



**Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity**

Ministry of Finance

No. 0477/MOF
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Unofficial translation

INSTRUCTION

ON IMPLEMENTATION OF LAW ON PUBLIC PROCUREMENT

- Pursuant to the Law on Public Procurement No. 30/NA (National Assembly) dated 2 November 2017.
- Pursuant to the Decree on the Ministry of Finance's organization and function No. 144/PM (Prime Minister) dated 8 May 2017.

**Deputy Prime Minister, Minister of Finance
issues an Instruction as below:**

I. Objectives

This Instruction elaborates and instructs some articles' content of law on public procurement No. 30/NA dated 2 November 2017 such as scope of application of the law, preparation of procurement plan, thresholds, timeline required for advertisement/notification for procurement of goods, works, services and consulting services, procedures and implementing rules for each type of methods of procurement and selection of consultants, tender committees, evaluation of bids/proposals, securities (guarantees) and other contents as stipulated in the Law for more detail and clear aiming to such law is implemented in proper, efficient, effective, and unified manner countrywide.

II. Instruction on some articles' content of law

1 Article 6: Scope of Application—paragraph 2: This Law does not apply to the procurement pertaining to national security and safety. For the procurement of goods, equipment and vehicles for routine administrative purpose; the procurement of works, building maintenance, office buildings, dormitories, schools and hospitals under the national security and safety sector's management, the law on public procurement No. 30/NA dated 2 November 2017 and this Instruction shall be applied in strictly manner.

2 Article 7: International Cooperation: This state promotes relations of cooperation with foreign countries, regional and international organizations in relation the public procurement by exchanging experiences, sharing data and information, technologies, organizing seminars and upgrading of technical capacity and,

implementation of international conventions and treaties to which the Lao PDR is a party.

In case of the implementation of international conventions and treaties, agreements between government and donors or any donor's agency who applied their own particular procurement regulations, such procurement regulations shall be applied. In case of the implementation of international conventions and treaties to which the Lao PDR is a party, no particular procurement procedures are specified, the law on public procurement and this Instruction shall be applied.

3 Article 17: Procurement threshold is the estimated value for each method of procurement inclusive of duties, taxes and fees, they include:

3.1 Threshold (procurement of goods, works, and services) and selection of consultants

| No. | Public Procurement Methods | Threshold value (Lao Kip) |
|-------------|--|--|
| I. | Works and/or maintenance and services | |
| 1. | Open bidding | Equal or more than five hundred million |
| 2. | Limited bidding | Refer to condition as indicated in sub-article 4.2.2 of this Instruction |
| 3. | Request for quotations (Price comparison) | Less than five hundred million |
| 4. | Direct contracting | Equal or less than five million applied for particular routine and daily administrative purpose or conditional threshold as indicated in sub-article 4.2.4 of this Instruction |
| II. | Supply of goods and/or services | |
| 1. | Open bidding | Equal or more than two hundred million |
| 2. | Limited bidding | Refer to condition as indicated in sub-article 4.2.2 of this Instruction |
| 3. | Request for quotations (Price comparison) | Less than two hundred million |
| 4. | Direct contracting | Equal or less than five million applied for particular routine and daily administrative purpose or conditional threshold as indicated in sub-article 4.2.4 of this Instruction |
| III. | Consulting services | |

| | | |
|----|----------------------------------|--------------------------------|
| 1. | Quality and cost-based selection | Equal or more than one billion |
| 2. | Quality-based selection | Less than one billion |

3.2 Revision of procurement thresholds: The threshold value shall be reviewed by the Ministry of Finance every two years. The threshold value may be changed subject to the Consumer Price Index when it is more than twenty five percent increased against the previous year. The Ministry of Finance may revise the procurement thresholds to ensure consistency with economic growth and appropriate execution in each stage.

3.3 Calculation of procurement threshold value included:

3.3.1 Works and/or maintenance: the summation of works and/or works value and engineering value in order to meet the requirements of economic goal and technical specifications.

3.3.2 Supply of goods and/or services which having the nature of contract with longer execution by means of multiple contract awarded to a single supplier or more suppliers which may be renewed, the value is based on the total aggregate value of contract in the similar package to be awarded within one year following the first award or the total value of the contract is longer than one year.

