accordance with the approved investor selection plan. The selected investor shall have satisfactory capacity and experience; have an appropriate and feasible project execution plan according to the decision on investment guidelines and the PPP project approval decision.

Section 9. VALIDATION AND SETTLEMENT OF COMPLAINTS DURING INVESTOR SELECTION PROCESS

Sub-section 1. VALIDATION DURING INVESTOR SELECTION PROCESS

Article 71. Validating prequalification documents, negotiation documents, bidding documents

1. The application for validation of pre-qualification documents or negotiation documents consists of:

- a) The application form;
- b) The draft pre-qualification documents or negotiation documents;
- c) Photocopies of the decision on investment guidelines; project approval decision (if any);
- d) Relevant documents.

2. The application for validation of bidding documents consists of:

- a) The application form;
- b) The draft bidding documents;
- c) Photocopies of the decision on investment guidelines; project approval decision;
- d) The written approval for the prequalification result (if any);
- dd) Relevant documents.

3. Validation contents:

a) Inspect the documents that are the basis for preparation of the pre-qualification documents, negotiation documents or bidding documents;

b) Inspect the conformity of the draft pre-qualification documents, negotiation documents or bidding documents with the decision on investment guidelines and PPP project approval decision, conformity with PPP laws and relevant laws;

c) Consider dissenting opinions (if any) between the organizations and individuals that prepare the pre-qualification documents, negotiation documents or bidding documents;

d) Other relevant contents.

4. The validation report shall contain:

- a) Overall contents of the project, which is the basis for preparation of the pre-qualification documents, negotiation documents or bidding documents;
 - b) Comments of the validating unit on the legal basis, conformity with PPP laws and relevant laws; assenting or dissenting opinions about the pre-qualification documents, negotiation documents or bidding documents;
 - c) The validating unit's proposals regarding approval for the pre-qualification documents, negotiation documents or bidding documents; remedial measures in case the pre-qualification documents, negotiation documents or bidding documents are foreign currencies conformable with PPP laws and relevant laws; what to do in case of inadequate basis for approving the pre-qualification documents, negotiation documents or bidding documents;
 - d) Other opinions (if any).
5. During validation, if necessary, the validating unit may hold a meeting between the parties to clarify the issues before submitting the validation report.

Article 72. Validation of prequalification result, list of technically qualified bidders and investor selection result

1. The application for validation of prequalification result consists of:

- a) The procuring entity's document about the result of evaluation of pre-qualification applications, which specifies the procuring entity's opinions about the proposals of the team of experts;
- b) The report on evaluation of prequalification applications;
- c) Photocopies of the prequalification documents, bid closing and bid opening records, prequalification applications and other necessary documents.

2. The application for validation of the list of technically qualified bidders consists of:

- a) The procuring entity's document regarding the result of technical proposal evaluation;
- b) The report on technical proposal evaluation result;
- c) Photocopies of the bidding documents, bid closing and bid opening records, technical proposals and other necessary documents.

3. The application for validation of the investor selection result consists of:

- a) The procuring entity's document regarding the investor selection result;
- b) The report on bid evaluation;
- c) Photocopies of the bidding documents, bid closing and bid opening records, bids and other necessary documents.

4. Validation contents:

- a) Inspect the documents that are the basis of prequalification and investor selection;
- b) Inspect the punctuality during the prequalification and investor selection process;
- c) Inspect the process of evaluation of pre-qualification applications and bids; conformity with PPP laws and relevant laws during the process of evaluation of pre-qualification applications, technical proposals; bids;
- d) Consider dissenting opinions (if any) between the procuring entity and the team of experts; between the individuals in the team;
- dd) Other relevant contents.

5. The validation report shall contain:

- a) Overalls about the project and legal basis for prequalification and investor selection;
- b) Brief summary of the process and proposals regarding the prequalification result, list of technically qualified investors and investor selection result;
- c) Remarks about conformity with PPP laws and relevant laws;
- d) Assenting or dissenting opinions about of the prequalification result, the list of technically qualified investors and investor selection result; proposed actions against violations of PPP laws during evaluation or what to do in case of inadequate basis for making a verdict about the evaluation result;
- dd) The validating unit's opinions about the competitiveness, fairness and transparency of the prequalification and investor selection process;
- e) The validating unit's opinions and proposals;
- g) Other opinions.

Sub-section 2. SETTLEMENT OF PETITIONS DURING INVESTOR SELECTION

Article 73. Conditions for settlement of petitions

1. Regarding petitions about the issues that arise during investor selection process:

- a) The petition is filed by a bidding investor. The petition about the pre-qualification documents, negotiation documents or bidding documents is filed by an investor whose name is on VNEPS;
- b) The petition form bears the signatures and seal (if any) of the investor's legal representative or the person that signs the application submission form or bid form;
- c) The petition form is received by the procuring entity and competent authority as prescribed in Clause 1 Article 96 of PPP Law;
- d) The petition settlement procedures specified in Clause 1 Article 96 of PPP Law are followed;
- dd) The issue in the petition has not been brought to court by the investor.

2. Regarding petitions against investor selection result

- a) The petition is filed by a bidding investor;
- b) The petition form bears the signatures and seal (if any) of the investor's legal representative or the person that signs the application submission form or bid form;
- c) The petition form is received by the procuring entity, competent authority or standing assistance team as prescribed in Clause 2 Article 96 of PPP Law;
- d) Petition settlement procedures specified in Clause 2 Article 96 of PPP Law are followed;
- dd) The issue in the petition has not been brought to court by the investor;
- e) The petition settlement fee is paid by the filing investor to the standing assistance team of the advisory board in case the petition is settled by the competent authority. The fee shall be 0,02% of the total investment but must be at least 20.000.000 VND and not more than 200.000.000 VND.

Article 74. Advisory board

1. Chairperson of the advisory board:

- a) The chairperson of the central-level advisory board is a representative of the Ministry of Planning and Investment. The central-level advisory board shall settle petitions relevant to projects whose decision on investment guidelines are issued by the National Assembly or the Prime Minister;
- b) The chairperson of an advisory board of a Ministry, ministerial agency or governmental agency (hereinafter referred to as "ministerial advisory board") is the head of the investor selection management unit of that agency. The chairperson of a local advisory board is the Director of the Department of Planning and Investment. Ministerial and local advisory boards shall counsel settlement of the projects whose decision on investment guidelines are issued or that are approved by the Ministers, heads of central authorities, other authorities, provincial People's Councils, except the projects specified in Point a of this Clause.

2. Members of an advisory board

Members of a central-level advisory board include representatives of the Ministry of Planning and Investment, competent authorities, Ministries, other authorities, relevant professional associations. Members of a ministerial advisory board include representative of relevant units of these agencies, representatives of the competent authority and relevant professional associations. Members of a local advisory board include representatives of the Department of Planning and Investment, the competent authority and specialized agency affiliated to the People's Committee of the province, relevant professional associations.

- b) The chairperson of the advisory board may invite other individuals that are experts in relevant fields to participate as members of the advisory board depending on each project;
- c) An advisory board member must not be the parent, parent-in-law, spouse, natural child, adopted child, son- or daughter-in-law, or sibling of:

- The person who signs the petition form;

- Any individual that directly participates in preparation of pre-qualification documents, negotiation documents, bidding documents, evaluation of pre-qualification application, negotiation application or bids;

- Any individual that directly validates the pre-qualification documents, negotiation documents, bidding documents, prequalification result, list of technically qualified bidders, investor selection result;

- The person who signs the approval for the investor selection result, the list of technically qualified investors, investor selection result.

3. Operation of the advisory board:

- a) The advisory board shall be established as prescribed in Point Clause 2 Article 96 of PPP Law within 05 working days from the day on which the investor's petition form is received;
- b) The advisory board shall work on individual cases, on the principle of collectives, vote under the majority rule and report to the competent authority, which will issue the final decision;
- c) Each member has the right to express and is legally responsible for their opinions.

4. Standing assistance team of the advisory board:

- a) The standing assistance team of the central-level advisory board is responsible for management of investor selection by the Ministry of Planning and Investment. The standing assistance team of a ministerial advisory board is responsible for management of investor selection by that agency. The standing assistance team of a local advisory board is responsible for management of investor selection by the Department of Planning and Investment. Members of the standing team do not include the individuals that directly participate in the validation of the list of technically qualified investors or investor selection result of the same project;
- b) The standing assistance team shall perform administrative tasks assigned by the chairperson of the advisory board; receive and manage the fees paid by the complaining investor as prescribed in Point e Clause 2 Article 73 of this Decree.

Article 75. Settlement of petitions against investor selection result

1. The time limit for settling a petition prescribed in Clause 1 and Clause 2 Article 96 of PPP Law begins when the petition fully satisfies the conditions for settlement prescribed in Article 73 of this Decree.

2. The procuring entity and competent authority shall send inform the investor in writing in case the petition is rejected because the conditions specified in Article 73 of this Decree are not fully satisfied.

3. The investor may withdraw the petition during the settlement process. The written withdrawal request shall bear the signatures and seal (if any) of the investor's legal representative or the person that signs the application submission form or bid form.