3.4 Project owner or procuring entities may split into multiple packages or lots as per bidders' qualifications and capabilities. The procurement threshold value is the summation of total value of each package or lot prior the identification of procurement method. The split into package or lot will facilitate the option to bidder to bid all packages or lots or some packages or lots as per their own capabilities. The split into package or lot for avoidance purpose of any procurement method required shall not be allowed.

For works and supply of goods contracts, the split of sub-package or sub-lot for decreasing of contract amount to meet the lower of procurement threshold shall not be allowed.

4 Article 18: Methods of public procurement—paragraph 3: Procedures and implementation guidelines for each procurement methods, including procedures for each method of selection of consultants as stipulated in article 23 of the Law, it includes:

4.1 Procedures for procurement (of goods, works and services) and selection of consultants

4.1.1 Public procurement planning

4.1.2.1 Annual procurement planning

Project owner or procuring entities shall prepare an annual public procurement plan through specific procurement plan attached to its annual budget plan. The procurement plan shall be included a list of procured items to be

implemented by the project owner or procuring entities as follow:

- 1) Summarize a list of procured item required from under managed-agencies and classify them in similar and different categories.
- 2) Prepare cost estimated in sufficient manner, including other expenses such as cost of advertisement and notification for bids.
- 3) Ensure the cost estimated is included in the approved annual budget plan.

4.1.2.2 Detailed public procurement plan

Project owner or procuring entities shall prepare a detailed procurement plan after the National Assembly's approval on annual state budget in consistency with market and capability of contractor or supplier and/or service provider or consultant for works and/or maintenance, supplier of goods and/or service and consulting services as the following:

- 1) Detailed items of works and/or maintenance, supply of goods and/or services and consulting services as required.
- 2) Determine procurement method or selection method; timeline estimated for bidding, delivery, contract execution or completion of works and/or maintenance, supply of goods and/or services and consulting services.
- 3) Combine into group of items for same contract bidding.
- 4) Prepare technical specifications and/or terms of reference for procurement (of goods, works, and services) or selection of consultant as per scope of contract.
- 5) Prepare cost estimated for each contract as per budget list.
- 6) Others relevant items.

The annual procurement plan and detailed public procurement plan shall be summarized and reported to the financial sector for further summary and reporting to government.

4.1.2 Preparation of bidding documents or request for proposals

The bidding documents or request for proposals shall clearly define the necessary information to facilitate bidders or consultants in preparation of bids or proposals in proper and complete manner. This also uses as reference for bidders or consultants' decision to submit bids or proposals. The bidding documents or request for proposals shall be accurate, simply understandable. The bidding documents or proposals comprises of the following:

4.2.1.1 Bidding documents

- 1) Invitation for bids

- 2) Instruction to bidders
- 3) Evaluation criteria
- 4) Contract
- 5) Forms
- 6) Schedule of items and price
- 7) Technical specifications
- 8) Schedule of delivery or completion
- 9) General and special conditions of contract
- 10) Others

4.2.1.2 Request for proposals

- 1) Letter of invitation
- 2) Instruction to consultants
- 3) Evaluation criteria
- 4) Contract
- 5) Terms of reference
- 6) General and special conditions of contract
- 7) Others

The period of time for procurement (of goods, works and services) or selection of consultants shall define the period of time for each process of procurement or selection procedures, and also include in the bidding documents or request for proposals. This period of time shall cover of the following: time for preparation of bidding documents or request for proposal, time for evaluation of bids or proposals, time for approval of winning bidder or consultant, time for negotiation and time for contract signing. During the procurement or selection implementation, if it is delay for any reason not to complete in the period of time as planned, the extension of bids or proposals' validity shall be required. The project owner or procuring entities shall request in writing to all bidders or consultants to extend the period of validity of their bids or proposals. This request shall be made prior to the expiration of the bid or proposal validity period. This extension period shall be less than the original period and can be made one time.

4.1.3 Notification of bids or selection of consultants

The project owner or procuring entities shall post an invitation for bids or selection of consultants to mass media, website or through electronic media comprised of the following contents:

4.1.3.1 Procurement (of goods, works and services)

- 1) Name of procuring entities
- 2) Explanation in brief of works, and/or maintenance, supply of goods and/or services
- 3) Address for selling of bidding documents and submission of bids, contact details for enquiries of submission of bids

- 4) Bid security
- 5) Selling price of bidding documents and process required
- 6) Deadline for submission of bids

4.1.3.2 Selection of consultants

- 1) Name of project owner
- 2) Explanation in brief of consulting services
- 3) Conditions and qualifications required for consulting services
- 4) Contact address for additional information enquiries
- 5) Deadline and address for submission of proposals

Period of time required for notification (time of preparation of bids or selection of consultants) should be followed:

| No. | Public Procurement Methods | Period of time (day) |
|------------|---|----------------------|
| I. | Works and/or maintenance, supply of goods and/or services | |
| 1. | Open bidding | At least 35 days |
| 2. | Limited bidding | At least 30 days |
| 3. | Request for quotations (Price comparison) | At least 15 days |
| 4. | Direct contracting | |
| II. | Consulting services | |
| 1. | Quality and cost-based selection, Quality-based selection, Selection under a fixed budget, Least-cost selection | |
| | • Shortlisting (request for expression of interest) | At least 15 days |
| | • Preparation of proposals | At least 30 days |
| 2. | Selection based on the consultants; qualifications | |
| | • Preparation of expression of interest | At least 20 days |
| | • Preparation of proposals | At least 30 days |
| 3. | Single source selection | |

Note: Day means calendar day

4.1.4 Application and selling of bidding documents or request for proposals

The project owner or procuring entities shall apply bidding documents or request for proposals (standard documents) for each method as promulgated in each stage.

The bidding documents or request for proposals prepared by the project owner or procuring entities are allowed to sell to use for administrative expenses purpose for procurement or selection of consultants or free distribution.

The selling price of bidding documents or request for proposals shall calculate reasonably in terms of actual expenses estimated in procurement of selection of consultant such expenses for printing, delivery, advertisement as printing, delivery, notification and others.

4.1.5 Pre-bid meeting or pre-proposals meeting

The project owner or procuring entities shall consider organizing the pre-bid meeting or pre-proposals in accordance with the relevant procurement or selection of consultants. If the pre-bid meeting or pre-proposal meeting is not specified in the bidding document or the request for proposals, but clarification from bidders or consultants are in place and the meeting is required, the project owner or procuring entities shall arrange the appropriate date for facilitating the attendance of bidders and consultants. The meeting shall be organized around ten days before the last day of deadline for submission of bids or proposals.

4.1.6 Submission of bids or proposals

Bidders or consultants are to ensure their bids or proposals shall be delivered and received by the project owner or procuring entities before the closing date and time of delivery as indicated in the Instruction to Bidders or consultants in the bidding documents or request for proposals.

The bids or proposals shall be directly delivered by hand or by courier (post office). They shall be in sealed envelope and marked in outer envelope as indicated in the bidding documents or request for proposals.

The project owner or procuring entities shall prepare a record of date and time of submission for bids or proposals received. Any late bid or proposal received after the deadline for submission of bids or proposals shall be rejected, and immediately returned unopened to the bidder or consultant. In addition, the certification recording of date and time received the bid or proposal shall be issued and signed by the delivered person or authorized person.

4.1.7 Place for submission of bids or proposals

The place for submission of bids or proposals shall be the same venue as indicated in the invitation for bids or letter of invitation for consultants. The project owner or procuring entities shall assigned their staff in-charge for receiving submitted bids or

proposals until the closing date and time for submission of bids or proposals.

In case of change place and address for submission of bids or proposals, the project owner or procuring entity shall directly notify to bidders or consultants who have got bidding documents or request for proposals before the deadline for submission of bids or proposals and to issue a revised notification and post through original mass media.

In case of founding the envelope of bids or proposals to be torn or opened before the deadline for submission of bids or proposals, this shall record the actual status of bids for evidence. If they are torn or opened financial proposals, they shall be immediately returned to the owner.

4.1.8 Opening of bids or proposals

All bids or proposals shall publicly open by the deadline, at the date, time and place as specified in the invitation for bids or request for proposals, in the presence of tender committees and bidders or consultants or authorized person by signing in the list of attendance and the record of opening for their confirmation and no-rejection of bids or proposals in the opening date.