4. The written response to the petition shall contain a verdict regarding the issued petitioned against.

- a) If the investor's petition is found to be true, solutions and time limit must be specified (if any);
- b) If the investor petition is found to be false, the written response shall contain explanation.

5. Reimbursement of petition settlement fee

- a) If the investor's petition is found to be true, the jointly responsible organizations and individuals shall pay the investor an amount equal to the fee paid by the investor.
- b) If the investor's petition is found to be false, the investor will not have the fee reimbursed.

6. If the petition against the investor selection result has to be settled by the competent authority, the advisory board shall provide fixed funding for the advisory board and standing assistance team to settle the petition.

In case the investor withdraws the petition, only 50% of the fee paid by the investor will be refunded if the advisory board has not been established or has been established but has not held any meeting. The fee will not be refunded if the advisory board has held a meeting.

Chapter V

CONFIRMATION OF COMPLETION, TRANSFER OF CONSTRUCTION WORKS AND INFRASTRUCTURE SYSTEM, TERMINATION OF PPP PROJECT CONTRACT

Section 1. CONFIRMATION OF COMPLETION, TRANSFER OF CONSTRUCTION WORKS AND INFRASTRUCTURE SYSTEM

Article 76. Confirmation of completion of construction works and infrastructure system

1. After the construction is completed, the project management enterprise shall submit an application for confirmation of construction works and infrastructure system. An application shall include:

- a) A written request for inspection and confirmation of completion of construction works and infrastructure system;
- b) A written acceptance notice issued by the competent authority as prescribed by construction law;
- c) The acceptance notice for work items, written confirmation of completed construction works of sub-projects funded by public investment capital prescribed in Point a Clause 5 Article 70 of PPP Law (if any) issued by the contract-signing authority.

2. In case the project is divided into multiple stages, the documents mentioned in Clause 1 of this Article shall be made separately for each stage.

3. Within 30 days from the day on which adequate documents specified in Clause 1 of this Article are received, the contract-signing authority shall issue the confirmation to the PPP project enterprise. In case of questionable quality of construction works and infrastructure system, the contract-signing authority may hire a consultant to assist in quality inspection as prescribed in Clause 3 Article 59 of PPP Law.

4. If the PPP project has sub-projects funded by public investment capital as prescribed in Point a Clause 5 Article 70 of PPP Law, the contract-signing authority shall pay up to 50% of the estimated value of the sub-projects when the PPP project enterprise completes the works thereof. The remainder shall be paid when the completion of construction works is confirmed as prescribed in Clause 3 of this Article.

Article 77. Rules, conditions for transfer, receipt of construction works and infrastructure systems of PPP projects

1. In case the PPP project contract is terminated ahead of schedules as prescribed in Article 81 of this Decree, the construction works and infrastructure system of the PPP project

a) The construction of works and infrastructure system shall be conformable with construction regulations and standards, relevant laws and regulations of the project contract;

b) The construction works and infrastructure system of the PPP project is not pledged, put up as collateral or subject to any ownership restriction;

c) the construction works and infrastructure system have full functions, necessary capacity and quality according to technical and quality requirements specified in the investment activities at the time of transfer, and can continue to be used as prescribed by law;

d) The transfer, receipt of construction works and infrastructure system must not affect the continuity and quality of public services and products provision.

2. The contract-signing authority shall request the competent authority to assign a unit that has adequate capacity and resources to operate and maintain the construction works and infrastructure system; adhere to the transfer schedule prescribed by law and the project contract without affecting the continuity and quality of public services and products provision.

Article 78. Procedures for transfer and receipt of construction works and infrastructure system

1. In case the PPP project is executed under a BOT or BLT contract:

a) At least 01 year before the termination date of the PPP project contract specified in therein, the PPP project enterprise shall publish the transfer of construction works and infrastructure system, procedures and time limit for contract finalization, payment of debts on a newspaper; send the application for transfer of construction works and infrastructure system prescribed in Clause 1 Article 79 of this Decree to the contract-signing authority;

b) Within 30 days from the receipt of the application for transfer, the contract-signing authority shall take charge and cooperate with the authority specialized in property management, the finance authority and relevant authorities (if necessary) in:

- Organizing inspection of quality, value, conditions of the construction works and infrastructure system under the terms and rules of the project contract.

- Preparing a list of transferred property.

- Preparing a record on damage to the property (if any) in order to request the project management enterprise to make repairs and maintenance of the property.

- If the construction works and infrastructure system satisfy the requirements, the contract-signing authority shall sign the property transfer record.

- Requesting the competent authority to assign a unit to operate and maintain the construction works and infrastructure system as prescribed in Clause 4 Article 80 of this Article;

c) The contract-signing authority shall request SAV to audit the value of property of the PPP project as the basis for increasing property as prescribed by regulations of law on management and use of public property.

d) At least 30 days before the termination date written in the PPP project contract, the contract-signing authority shall prepare documents and request the competent authority to issue a decision on establishment of public ownership; prepare a plan for property settlement and submit it to the competent authority for approval in accordance with regulations of law on management and use of public property;

dd) The assigned unit shall operate and maintain the construction works and infrastructure system as per regulations.

2. In case the PPP project is executed under a BTO or BTL contract:

a) If the requirements specified in Article 76 of this Decree are fully satisfied the PPP project enterprise shall send the application for transfer of construction works and infrastructure system to the contract-signing authority;

b) The contract-signing authority shall sign the property transfer record, prepare documents and request the competent authority to issue a decision on establishment of public ownership in accordance with regulations of law on management and use of public property;

c) The PPP project enterprise shall manage and operate the construction works and infrastructure system in accordance with the project contract;

d) At least 01 year before the termination date of the PPP project contract specified in therein, the PPP project enterprise shall publish the transfer of construction works and infrastructure system, time limit for contract finalization, payment of debts on a newspaper; send the application for transfer of construction works and infrastructure system to the contract-signing authority;

dd) Within 30 days from the receipt of the application for transfer, the contract-signing authority shall take charge and cooperate with the authority specialized in property management, the finance authority and relevant authorities (if necessary) in performing the tasks specified in Point b and Point c Clause 1 of this Article;

e) At least 30 days before the termination date of the PPP project contract specified in therein, the contract-signing authority shall cooperate with the unit assigned to operate and maintain the construction works and infrastructure system in performing the tasks specified in Point d and Point dd Clause 1 of this Article.

Article 79. Procedures for transfer and receipt of construction works and infrastructure system

1. The application for transfer of construction works and infrastructure system of the PPP project executed under a BOT or BLT contract consists of:

a) The written request for transfer of construction works and infrastructure system;

b) The report on fulfillment of the rules and conditions specified in Article 77 of this Decree;

c) Other documents specified in the contract and written agreement prescribed in Point a Clause 1 Article 78 of this Decree.

2. If the PPP project is executed under a BTO or BTL contract, the PPP project enterprise shall include the report on fulfillment of the rules and conditions specified in Article 77 of this Decree in the application for confirmation of completed construction works and infrastructure system.

Section 2. TERMINATION OF PPP PROJECT CONTRACT

Article 80. Termination of PPP project contract on schedule

1. The contract-signing authority, the investor, the PPP project enterprise shall terminate the PPP project contract on the date specified in the contract as the basis for contract finalization.

2. At least 01 year before the termination date written in the contract, the contract-signing authority, the investor, the PPP project enterprise shall:

a) Confirm the fulfilled obligations and responsibility of the parties to the tasks that need to be completed in 01 year;

b) Develop a mechanism for cooperation in completing procedures for transfer of construction works and infrastructure system as prescribed in Article 78 of this Decree (if any); establish rules and conditions for transfer of cleared land (if the project is executed under a BOO contract); conditions for transfer of construction works and infrastructure system (if the project is executed under an O&M contract);

c) Prepare the plan for transfer of technology, personnel, documents about the construction works and infrastructure system serving operation thereof to the contract-signing authority or the unit assigned to operate and maintain construction works and infrastructure system;

d) Agree on the contents that ensure the continuity and quality of public services and products provision, including the PPP project enterprise maintaining provision of public services and products until the assigned unit mentioned in Clause 4 of this Article receives the construction works and infrastructure system;

dd) Other necessary tasks specified in the project contract.

3. The agreement on contents of the tasks specified in Clause 2 of this Article shall be made into a written document signed by the parties.

4. On the basis of the agreement mentioned in Clause 2 of this Article, the contract-signing authority shall submit a report to the competent authority with the following contents:

- a) Assigning a unit to receive the construction works and infrastructure system for operation and maintenance; ensuring fulfillment of the conditions specified in Clause 2 Article 77 of this Decree.
- b) Requesting the assigned unit mentioned in Point a of this Clause to prepare funds and other necessary resources to receive, operate and maintain the construction works and infrastructure system.

Article 81. Premature termination of PPP project contract

1. Procedures for premature termination of PPP project contract:

- a) A party to the contract submits a written request for premature termination of the PPP project contract which must specify the reasons for premature termination;
- b) The parties reach an agreement the conditions for premature termination of the PPP project contract;
- c) The parties complete the procedures for contract finalization as prescribed in Article 68 of PPP Law.

2. The agreement mentioned in Point b Clause 1 of this Article shall be made into a written document with the following primary contents:

- a) Reasons for premature termination, which must be conformable with Clause 2 Article 52 of PPP Law;
- b) Unfulfilled obligations of the parties, including the obligation to transfer the construction works and infrastructure system;
- c) Tasks that need to be completed to ensure continuity and quality of public services and products provision after contract termination;
- d) Civil responsibility limits and exemption of one of the parties;
- dd) The time needed for the parties to implement remedial measures; estimated cost of settlement of the prematurely terminated contract; selection of an audit organization (if necessary);
- e) Other necessary contents as prescribed by civil laws and the PPP project contract.

3. Either party has the right to unilaterally terminate the PPP project contract prematurely when the other party seriously violates the contract as prescribed in Point d Clause 2 Article 52 of PPP Law.

4. When a PPP project contract is terminated prematurely and a substitute investor has to be selected to sign a new contract, the contract-signing authority shall inform the lender of the appointment of the substitute investor. The appointment of the substitute investor shall comply with Article 67 and Article 68 of this Decree.

5. The contract-signing authority shall ensure the safety and protect the construction works and infrastructure system from degradation, or organize the operation of the construction works and infrastructure system in order to ensure continuity of public services and products.

Article 82. Costs of settlement in case of premature termination of contract

1. The PPP project contract shall specify the formula or method for calculation of costs of settlement in case of premature termination of the contract as prescribed in Clause 2 Article 52 of PPP Law.

2. In case of the contract is prematurely terminated because the contract-signing authority seriously violates the obligations to execute the contract, compensations shall be paid to the investor and the PPP project enterprise as follows:

- a) Establishment of the project funded by public investment capital. Procedures for approving the decision on investment guidelines and investment decision shall comply with the Law on Public Investment;
- b) Use of backup public investment capital;
- c) Other lawful sources of financing.

3. The procedures and funding for purchase of the PPP project enterprise shall comply with regulations of law on management and use of state capital for business operation of enterprises.

4. After the parties reach an agreement on the conditions for premature termination of the project contract, the contract-signing authority shall request the competent authority to consider deciding the cases in which the settlement costs have to be paid; method, values and sources of payment to the investor and the project management enterprise if that is the liability of the State.

Chapter VI

HANDLING SITUATIONS AND ACTIONS AGAINST VIOLATIONS DURING PPP INVESTMENT

Section 1. HANDLING SITUATIONS DURING PROJECT EXECUTION

Article 83. Handling of certain situations

1. In case the competent authority receives a project proposal from another investor after the first investor submits the project proposal that have the same objectives and location and are conformable with the project planning, the competent authority shall handle this situation as follows:

a) If the second investor's project proposal is received within 10 days from the day on which the first investor's project proposal is received, assign an affiliated specialized agency to consider and establish evaluation method to select the project proposal with highest feasibility and efficiency according to the following criteria:

- The conditions specified in Clause 1 Article 26 of PPP Law;
- Necessity of investment;
- Technical feasibility;
- Economic – social efficiency of the project;
- Financial feasibility of the project;
- The investors' capacity and experience as the basis for preparation of the pre-feasibility study report, feasibility study report of the project.

b) If the second investor's project proposal is received after 10 days from the day on which the first investor's project proposal is received, the competent authority shall not consider the it and return it to the second investor as is.

2. In case the project applies competitive bidding with prequalification or competitive negotiation as prescribed in Clause 2 and Clause 3 Article 38 of PPP Law and fewer than 03 investors satisfy the requirements of the pre-qualification documents or negotiation documents (qualified investors), the procuring entity shall, on the basis of specific conditions of the project, request the competent authority to select one of the following options:

a) Immediately approve the shortlist of qualified investors;

b) Revise the pre-qualification documents or negotiation documents (if necessary) and reinstate the prequalification or competitive negotiation process to increase the number of investors on the shortlist. In this case, investors may revise or withdraw their submitted pre-qualification applications or negotiation applications.

3. In case of prequalification, competitive bidding without prequalification, competitive negotiation prescribed in Clause 2 and Clause 3 Article 38 of PPP Law and fewer than 03 investors submit pre-qualification applications, negotiation application or bids, the procuring entity shall request the competent authority to selection one of the following options:

a) Immediately open and evaluate the bids;

b) Defer the bid closing time and revise the pre-qualification documents, negotiation documents or bidding documents (if necessary). In this case, investors may revise or withdraw their submitted pre-qualification applications, negotiation applications or bids.

4. In case of competitive bidding where prequalification or competitive negotiation has been carried out and the quantity of bidding investors is smaller than the approved quantity in the shortlist at the bid closing time, the procuring entity shall request the competent authority to select one of the following options:

a) Immediately open and evaluate the bids;

b) Defer the bid closing time and revise the pre-qualification documents, negotiation documents or bidding documents (if necessary). In this case, investors may revise or withdraw their submitted pre-qualification applications, negotiation applications or bids.

5. The investor that needs to change their status and name in the shortlist shall send a written notice to the procuring entity at least 07 working days before the bid closing date. The procuring entity shall request the competent authority to consider permitting:

a) Addition of the partnership member to the shortlist;

b) Removal of the partnership member provided the remaining members or the substitute member (if any) have qualified capacity and experience;

c) Change of the ratio of contributed equity to in the partnership, in which case the procuring entity shall carry out evaluation and update information about the investor's capacity; ensure that the investor has adequate capacity and minimum equity ratio of each member specified in the pre-qualification documents or negotiation documents.

6. In case the shortlisted investors wish to form a partnership to bid, the competent authority shall consider approving this as long as competitiveness, transparency and efficiency are ensured.

7. In case all investors that are technically qualified and included in the list of ranked investors propose the prices, fees for public services and products, state capital provided as assistance in construction of works and infrastructure system that are higher than the values in the approved feasibility study report (or the pre-feasibility study report for high-tech projects), the procuring entity shall request the competent authority to select one of the following options:

a) Allow the investors to resubmit the financial – commercial proposals;

b) Concurrently allow these investors to resubmit the financial – commercial proposals and reconsider the prices, fees for public services and products, state capital provided as assistance in construction of works and infrastructure system in the approved feasibility study report (or the pre-feasibility study report for high-tech projects), if necessary.

8. In case all investors are equally ranked after evaluation of financial – commercial proposals, the investor that has the highest technical score will be first-ranked.

9. In case some contents of the bidding documents are not conformable with PPP laws and relevant laws and thus cause vague or ambiguous interpretation during bid evaluation or incorrect investor selection result, the procuring entity shall request the competent authority to consider following these steps:

a) Revise the bidding documents to their conformity with the decision on investment guidelines, project approval decision, PPP laws and relevant laws;

b) Notify all investors that have submitted their bids of the revisions to the bidding documents and request them to submit supplementary documents for the revised contents or other contents if affected by the revisions to the bidding documents (if necessary);

c) Organize re-evaluation of bids.

10. In case the successful investor fails to satisfy the technical and financial criteria, the by the time the contract is concluded, the next-ranked bidder will be invited to negotiate the contract. The invited investor shall restore the effect of the bid and bid security in case it has expired and ensure that the bid security has been returned or released.

11. In case the partnership is the successful bidder but the project contract has not been concluded or concluded but has not come into force and the ratio of equity contribution in the partnership is adjusted, the procuring entity shall update the investor's capacity as prescribed in Clause 1 Article 49 of PPP law, ensuring that the investor has adequate capacity and minimum equity ratio of each member as prescribed in Point a Clause 2 Article 41 of PPP law. After information about the investor's capacity is updated, the procuring entity shall request the competent authority to make a decision in order to carry on the procedures as per regulations.

12. In other situations than those mentioned above, the competent authority shall make decision on the basis of ensuring competitiveness, fairness, transparency and efficiency.

Article 84. Responsibility for handling situations

1. The situations specified in Clauses 1, 2, 3, 4, 5, 6, 7, 9, 11 and 12 Article 83 of this Decree shall be handled by the competent authority.

2. The situations specified in Clause 8 and Clause 10 Article 83 of this Decree shall be handled by the procuring entity.

Section 2. HANDLING VIOLATIONS

Article 85. Bid cancellation, bid suspension, refutation of investor selection result, invalidation of decisions of the competent authority, contract-signing authority, procuring entity

1. Bid cancellation is an action against violations of PPP laws and relevant laws committed by organizations and individuals participating in investor selection. The competent authority shall decide bid cancellation in the cases specified in Article 34 of PPP law.

2. Bid suspension means suspension of the bidding process before the investor selection result is approved when violations against PPP laws or relevant laws by the organizations and individuals participating in the investor selection are suspected which affect the achievement of the purposes of investor selection.

3. Refutation of investor selection result means cancellation of the investor selection result during the period from the day on which the investor selection result is approved to before the contract conclusion date if there is evidence that the organizations and individuals participating in the investor selection commits violations against PPP laws or relevant laws which alters the investor selection result.