The list of attendance in the opening date shall be separate between tender committees and bidders or consultants or authorized person. The tender committees shall also prepare a record of opening of bids or proposals.

In case of the application of "single stage, one-envelope" bidding procedures. The envelopes shall be opened, and prices shall be read out.

In case of the application of "single stage, two-envelope" bidding procedures. The envelopes of qualifications and technical specifications shall be opened, while the financial envelopes shall be kept unopened until the evaluation of qualifications and technical specifications are completed.

For envelopes, the technical specifications envelopes shall be opened, in the presence of tender committees, bidders are not allowed to attend. While the financial envelopes shall be kept unopened until the evaluation of technical specifications are completed. Only qualified bidders or shortlisted consultants will be invited for opening of financial proposals. The financial proposals of unqualified bidders or non-shortlisted consultants will be returned unopened to them after the contract is signed.

4.1.9 The evaluation of bids or proposals shall conduct through the preliminary examination and the detailed examination of bids or proposals as specified in clauses 12 and 13 of this Instruction.

4.1.10 Confidentiality

The tender committees shall keep confidentiality of examination, evaluation, recommendation of award of contract to bidder or consultant until the approval of award of contract to bidder or consultant and the contract signing are made.

4.1.11 Clarifications

After opening of bids or proposals, no negotiation with bidders or consultants is made, they have no right to ask for bids for procurement or selection of consultants matters. But the tender committees may request for clarifications to relevant bidders or consultants in written regarding the contents of their bids or proposals.

4.1.12 Approval of evaluation report of bids and proposals is specified in clause 16 of this Instruction.

4.1.13 Contract for the public procurement is specified in clause 17 of this Instruction.

4.1.14 Contract management and contract completion are specified in clause 18 of this Instruction.

4.2 Implementation of each method of public procurement

4.2.1 Open bidding

The open bidding for works and/or maintenance and supply of goods and/or services should be followed:

4.2.1.1 Single-stage, one-envelope bidding

The single-stage, one-envelope bidding applies for works and/or maintenance and supply of goods and/or services which the nature of non-complexity, non-tool or advance technology required for works, certain goods are available in the market which all items and prices required for bidders to submit in one envelope.

4.2.1.2 Single-stage, two-envelope bidding

The single-stage, two-envelope bidding applies for works and/or maintenance and supply of goods and/or services which required particular technical specifications, certain goods with high technical specifications. The bidders are required to pack in one sealed envelope by splitting out two sealed separate envelopes inside, one for qualification and technical specifications of bidder and one for bid price prior submission.

For bids which pass the qualifications and technical specifications, the bidders will be invited for opening of bid price envelope. While bids which do not pass the qualifications and technical specifications, the bid price will not be opened and return to bidders.

4.2.1.3 Pre-qualification procedure

This applies for large-scale, technically complex and high value projects, the suitable bidders shall be assessed in advance. The pre-qualification process shall be carried out as an open public bidding procedure with the pre-qualification documents indicated the criteria and conditions to all interested companies. Bidders who meet the criteria and conditions set out in the pre-qualification documents will then be invited to submit bids with bid price.

During the preparation of invitation for bids with bid price, the qualifications and technical specifications are still requested by the project owner or procuring entities which are the same conditions of pre-qualification. Bidders who do not propose the qualifications and technical specifications in compliance with the project owner or procuring entities' conditions may be rejected.

The project owner or procuring entities may apply single-stage, two-envelope bidding procedure in the event of time constraint and time-consuming for pre-qualification procedure.

4.2.1.4 Double-stage bidding

This applies for large-scale, and high value projects which the implementing agency has no experience in technical specifications preparation or high value design. The double-stage bidding comprises of the following:

- 1) Stage 1: Interested bidders are requested to submit preliminary proposal of technical and methodology for assessment and acceptance of appropriate technical specifications for initial reference. Then, the project owner shall define the technical specifications and criteria for bidding.
- 2) Stage 2: The qualified bidders will be informed to submit technical specifications and methodology in order to facilitate the project owner or procuring entities to modify the criteria if needed. Then, the qualified bidders will be invited for submission of bids.