4. Invalidation means cancellation of a decision that is issued by the competent authority, contract-signing authority or procuring entity against PPP laws and relevant laws.

Article 86. Prohibition from participating in PPP investment activities

1. Depending on the seriousness of the violation, an organization or individual can be prohibited from participation in PPP investment activities for:

- a) 06 – 12 months for any of the violations specified in Clause 4 and Clause 5 Article 10 of PPP Law;
- b) 01 – 03 years for any of the violations specified in Clause 7 and Clause 8 Article 10 of PPP Law;
- c) 03 - 05 years for any of the violations specified in Clauses 3, 6, 9, 10, 11 and 12 Article 10 of PPP Law.

2. Authority to prohibit participation in PPP investment activities:

- a) The competent authority shall issue decisions to prohibit organizations and individuals from participating in or involving in investment in PPP projects under its management; in case of serious violations, the competent authority shall request the Minister of Planning and Investment to issue the decision on prohibition from participation in PPP investment activities nationwide;
- b) The Minister of Planning and Investment shall issue decisions to prohibit participation in PPP investment activities nationwide in the cases requested by the competent authority as prescribed in Point a of this Clause.

Chapter VII

INSPECTION OF PPP INVESTOR SELECTION

Article 87. Inspection of investor selection

1. Inspections include periodic inspections and unscheduled inspections that are carried out whenever there is a complaint or when requested by the Prime Minister, the President of the People's Committee of the province, the head of the investor selection inspection authority prescribed in Clause 2 of this Article.

2. Ministers, heads of central authorities and other authorities prescribed in Point a and Point c Clause 1 Article 5 of PPP Law, Presidents of the People's Committees of provinces, Directors of Departments of Planning and Investment, heads of specialized agencies affiliated to the People's Committees of provinces shall supervise the investor selection by their inferior units and the projects they decide to invest in to ensure punctuality, effectiveness of investor selection, discover and handle violations against PPP laws.

3. The Ministry of Planning and Investment shall organize inspection of investor selection nationwide. Other Ministries, central authorities, other authorities, the People's Committees of provinces, Departments of Planning and Investment, specialized agencies affiliated to the People's Committees of provinces, the People's Committees of districts shall organize inspection of investor selection at the request of the authorities responsible for investor selection inspection. Departments of Planning and Investment shall assist the People's Committees of provinces in inspecting investor selection in their provinces.

Article 88. Inspection contents

1. Periodic inspection contents:

a) Inspect the promulgation of instructional documents about investor selection and hierarchy in investor selection;

h) Inspect the preparation and approval of pre-qualification documents, negotiation documents, bidding documents, prequalification result and investor selection result;

c) Inspect the sequence and progress of project execution;

d) Inspect the contents of the concluded contract and legal basis for contract conclusion and execution;

d) Inspect the preparation and submission of investor selection-related reports;

e) Inspect the performance of investor selection-related inspection and supervision tasks;

2. Unscheduled inspection contents: decided by the chief of the inspectorate.

3. A report and verdict shall be made at the end of the inspection, the inspecting authority shall monitor the rectification of weaknesses (if any) mentioned in the verdict. Propose remedial measures if violations are found or transfer the case to an investigation authority for handling as per regulations.

Chapter VIII

IMPLEMENTATION CLAUSES

Article 89. Amendments to some Articles of the Government's Decree No. 25/2020/ND-CP dated February 28, 2020 elaborating some Articles of the Law on Bidding on investor selection

1. Amendments to Point b Clause 1 Article 2:

b) The counseling contractor specialized in preparation of the capacity profiles; preparation and validation of bidding documents, validation and evaluation of bids, validation of investor selection result.”.

2. Amendments to Article 4:

a) Amendments to Point c of Clause 1:

“c) Department of Planning and Investment or the economic zone management board (if the project is executed in a economic zone) shall publish information about land-using projects, extension or change of deadline for applying (if any), capacity profile evaluation, experience of each applicants according to Clause 1.i and 1.l Article 8 of the Law on Bidding;”;

b) Amendments to Point d of Clause 1:

“d) The procuring entity shall publish the information specified in Point b, c, d and dd Clause 1 Article 8 of the Law on Bidding and information about change in bid closing time (if any); information about contracts for land-using projects specified in Clause 1.l Article 8 of the Law on Bidding.”.

c) Amendments to Clause 5:

“5. In addition to the responsibility to publish the information specified in Clause 1.d of this Article, the procuring entity shall publish the invitation to bid in both English and Vietnamese on the website of the People’s Committee of the province (if any) or on an English newspaper published in Vietnam.”.

3. Amendments to Clause 1 of Article 5:

“

“1. For the information specified in Point b and Point c Clause 1 Article 8 of the Law on Bidding, the procuring entity shall issue bidding documents together with the invitation to bid the national bidding network.”.

4. Amendments to Article 6:

a) Amendments to Clause 3:

“3. The bidding documents shall be issued together with the invitation to bid on the national bidding network. The request for proposals shall be issued within the timeframe specified in the invitation to bid which is sent to the pre-selected investor;”.

b) Amendments to Clause 7:

“7. Any revisions to the bidding documents shall be sent to bidders that received bidding documents at least 15 days for domestic bidding or 25 days for international bidding before the bid closing date; at least 10 days before the bid closing time for revisions to the request for proposals. In case the revisions are not sent by the deadline specified in this Clause, the procuring entity shall delay the bid closing time to allow enough time for sending revisions to the bidding documents or request for proposals.”.

5. Amendments to Article 7:

a) Amendments to Clause 1:

“1. For domestic bidding, the selling price (inclusive of tax) shall not exceed 20.000.000 VND for a set of bidding documents or request for proposals; For international bidding, the selling price (inclusive of tax) shall not exceed 30.000.000 VND for a set of bidding documents or request for proposals.”.

b) Amendments to Clause 4:

“4. For re-selection of investors and similar projects of the same competent authorities and procuring entity, the costs of preparation and validation of prequalification documents, preparation and validation of bidding documents or request for proposals shall be 50% of the costs mentioned in Clause 2 and Clause 3 of this Article. In case of re-selection of investors, inclusion of these costs in investment preparation costs must be considered.”.

6. The title of Chapter II is changed into "Investor selection plan”.

7. Amendments to Point b Clause 1 of Article 24:

“b) For a land-using project:

- The decision on approval for investment guidelines (for projects subject to approval for investment guidelines according to investment laws) or the decision on approval for the list of land-using projects (for projects not subject to approval for investment guidelines according to investment laws);
- The decision to apply competitive bidding;
- Relevant documents (if any).”.

8. Amendments to Article 25:

a) Amendments to Clause 2:

"2. Estimated total cost of the project, cost of compensation, assistance and relocation, land levy, land rent of a land-using project."

b) Amendments to Point a of Clause 4:

"a) The method of investor selection shall be determined in accordance with Article 22 and Article 26 of the Law on Bidding, and Article 10 of this Decree;"

9. Amendments to Point a Clause 1 of Article 47:

"a) The decision on approval for investment guidelines (for projects subject to approval for investment guidelines according to investment laws) or the decision on approval for the list of land-using projects (for projects not subject to approval for investment guidelines according to investment laws);"

10. Amendments to Article 49:

"Article 49. Validating and approving the bidding documents

1. Bidding documents shall be validated and approved in accordance with Clause 2 Article 75 of this Decree before approval.

2. Approval for the bidding documents shall be made in writing and on the basis of the application for approval and the validation report."

11. Amendments of Article 51 and addition of Article 51a, 51b, 51c and 51d after Article 51:

"Article 51. Inviting bids, issuing, revising, clarifying bidding documents; extending bid submission deadline

1. The invitation to bid shall be published in accordance with Point d Clause 1 Article 4 and Clause 1 Article 5 of this Decree.

2. Bidding documents must be publicly issued to the bidders. The procuring entity shall post the files of bidding documents free of charge on the national bidding network.

3. If the bidding documents have to be revised after issuance, the revision decision and the revisions must be posted by the procuring entity on the national bidding network.

4. In case clarification of the bidding documents is needed, the bidder shall send a written request to the procuring entity at least 07 working days (for domestic bidding) or 15 days (for international bidding) before the bid closing date. The bidding documents shall be clarified by the procuring entity in one or some of the following manners:

a) Post the clarifying document on the national bidding network;

b) If necessary, hold a pre-bid meeting to discuss the contents that need clarifying in the bidding documents. The minutes of the meeting prepared by the procuring entity shall used as the clarifying document and posted on the national bidding network.

The clarifying document must not contradict the approved bidding documents. In case the bidding documents have to be revised after clarification, the revision shall be carried out in accordance with Clause 3 of this Article.

5. The revision decision and clarifying document shall be part of the bidding documents.

6. Extending bid submission deadline

a) The procuring entity shall post the extension notice together with the decision to approve extension on the national bidding network;

b) The extension notice shall specify the reason for extension and the new bid closing time.