4.2.1.5 Framework agreement

The frame agreement is the agreement between the project owner or procuring entities with one or more suppliers and/or service providers which is a reference in procuring of goods, equipment, maintenance and/or services in certain timeframe or two to three-year period with pre-agreed in estimated price, quality and quantity for each period.

The conditions of framework agreement will be defined in the contract.

4.2.1.6 Public Private Partnership (PPP)

Procurement under Public Private Partnership (PPP) Arrangement comprises of (i) Build, own, operate (BOO), (ii) Build, operate, transfer (BOT) and others which risks are transferred to private sector. Procurement under Public Private Partnership (PPP) arrangement shall be procured under open bidding procedure.

4.2.2 Limited bidding

The limited bidding is used for particular technical specifications required where there are a limited number of contractors or supplier and/or service providers. The project owner or procuring entities shall inform contractors or suppliers and/or service providers for competitive price bid submission.

Procurement under limited bidding shall be procured under open bidding procedure, but the advertisement or notification through mass media are not required; which bidders may be directly invited.

4.2.3 Request for quotations (Price comparison)

The request for quotations (price comparison) is used for small scale works and/or maintenance, routine maintenance, office supplies and other services under the specified threshold value.

Under this procedure, the direct invitation or electronic media are issued to bidders, with a minimum of three. The period of time will be specified in the request for quotations.

The request for quotations will be directly sent to potential bidders initially selected by the project owner or procuring entities in order to bid as per conditions, rights and obligations of bidders.

Procurement under request for quotations shall be procured as under open bidding procedure.

4.2.4 Direct contracting

The direct contracting is the agreement between the project owner and contractor or between the procuring entities and supplier and/or service provider, no bidding conducted is required. Direct contracting is carried out by one of the following cases:

4.2.4.1 Goods under single source supplier who engages in patent or copy right (industry) or intellectual property right.

4.2.4.2 Equipment and particular goods under single source contractor or supplier and/or service provider for maintenance or replacement purpose.

4.2.4.3 Additional works (variation) and continuation of previous works and/or maintenance, supply of goods and/or services and consulting services which covers the same contents with main contract not exceed twenty (20) percent of the original contract amount.

4.2.4.4 Government's projects or activities implemented in remote areas, with poor infrastructure facilities or without interested bidders.

4.2.4.5 Under the threshold as indicated in sub-clause 3.1 of this Instruction and be essential for particular routine and daily administrative purpose.

4.2.4.6 Force majeure or emergency matters such as national disaster as per the government's decision, they include:

1) For recovery of urgent works and maintenance, it shall be followed:

- The tender committees or ad-hoc committee will be appointed
- The qualified bidder or potential (creditable) and readiness bidder will be invited for negotiations
- For works under force majeure matter, the contract amount will be determined by the calculation of quantity of related works and negotiated with contractor or supplier and/or service provider on case by case basis. The determination and calculation of quantity of related works shall be based on the calculation of relevant technical staff.
- In case of the related works cannot be determined and calculated, the preliminary negotiation with contractor or supplier and/or service provider is required as per the scope of unit price for each item implemented. This will be used as a basis for implementation.
- After the completion of works, the assessment, inspection and certification are required for summarize the contract amount for contract signing and payment certification.

2) For goods, equipment in urgent needs, the potential supplier with capability to provide such items required will be invited for negotiations and contract signing based on the market price comparison.

3) For direct contracting: besides the threshold as indicated in sub-article 3.1 of this instruction, the item to be procured shall not be the same item listed in the approved annual procurement plan of that year. After

the completion, the project owner or procuring entities shall revise such annual procurement plan of that year.