Article 51a. Preparing, submitting, receiving, managing, revising, replacing withdrawing bids

1. The investor shall prepare and submit the bid according to requirements of the bidding documents.

2. The procuring entity shall receive all bids submitted by investors before the bid closing time and treat them as secret documents until the investor selection result is disclosed; Do not reveal information in one investor's bid to any other investor, except the information that is disclosed during bid opening.

3. In case the submitted bid has to be revised, replaced or withdrawn, the investor shall send a written request to the procuring entity. The procuring entity shall only allow the revision, replacement or withdrawal if the written request is received before bid closing time.

4. The bids and documents sent by investors to the procuring entity after the bid closing time shall not be opened, considered invalid and eliminated, except documents clarifying bids requested by the procuring entity or clarifying, supplementary documents proving the investors' lawful status, capacity and experience.

Article 51b. Opening technical proposals

1. Technical proposals shall be publicly opened within 01 hour from the bid closing time. The bid opening record shall be sent to all bidding investors.
2. The procuring entity's representative shall sign the original copy of the bid form, power of attorney of the investor's legal representative (if any); the partnership agreement (if any); the bid guarantee; important documents of each technical proposal.
3. Financial – commercial proposals of all investors shall be sealed by the procuring entity in a separate bag. The seal shall be signed by the procuring entity's representative and the investors that participate in the technical proposal opening ceremony.

Article 51c. Rules for bid evaluation

1. Bid evaluation shall be carried out on the basis for criteria for bid evaluation and other requirements in the bidding documents, the submitted bids, bid-clarifying documents provided by the investors in order to select a qualified investor with feasible technical, financial – commercial plans for execution of the project.
2. Photocopies shall be used for evaluation. The investor shall be responsible for the consistency between the original copies and photocopies. In case of minor discrepancies between the original copies and photocopies which do not affect the investor's rank, the original copies shall be used for evaluation. In case of serious discrepancies between the original copies and photocopies which affect the evaluation result and the investor's rank, the bid of that investor will be eliminated.
3. During bid evaluation, the procuring entity shall inspect the technical, financial – commercial contents of the bids to make sure the bids do not contain discrepancies, additional conditions or missing basic contents. To be specific:
 - a) Discrepancies are contents that are different from those specified in the bidding documents;
 - b) Additional conditions are those imposed by the investor that are restrictive or express partial consent to the requirements in the bidding documents;
 - c) Omitted contents are the information or documents that are not fully provided by the investor as required by the bidding documents.
4. If the bid fulfills the basic requirements in the bidding documents, the procuring entity may accept the flaws that are not the aforementioned discrepancies, additional conditions or omitted contents, which, if accepted by the procuring entity or revised, supplemented or replaced by the investor, will:
 - a) Significantly affect the scope, technical requirements, quality of construction works and infrastructure system;
 - b) Cause significant restrictions and inconsistency between the bidding documents and entitlements of the procuring entity, the contract-signing authority, competent authority or obligations of the investor in the contract;
 - c) Unfairly affect competitiveness of other investors whose bids satisfy the basic requirements in the bidding documents.
5. A bid that fails to satisfy the basic requirements in the bidding documents will be eliminated; revisions to the discrepancies, additional conditions or omitted contents to make a bid satisfactory are not permitted.

Article 51d. Rules for clarifying bids

1. After bids are opened, the investors shall clarify their bids if requested by the procuring entity.
2. After bid closing, the procuring entity shall receive clarifying documents, supplementary documents proving the investors' lawful status, capacity and experience in case the investors find that their existing information and documents about their capacity and experience are not submitted together with the bidding documentation. These documents shall be considered part of the bids.
3. The clarification of contents about the investor's lawful status, capacity and experience must not change the nature of the investor's lawful status, capacity and experience. The clarification of technical, financial - commercial contents in the bid must not change the basic contents of the submitted bid.
4. The clarification shall be carried out between the procuring entity and the investor whose bid has to be clarified. The clarification shall be made into a written document and retained by the procuring entity as part of the bid.”

12. Amendments to Article 52:

“Article 52. Evaluation of technical proposals

1. Inspection of validity of technical proposals, including:
 - a) Inspection of the quantity of original copies and photocopies of the technical proposal;

- b) Inspection of components of the technical proposal, including: the bid form, partnership agreement (if any), letter of authorization to sign the bid form (if any); bid guarantee; documents proving the signor's lawful status (if any); documents proving the investor's lawful status, capacity and experience; the technical proposal; other components of the technical proposal;
- c) Inspection of consistency between the original copies and photocopies serving detailed evaluation of the technical proposal.

2. Evaluation of validity of technical proposals:

A technical proposal shall be considered valid when:

- a) There is the original copy of the technical proposal;
- b) There is a valid bid form;
- c) The effect of the technical proposal is conformable with regulations of the bidding documents;
- d) There is a valid bid guarantee;
- d) The investor does not submit more than one technical proposal as independent investor or partnership member;
- c) There is a valid partnership agreement in case of a partnership;
- a) The investor is not being banned from bidding under bidding laws;
- h) The investor has lawful status as prescribed in Article 5 of the Law on Bidding.

3. Evaluation of capacity and experience

Evaluation of capacity and experience shall be carried out according to the criteria and method specified in the bidding documents.

4. Investors that have valid technical proposals and satisfy capacity and experience requirements shall have their technical proposals undergo detailed evaluation

5. Detailed evaluation of technical proposals

Detailed evaluation of technical proposals shall be carried out according the criteria and method specified in the bidding documents.”.

13. Amendments to Article 53:

“Article 53. Validating, approving the list of technically qualified investors

- 1. c) The list of technically qualified investors must be validated in writing on the basis of the written request for approval and the report on validation of the list of technically qualified investors.
- 2. In case of investor appointment, do not validate and approve the list of technically qualified investors.
- 3. The procuring entity shall send the list of technically qualified investors to all bidding investors and invite them to participate in the opening of financial – commercial proposals, specify the opening time and location.”.

14. Amendments to Article 54:

“Article 54. Opening financial – commercial proposals

- 1. Financial – commercial proposals of the investors on the list of technically qualified investors shall be publicly opened within at the time and location specified in the notification of the list of technically qualified investors. The bid opening record shall be sent to all bidding investors.
- 2. The procuring entity’s representative shall sign the original copy of the bid form, power of attorney of the investor’s legal representative (if any); the partnership agreement (if any); the bid guarantee; important documents of each financial – commercial proposal.”.

15. Amendments to Article 55:

“Article 55. Evaluation of financial - commercial proposals

- 1. Inspection of validity of financial - commercial proposals, including:
 - a) Quantity of original copies and photocopies of the financial – commercial proposal;
 - b) Components of the financial – commercial proposal, including: the bid form, other components of the financial – commercial proposal;
 - c) Consistency between the original copies and photocopies.
- 2. Evaluation of validity of financial - commercial proposals:

A financial – commercial proposal shall be considered valid when:

- a) There is the original copy of the financial – commercial proposal;
- b) There is a valid bid form;
- c) The values in the bids are specific, expressed in both numbers and words, rational, logical and consistent, and are not associated with conditions that are disadvantageous to the authorities or procuring entity (including: total investment proposed by the investor (M₁); value of compensation, assistance and relocation proposed by the investor (M₂); proposed payment to state budget in addition to the investor's liabilities to state budget prescribed by applicable laws (M₃); proposed increase in payment to state budget in addition to the investor's liabilities to state budget prescribed by applicable laws (if any);
- d) The effect of the financial – commercial proposal is conformable with regulations of the bidding documents.

3. The investor whose financial – commercial proposal is valid will undergo detailed financial – commercial evaluation. Detailed evaluation of financial – commercial proposals and investor ranking shall be carried out according the criteria and method specified in the bidding documents.

4. After bid evaluation is complete, the team of experts shall submit a report to the procuring entity for consideration. The report shall have the following contents:

- a) The list of ranked investors;
- b) The list of disqualified investors and reasons for disqualification;
- c) Remarks on the competitiveness, fairness, transparency and efficiency of the investor selection process. In case competitiveness, fairness, transparency or efficiency is not ensured, provide explanation and propose solutions.

5. Where necessary, the procuring entity shall request the competent person to allow the first-ranked investor to enter preliminary contract negotiation in order to facilitate contract negotiation and conclusion after investor selection result is available.

16. Amendments to Clause 1 of Article 57:

"1. Submission, validation, approval for investor selection result:

- a) On the basis of the bid evaluation result report, the procuring entity shall submit the investor selection result, specifying the comments of the procuring entity on the evaluation by the team of experts;
- b) The investor selection result shall be validated in accordance with Clause 4 Article 76 of this Decree prior to approval;
- c) The investor selection result shall be approved in writing on the basis of the validation report and the request for approval."

17. Amendments to Clause 5 of Article 58:

"5. During the process of contract negotiation and completion, the parties shall draft the contract. The selected investor must not change, withdraw or refuse to fulfill the basic proposals in the bid, except for the changes that are proposed by the investor to be more efficient."

18. Amendments to Article 67:

a) Amendments to Point a of Clause 1:

"a) Basis for preparation of request for proposals:

- The list of projects that need land expropriation as prescribed by land laws, located in land areas that are managed or used by the State and will be assigned or leased out by the People's Committee of the province or economic zone management board to the approved investor;
- The housing development program as prescribed by housing laws; urban development program (if any) as prescribed by urban development laws;
- The socio-economic development or industry development plan; the construction planning with a ratio of 1/2.000 or 1/500 (if any), or the urban sector planning with a ratio of 1/2.000 or 1/5.000 as prescribed by law;
- The approved plan for investor selection;
- Applicable regulations of law on land, housing, real estate trade, investment, construction and relevant laws."

b) Amendments to Point c of Clause 2:

"c) In the cases of direct contracting prescribed in Point b Clause 4 Article 22 of the Law on Bidding and Clause 3 Article 10 of this Decree, an investor will be selected to receive the request for proposals

when qualified as prescribed in Point a, b, c, d, e, g Clause 1 Article 5 of the Law on Bidding and has adequate capacity and experience for project execution;”.

19. Amendments to Point b Clause 1 Article 74:

“b) The reasons that none of the methods of investor selection specified in Article 20 and Article 22 of the Law on Bidding, and Article 10 of this Decree cannot be applied;”.

20. Amendments to Article 75:

a) The title of the Article is changed into “Validating bidding documents and request for proposals”.

b) Amendments to Point a of Clause 2:

“a) The application for validation and approval consists of:

- The procuring entity’s written request for approval for the bidding documents/request for proposals;
- The draft bidding documents/request for proposals;
- Photocopies of the decision to approve the investor selection plan;
- Other relevant documents.”.

21. Amendments to Article 76:

a) The title of the Article is changed into “Validation of the list of technically qualified investors and investor selection result”.

b) Amendments to Point a of Clause 1:

“a) The list of technically qualified investors and investor selection result must be validated prior to approval;

c) Amendments to Point b of Clause 4:

“b) Validation contents:

- The relevance and conformity of the bidding documents/request for proposals; conformity with bidding laws and relevant laws.
- Punctuality during the investor selection process;
- Conformity with regulations of law on submission of investor selection result.”.

22. Amendments to Article 77:

“Article 77. Responsibilities of Presidents of the People’s Committees of provinces

1. Approve lists of projects.

2. Approve investor selection plans and investor selection results.

3. Approve bidding documents, requests for proposals, lists of technically qualified investors, lists of ranked bidders (this task may be authorized to the head of a specialized agency affiliated to the People’s Committee of the province, or to the President of the People’s Committee of a district).

4. Perform other tasks that are responsibilities of the competent persons specified in Article 73 of the Law on Bidding.”.

23. Amendments to Article 78:

“Article 78. Responsibilities of heads of specialized agencies affiliated to the People’s Committee of the provinces, agencies affiliated to the People’s Committees of provinces or Presidents of the People’s Committees of districts

1. Perform the tasks that are responsibilities of the procuring entity as prescribed in Article 75 of the Law on Bidding.

2. Perform other investor selection tasks as authorized by their superiors.”.

24. Amendments to Article 79:

a) Amendments to Point b of Clause 3:

“b) The bidding documents, request for proposals, list of technically qualified investors that are approved by the President of the People’s Committee of the province.”.

b) Amendments to Clause 4:

“4. In case of authorization prescribed in Clause 3 Article 77 of this Decree, the authorized unit or the planning – finance department of a specialized agency affiliated to the People’s Committee of the province or the People’s Committee of the district shall validate the bidding documents, request for proposals and list of technically qualified investors.”.

25. Amendments to Article 80:

a) Amendments to Clause 4:

“In case no bids are submitted at the bid closing time, the procuring entity shall inform the competent person who will decide whether to:

- a) Extend the bid closing time for up to 30 more days; or
- b) Decide bid cancellation and request the procuring entity to revise the bidding documents and reinitiate the investor selection process.”.

b) Amendments to Clause 5:

“5. In case no applications are submitted at the end of the time limit for applying for execution of a land-using project, the Department of Planning and Investment shall request the President of the People’s Committee of the province to decide whether to:

- a) Extend the time limit; or
- b) Plan the re-announcement of the project information.

In case the project is executed within a economic zone, the chief of the economic zone management board shall choose one of the aforementioned options.”.

c) Addition of Clause 5a:

In case only one investor is qualified in terms of capacity, experience, project execution progress, investment attraction targets and other specific conditions of the project, the President of the People’s Committee of the province (or the chief of the economic zone management board the project is executed within a economic zone) shall decide whether to:

- a) Inform and instruct the investor to submit the application for approval for the investment guidelines as prescribed by investment laws if the process ensures transparency, competitiveness and the project requires faster progress.
- b) Extend the deadline so other potential investors have the opportunity to access information and submit their applications, thus increase competitiveness. The qualified investor is not required to re-submit the application.

After deadline extension, on the basis of preliminary evaluation of energy and experience, carry on the procedures specified in Clause 3 Article 13 of this Decree.

d) Amendments to Clause 13:

“13. In case some contents of the bidding documents or request for proposals are not conformable with bidding laws and relevant laws and thus cause vague or ambiguous interpretation during evaluation of bids or proposals or incorrect investor selection result, the procuring entity shall request the competent authority to consider following these steps:

- a) Revise the bidding documents or request for proposals to ensure conformity with the written approval for investment guidelines (if any), bidding laws and relevant laws;
- b) Notify all investors that have submitted their bids or proposals of the revisions; request them to supplement their bids or proposals according to the revisions or other contents of the bids or proposals if they are affected by the revisions (if necessary).

d) Addition of Clause 13a:

13a. In case a partnership is awarded the contract but has not signed the project contract or the project contract has not come into force when the ratio of equity contribution in the partnership is adjusted, the procuring entity shall update information about the investor’s capacity as prescribed in Clause 2 Article 70 of the Law on Bidding; ensure that the investor has adequate capacity, minimum ratio of equity of each partner as prescribed in Clause 3 Article 52 of this Decree. After this information is updated, the procuring entity shall request the competent person to consider carrying on the procedures as per regulations”.

26. Amendments to Article 82:

“Article 82. Advisory board

1. Chairperson of the advisory board:

The chairperson of the advisory board is the Director of Department of Planning and Investment. The advisory board shall counsel the settlement of petitions.

2. Members of the advisory board:

- a) Members of the advisory board include personnel of the Department of Planning and Investment, representatives of competent authorities and relevant professional associations;
- b) The chairperson of the advisory board may invite other individuals to participate as members of the advisory board depending on each project;

c) An advisory board member must not be the parent, parent-in-law, spouse, natural child, adopted child, son- or daughter-in-law, or sibling of the person who signs the petition form or any individual that directly participates in bid/proposal evaluation or any individual that directly validates the list of technically qualified investors, investor selection result, or the person who signs the approval for the investor selection result.

3. Operation of the advisory board:

a) The chairperson of the advisory board shall issue a decision to establish the advisory board within 05 working days from the day on which the investor's petition form is received. The advisory board shall operate on a case-by-case basis;

b) The advisory board shall work on the principle of collectives, vote under the majority rule and report to the competent person; each member has the right to express and is legally responsible for their opinions.

4. Standing assistance team of the advisory board:

a) The standing assistance team of the advisory board is a unit of Department of Planning and Investment that is assigned to manage investment activities; the standing assistance team members do not include the individuals that directly participate in the validation of the investor selection result of the same project.

b) The standing assistance team shall perform administrative tasks assigned by the chairperson of the advisory board; receive and manage the fees paid by the complaining bidder as per regulations in Clause 6 Article 7 of this Decree.

27. Amendments to Article 88:

a) Amendments to Clause 2:

"2. Ministers, heads of ministerial-level agencies, Governmental agencies, Presidents of the People's Committees of provinces; Directors of Provincial Departments of Planning and Investment, heads of specialized agencies affiliated to the People's Committees of provinces; Presidents of the People's Committees of districts shall preside over the inspection of bidding for projects under their management and the projects whose investment guidelines are approved by them to ensure speedup progress, improve efficiency, detect and take actions against violations against bidding laws."

b) Amendments to Clause 3:

"3. The Ministry of Planning and Investment shall organize inspection of bidding nationwide. Other Ministries, ministerial-level agencies, Governmental agencies, the People's Committees of provinces, Provincial Departments of Planning and Investment, specialized agencies affiliated to the People's Committees of provinces, the People's Committees of districts shall organize bidding inspection when requested by the competent person of a bidding inspection authority. Departments of Planning and Investment shall assist the People's Committees of provinces in organizing bidding inspection in their provinces.

c) Amendments to Point a of Clause 4:

"a) Periodic inspection:

Issuance of guidelines for investor selection; hierarchy of power in investor selection.