- 4) For direct contracting, the approval is required, and the tender committees or ad-hoc committees is appointed on case by case basis as below:

| Estimated Threshold Value (Lao Kip) | Ministry or Agency | Province or District level | Embassy or Government Office abroad | Loan and Grant Project |
|---|--|---|--|--|
| More than five million up to five hundred million | <ul style="list-style-type: none"> Permanent Secretary/Chief of Cabinet (if the budget is managed by the Ministry or Agency). Relevant Department's director general (if the budget is managed by the Department). Authorized person to approve and appoint ad- hoc Committees which composed of 3-7 members. | <ul style="list-style-type: none"> Head of Provincial Administrative Office (if the budget is managed by the province). Provincial Department's director general (if the budget is managed by the Department). Head of District, Head of Municipality, Head of City (if the budget managed by the District). Authorized person to approve and appoint ad- hoc Committees which composed of 3-7 members. | Ambassador or Head of Office or authorized person to approve and appoint ad- hoc Committees which composed of 3-7 members. | Based on agreement and financing agreement and shall be approved by the donor. |
| More than five hundred million up to ten billion | Minister or Head of Agency or authorized person to approve and appoint ad-hoc Committees which composed of 3-7 members. | <ul style="list-style-type: none"> Provincial Governor, Capital Governor or authorized person to approve and appoint ad-hoc Committees which composed of 3-7 members. | Ambassador or Head of Office or authorized person to approve and appoint ad- hoc Committees which composed of 3-7 members. | Based on agreement and financing agreement and shall be approved by the donor. |
| More than ten billion | Government or authorized relevant agency responsible to approve and appoint ad-hoc Committees. | | | |

5 Article 23: Selection of consultants may be carried out through direct submission of documents or electronically in which the procedures and methods are the following:

5.1 Procedures for selection of consultants may be carried out as indicated in sub-article 4.1 of this Instruction.

5.2 Methods of selection of consultants

Selection of consultants for each method shall be followed:

5.2.1 Quality and cost-based Selection (QCBS)

Project owner issues the request for expressions of interest to interested consultants to submit the expressions of interest which includes of information on achievements, professional experience, staff organization chart and other relevant information.

Then, the consultants will be shortlisted. Short lists shall comprise three to six consultants and will be invited to submit technical proposal and financial proposal which will be evaluated through weight and point system as the following:

Evaluation applies point system to be assigned for criteria, and sub-criteria as indicated in the request for proposals.

For this method of selection, the ratio of weight given to the technical and financial proposal scores is ninety percent against 10 percent (90%/10%) or eighty percent against 20 percent (80%/20%) or seventy percent against 30 percent (70%/30%) respectively as indicated in the request for proposals. The evaluated scores obtained from technical and financial proposals will be combined to define the highest score. The consultant achieving the highest combined score shall be recommended to award a contract.

5.2.2 Quality-based Selection (QBS)

Quality-based selection may be carried out in compliance with sub-article 5.2.1, the ratio of weight for technical and financial proposal is not determined, but the technical evaluation is mainly focused on. The consultant obtaining the highest technical score shall be invited for contract negotiations.

5.2.3 Selection under a fixed budget (FBS)

Selection under a fixed budget may be carried out in compliance with sub-article 5.2.1, the ratio of weight for technical and financial proposal is not determined, but the technical evaluation is mainly focused on. The consultants obtaining the minimum score required to pass shall be invited for opening of financial proposals. The consultant most qualified, but under the allocated budget will be taken into contract negotiations. While the consultants whose proposals over the allocated budget shall be rejected.

5.2.4 Least-cost selection (LCS)

Least-cost selection may be carried out in compliance with sub-article 5.2.1, the ratio of weight for technical and financial

proposal is not determined, but the technical evaluation is mainly focused on. The consultants obtaining the minimum score required to pass shall be invited for opening of financial proposals, and the consultant proposing the lowest price will be invited for contract negotiations.

5.2.5 Selection based on the consultants' qualifications selection (CQS)

Selection based on the consultants' qualifications selection may be carried out in compliance with sub-article 5.2.1, but the most qualified of three consultants shall be shortlisted. Only the best qualified consultant among three shortlisted consultants shall be asked to submit a combined technical and financial proposal for consideration and contract negotiations.

5.2.6 Single source selection (SSS)

Project owner may conduct a direct negotiation with consultant as per specified scope of works and approve on case by case basis as indicated in the law such as a natural continuation of previous tasks carry by the same consulting firm or when only one consultant is qualified and has the specific conditions and experience for the tasks to be assigned or in emergency and urgent circumstances as declared by project owners.