- Provision of training in bidding;

- Issuance of certificates of training in bidding;

- Preparation, approval, disclosure of list of projects (including preliminary required capacity and experience of investors); preliminary evaluation of investors' capacity and experience;

- Development and approval of the investor selection plans, bidding documents, request for proposals and investor selection results;

- Contents of the concluded contract and conformity with the legal basis during the process of project conclusion and execution;

- Bidding-related reporting;

- Performance of bidding inspection and supervision tasks."

28. Amendments to Article 89:

a) Amendments to Clause 1:

"1. Supervision shall be carried out when a Minister, heads of ministerial-level agency or governmental agency authorizes the head of a organization affiliate thereto; when the President of the People's Committee of the province authorizes the head of a specialized agency affiliated thereto or the President of the People's Committee of a district to act as the competent person who has the power to supervise and take actions against violations of bidding laws and relevant laws."

b) Amendments to Clause 3:

“3. The following bidding tasks shall be supervised:

- a) Preparation, approval, disclosure of list of projects (including preliminary required capacity and experience of investors); preliminary evaluation of investors’ capacity and experience;
- b) Preparation, validation and approval of bidding documents, request for proposals;
- c) Evaluation of bids, proposals;
- d) Validation of investor selection result;
- d) Negotiation and conclusion of the contract.

c) Amendments to Point a of Clause 4:

“a) The procuring entity shall inform the bidders that bought the bidding documents or request for proposals the name and address of the supervising entity;”.

29. Amendments to Article 90:

a) Amendments to Clause 3:

“3. Prequalification documents issued before the effective date of this Decree shall be handled as follows:

- a) In case two or more investors are shortlisted, the project shall apply competitive bidding as prescribed in Clause 1 and Clause 2 Article 9 of Decree No. 30/2015/ND-CP. Subsequent procedures for investor selection shall be carried out in accordance with Chapters III, IV and V of Decree No. 30/2015/ND-CP. Bidding documents shall be issued to the shortlisted investors as prescribed in Clause 1 Article 30, Article 49 and Article 61 of Decree No. 30/2015/ND-CP.
- b) In case only one investor is shortlisted, the project shall apply investor appointment as prescribed in Point a Clause 3 Article 9 of Decree No. 30/2015/ND-CP. Subsequent procedures for investor selection shall be carried out in accordance with Chapter VI of Decree No. 30/2015/ND-CP.
- c) The contents of the bidding documents or request for proposals shall comply with regulations of Decree No. 30/2015/ND-CP, its guiding Circulars and relevant laws that are applicable when the bidding documents or request for proposals are approved;
- d) The selected investor shall execute the project in accordance with the contract, regulations of law on investment, construction, land, planning and relevant laws.”.

b) Addition of Clause 5:

“5. Regarding the pre-qualification documents, bidding documents and request for proposals that are issued before January 01, 2021, the selected investors or the project management enterprises established by the selected investors shall promulgate regulations on selection of investors for the contract packages of their projects, which shall be uniformly applied to the entire projects to ensure fairness, transparency and efficiency as prescribed in Clause 2 Article 3 of the Law on Bidding.”.

30. Amendments to Clause 1 of Article 91:

a) Amendments to Point a:

“a) Preside over the development and issuance of model bidding-related documents, including: bidding documents, request for proposals for selection of investors in land-using projects; reporting forms and other set forms;”.

b) Amendments to Point b:

b) Set a roadmap for publishing information and selection of investor in land-using projects on VNEPS.”.

31. Amendments to the notes of Appendix I:

“Notes:

- Column [1]: Contents of investor selection activities for projects that apply competitive bidding. The Department of Planning and Investment or economic zone management board (if the project is executed in a economic zone) shall monitor the progress of preliminary evaluation of investors’ capacity and experience.
- Column [2], [3]: The procuring entity shall determine the specific times for the investor selection activities, submit them to the competent person for approval together with the investor selection plan.
- Column [4], [5], [6], [7]: The procuring entity shall update the actual time and time difference when submitting the bidding contents to the competent person for approval.”

32. Point a Clause 1 Article 1, Article 3, point b Clause 1 Article 4, Clause 4 and Clause 9 Article 6, Clause 2 Article 7, Article 8, Article 9, Section 1 Chapter II, Point a Clause 1 Article 24, Clause 3 and

Point a Clause 6 Article 25, Chapter III, Section 1 Chapter V, Clause 1 Article 75, Clause 2 Article 76, Clause 2 Article 79, Clauses 2, 3, 9, 10, 11 Article 80, Clause 1 Article 90 of Decree No. 25/2020/ND-CP, Appendix II of Decree No. 25/2020/ND-CP are annulled.

Article 90. Amendments, addition and annulment of some Articles of the Government's Decree No. 69/2019/ND-CP dated August 15, 2019 on use of public property as payment for investors executing construction projects under BT contracts

1. Amendments to Clause 2 of Article 5:

"2. Land areas used for making payment to investors are land that is not cleared by the State. Determination of land areas used for making payment to investors but must meet the following requirements:

- a) Land areas are determined in land use master plans or plans approved by competent authorities;
- b) The appropriation of land areas to be used for making payment to investors in BT projects must comply with land laws;
- c) If cleared land areas are used for making payment to investors in BT projects, provincial People's Committees must obtain decisions thereon issued by the Prime Minister before deciding the project's investment guidelines."

2. Amendments to Point b Clause 1 Article 8:

b) Investors shall pay in advance funds for compensation and ground clearance according to compensation and ground clearance plans approved by competent authorities; the advanced funds shall be deducted from the value of land areas assigned by the State to the investor as payment for the BT project as prescribed by law; loan interest on the advanced funds shall not be charged

3. Amendments to Article 17:

"1. Payment to investors by land areas or working offices under BT contracts duly signed before January 01, 2018 shall be continued according to terms and conditions of the signed BT contracts.

If a BT contract does not provide specific provisions on payment regarding the location and purposes of the land areas, the payment shall be made according to the 2013 Law on land, 2014 Law on investment, 2014 Law on construction, 2015 Law on state budget, 2017 Law on Management and Use of Public Property and relevant laws. To be specific

- a) The value of a BT project must be determined in accordance with laws on investment and construction, and relevant laws;
- b) The use of land areas and working offices for making payment to investors shall be made according to regulations of the Law on land. To be specific:
 - Land areas and working offices must adhere to the land use master plans or plans approved by competent authorities.
 - Payment by cleared land areas and working offices shall be subject to the Prime Minister's decision.
- c) Values of land areas and working offices used for payment must adhere to the principle of parity, i.e. the value of the land area or working office must be equivalent to the value of the BT project;
- d) Values of land areas and working offices used for payment shall be recorded as state budget revenues and expenditures in accordance with regulations of the Law on state budget.

2. Regarding BT contracts that are concluded according to regulations of law that are effective during January 01, 2018 to before October 01, 2019, the payment of public property to investors in BT projects shall comply with the 2013 Law on Land, the 2014 Law on Investment, the 2014 Law on Construction, the 2015 the Law on State Budget, the 2017 the Law on Management and Use of Public Property and relevant laws, and:

- a) The value of a BT project must be determined in accordance with laws on investment and construction, and relevant laws;
- b) The use of land areas and working offices for making payment to investors shall be made according to regulations of the Law on land. To be specific:
 - Land areas and working offices must adhere to the land use master plans or plans approved by competent authorities.
 - Payment by cleared land areas and working offices shall be subject to the Prime Minister's decision.
- c) Values of land areas and working offices used for payment must adhere to the principle of parity, i.e. the value of the land area or working office must be equivalent to the value of the BT project;
- d) Values of land areas and working offices used for payment shall be recorded as state budget revenues and expenditures in accordance with regulations of the Law on state budget."

4. Clause 3 Article 1 and Clause 7 Article 19 are annulled.

Article 91. Transition clauses for PPP Law

1. In case of revisions that are made after January 01, 2021 to the target, location, scale, type of project contract or increase in total investment by at least 10% or increase in state capital as prescribed in Points a, b, and c Clause 1 Article 18 of PPP Law in a PPP project whose investment guidelines have been approved by the competent authority (in a separate document or in the written planning/plan approval), project proposals and state investment are approved in accordance with legislative documents that are effective before the effective date of the Government's Decree No. 63/2018/ND-CP (June 19, 2018) and the transition conditions specified in Article 101 of PPP Law are satisfied, the following regulations shall be complied with:
 - a) The competent authority that approves the investment guidelines (in a separate document or in the written planning/plan approval) and the project proposal is the authority that has the power to decide the changes. In case the project is uses state capital, it is required to have approval by the competent authority for use of state capital before the revisions are made;
 - b) Procedures and documentation for revisions shall comply with Clause 3 and Clause 4 Article 18 of PPP Law and this Decree. For projects whose project proposals have been approved by the People's Committee of the province, the procedures for revising project proposals shall comply with Points a, b, c, and d Clause 4 Article 13 of PPP Law and this Decree.
2. In case revisions to investment guidelines are made after January 01, 2021 to a PPP project whose decision on investment guidelines has been issued by the competent authority according to Decree No. 63/2018/ND-CP and transition conditions specified in Article 101 of PPP law are satisfied, follow the instructions in Article 18 of PPP Law and this Decree, except:
 - b) Projects whose decisions on investment guidelines have been issued by the People's Committees of provinces, in which case the steps specified in Points a, b, c, and d Clause 4 Article 13 of PPP Law and this Decree shall be followed;
 - b) Projects whose revisions to investment guidelines are submitted for approval before January 01, 2021, in which case establishment of an Assessment Board according to PPP Law and this Decree is not mandatory.
3. In case a PPP project whose feasibility study report has been approved by the competent authority and satisfies the transition conditions specified in Article 101 of PPP Law but the pre-qualification documents or bidding documents (in case of no pre-qualification) are not issued by January 01, 2021, the competent authority shall consider approving the method and time for investor selection as prescribed in Point b Clause 1 Article 101 of PPP Law.
4. In case a PPP project whose feasibility study report has been approved by the competent authority and satisfies the transition conditions specified in Article 101 of PPP Law but the pre-qualification documents or bidding documents (in case of no pre-qualification) are yet to be issued, survey investors' and lenders' interest in accordance with this Decree. On the basis of the survey result, the competent authority shall consider approving the method and time for investor selection as prescribed in Point b Clause 1 Article 101 of PPP Law.
5. If the pre-qualification documents of a PPP project have been issued but the prequalification result is not approved by the effective date of this Decree, the pre-qualification applications shall continue to be evaluated according to the pre-qualification documents. On the basis of the prequalification result (even if there is only one shortlisted investor), the competent authority shall consider approving the method and time for investor selection as prescribed in Point b Clause 1 Article 101 of PPP Law
6. In case a PPP project whose prequalification result has been approved (even if only one investor is shortlisted) but the bidding documents or request for proposals are not issued by the effective date of this Decree, organize the preparation, validation, approval and issuance of bidding documents following competitive bidding procedures prescribed in PPP law and this Decree.
7. In case bid opening has been carried out but the investor selection result is not approved by January 01, 2021, the procuring entity shall submit the investor selection result for validation approval on the basis of the bids, proposals, bidding documents, request for proposals. The contract negotiation, completion and conclusion shall follow the procedures specified in PPP Law and this Decree and must not cause changes to the approved investment guidelines and feasibility study report.
8. In case the investor selection result of a PPP project has been available or an investor has been selected by the competent authority as prescribed by applicable laws but the procedures for PPP project contract conclusion are not completed by January 01, 2021, carry out project contract negotiation, completion and conclusion in accordance with PPP Law and this Decree; make sure this does not cause changes to the approved investment guidelines and feasibility study report. Project contract negotiation, completion and conclusion shall be carried out on the basis of:
 - a) The bids, proposals, bidding documents, request for proposals if investor selection has been carried out;
 - b) Written commitments or approvals of the Government, the Prime Minister, Ministry, central authority or the People's Committee of the province on investment incentives, assurance and other contents

relevant to project execution as prescribed by regulations of law that are effective when these written commitments or approvals are issued;

c) The project contract or investment agreement that is concluded in accordance with regulations of law that are effective when it is concluded. In this case, re-negotiation of the project contract or investment agreement is not required.

9. A project that has been granted the Certificate of Investment Registration may continue to be executed in accordance with the contents of the Certificate. In case revisions to the project have to be made, the parties shall revise the project contract in accordance with this Decree and relevant laws without having to follow procedures for revising the Certificate of Investment Registration. In case the project contract has contents that are contrary to the Certificate of Investment Registration, the parties shall apply the revised contract and take legal responsibility for such revisions.

10. In case the decision on investment guidelines of a high-tech project has been issued by the competent authority but the bidding documents or request for proposals are not issued by January 01, 2021, the method and time for competitive negotiation shall be approved in accordance with Clause 2 Article 38 of PPP Law; Carry out investor selection in accordance with this Decree.

11. In case a PPP project has to be suspended as prescribed in Clause 2 and Point a Clause 5 Article 101 of PPP Law, the proposing project shall bear all the risks and costs of project preparation; in case there is a written agreement with the competent authority and the investor on payment of project preparation costs, validation shall be carried out according to such agreement and relevant applicable laws.

12. In case a BT project satisfies the transition conditions specified in Clause 5 Article 101 of PPP Law, public property may be used as payment to the investor in accordance with Clause 13 or Clause 14 of this Article and regulations of law on management and use of public property (except Point b Clause 1 Article 3 of Decree No. 69/2019/ND-CP), and:

a) The value of a BT project must be determined in accordance with laws on investment and construction, and relevant laws;

b) The use of land areas and working offices for making payment to investors shall be made according to regulations of the Law on land. To be specific:

- Land areas and working offices must adhere to the land use master plans or plans approved by competent authorities.

- Payment by cleared land areas and working offices shall be subject to the Prime Minister's decision.

c) Values of land areas and working offices used for payment must adhere to the principle of parity, i.e. the value of the land area or working office must be equivalent to the value of the BT project;

d) Values of land areas and working offices used for payment shall be recorded as state budget revenues and expenditures in accordance with regulations of the Law on state budget.

13. In case the bidding documents, request for proposals of a BT project have been issued as prescribed by law before the effective date of Decree No. 69/2019/ND-CP (October 01, 2019), the project may continue to be executed according to the bidding documents, request for proposals and regulations of law that are applicable when the bidding documents, request for proposals are issued. The use of public property as payment to the investor shall comply with Article 12 of this Article.

14. In case the investor selection result of a BT project is available as prescribed by regulations of law that are effective before the effective date of Decree No. 69/2019/ND-CP (October 01, 2019), but the procedures for conclusion of the PPP project contract are not completed by January 01, 2021, the PPP project contract shall be negotiated, completed and concluded on the basis of the bids, proposals, bidding documents, request for proposals, written commitments or agreements of the Government, the Prime Minister, Ministry, central authority or the People's Committee of the province following the procedures specified in Decree No. 63/2018/ND-CP. The use of public property as payment to the investor shall comply with Article 12 of this Article.

15. From the effective date of Decree No. 69/2019/ND-CP (October 01, 2019), the use of public property as payment to investors in BT projects as prescribed by regulations of law on management and use of public property shall apply to projects that undergo investor selection by competitive bidding, except the cases specified in Clause 12 and Clause 13 of this Article.

16. From January 01, 2021, any revisions to the concluded contract of a BT project shall be carried out in accordance with the concluded contract. In case the contract does not specify the revisions, regulations of law that are applicable when the contract is concluded shall apply.

In case of revisions to the contract of a project that has been granted the Certificate of Investment Registration, it is not required to follow procedures for revising the Certificate of Investment Registration. In case the revised contract has contents that are contrary to the Certificate of Investment Registration which is granted before the effective date of this Decree, the parties shall apply the revised contract and take legal responsibility for such revisions.

17. For PPP projects that are executed during the period from January 01, 2021 to the effective date of this Decree, the corresponding procedures specified in this Decree are not mandatory if those projects are conformable with regulations of PPP Law and relevant laws.

Article 92. Effect

1. This Decree comes into force from the day on which it is signed, Except the regulations specified in Clause 2 of this Article.
2. Regulations of Article 90 of this Decree come into force from October 01, 2019.
3. The Government's Decree No. 63/2018/ND-CP dated May 04, 2018 on PPP investment is annulled.

Article 93. Responsibility for implementation

1. The Ministry of Planning and Investment shall:

- a) Draft and promulgate model investor selection documents;
- b) Set a roadmap for application and provide detained guidance on publishing information, selection of PPP investors and reporting progress of PPP projects on VNEPS;
- c) Provide guidance on implementation of other contents of the Decree to facilitate state management of PPP investment.

2. The Ministry of Finance shall provide guidance on management and use of funds relevant to investor selection; cooperate with other Ministries and ministerial agencies in providing guidance on the framework ratio of profit to equity of investors and model project contracts.

3. Other Ministries and ministerial agencies shall provide detained guidance on PPP investment within their jurisdiction, Including:

- a) Authorities responsible for validation of designed according to relevant laws;
- b) Contents of pre-feasibility study reports and feasibility study reports, including: economic-social benefits; framework ratio of profit to equity of investors; indicators for evaluation of quality of construction works and infrastructure system and public services provided by project management enterprises; depreciation periods of construction works and infrastructure systems;
- c) Detailed criteria and methods for bid evaluation, including criteria for evaluating capacity, experience, technical, financial – commercial proposals and evaluation method; rules for prioritizing experienced investors in OECD member states (if applied);
- d) Model project contracts suitable for their fields according to the basic contents of a PPP project contract specified in Article 47 of PPP Law and the Guidelines for Preparation of PPP Project Contract in Appendix VI hereof;
- dd) Other necessary contents of this Decree, provided they do not contradict PPP Law and this Decree.

4. Ministers, Heads of ministerial agencies, Heads of Governmental agencies, Presidents of the People's Committees of provinces, relevant organizations and individuals are responsible for providing guidelines and implementing this Decree./.

**ON BEHALF OF THE GOVERNMENT
THE PRIME MINISTER**

Nguyen Xuan Phuc

ATTACHED FILE



Appendix