- 6 Article 31: Bid Securities** are guarantees provided by bidders in the form of cash deposits, securities issued by local or foreign banks or insurance institutions. The amount is not less than two (2) percent of estimated contract amount or a certain amount as indicated in bidding documents. In case of cash deposits or securities are not applied, a bid-securing declaration may apply and will be issued by the bidders through their own honors.

Validity of bid securities shall be 30 days beyond the validity period for the bids. The currency of bid securities shall be Lao Kip. In case of other currencies applied, the exchange rate (buying rate) of bank on the date of bid opening shall apply. After the award of contract is approved and the contract is signed, the tender committee shall return the bid securities to unsuccessful bidders within 7 days after the contract is awarded.

Project owner or procuring entities shall return the bid security to the winning bidder after the contract is signed. In case of the winning bidder fails to sign the contract and fails to furnish the performance security, the project owner or procuring entities may negotiate with the next-ranked bidder for contract negotiations and contract signing.

In case of a bid-securing declaration is applied, if a winning bidder withdraws or changes any bid matters during the period of bid validity or fails to sign the contract or fails to furnish the performance security as timeframe required, the winning bidder will pay a fine to the project owner or procuring entities. In addition, the project owner or procuring entities will propose to issue a notification to that winning bidder to be not eligible to join any tender for two years starting from the date of notification is issued.

- 7 Article 32: Performance securities** are guarantees by contractors or suppliers and/or service providers or consultants to project owners or procuring entities on the performance of contracts according to agreed contract conditions in order to fulfill the contract's obligations and conditions as indicated in the bidding documents and contract agreement such as the guarantee prior the contract execution that may specify an amount or ratio but not less than ten (10) percent of contract amount.

Project owners or procuring entities may specify the amount of performance security or may not require this performance security, subject to the contract amount or anticipated risks of non-execution of contract conditions. If this risk is the case, the project owners or procuring entities shall apply the other option such as the temporary suspension of payment. Project owners or procuring entities shall return the performance security to contractors, suppliers and/or service providers or consultants upon to the fulfillment of all guaranteed contract conditions or the completion of contract with no faults causing from contractors, suppliers and/or service providers.

- 8 Article 33: Advance payment securities** are guarantees by contractors or suppliers and/or service providers or consultants to project owners or procuring entities for advance payment according to agreed contract conditions. Such contract may provide the advance payment security to contractors, suppliers and/or service providers or consultants in order to ensure the contract execution in effective manner or price competition. The advance payment security should not to exceed of thirty (30) percent of contract amount. The advance payment security provided by contractors, suppliers and/or service providers shall be in the same amount of the advance payment.

For consultants, the advance payment security is not required subject to the consultants are on board for carrying out the assignment.

- 9 Article 34: Warranty securities** are guarantees by contractors or suppliers and/or service providers or consultants to project owners or procuring entities on workmanship, standards, quality and services, they include:

9.1 Warranty for works and/or maintenance or services

The warranty for works and/or maintenance should not less than ten (10) percent of contract amount. The warranty period (defect liability period) should not less than 12 months. This warranty shall apply in one of the following cases below:

- 9.1.1 For this warranty, the project owners retain not less than ten (10) percent of contract amount until the warranty period of works and/or maintenance or services are expired.

9.1.2 Contractors, service providers shall provide the guarantee issued by banks or financial institutions in the amount of not less than ten (10) percent of contract amount until the expiration of warranty period.

9.2 Warranty for supply of goods and services

The warranty for supply of goods and services should be amounted from two to ten (2-10) percent of contract amount. The warranty period should not less than 12 months. This warranty shall apply in one of the following cases below:

9.2.1 For this warranty, the procuring entities retain in the amount of two to ten (2-10) percent of contract amount until the warranty period of goods and services are expired.

9.2.2 Suppliers and/or service providers shall provide the guarantee issued by banks or financial institutions in the amount of two to ten (2-10) percent of contract amount until the expiration of warranty period.

9.3 Warranty for consultants

The warranty for consultants may apply and should not less than ten (10) percent of contract amount. The warranty period should also not less than 12 months. Consultants shall provide the guarantee issued by banks or financial institutions in the amount of less than ten (10) percent of contract amount until the expiration of warranty period or consultants shall be required to have insurance to cover all risks of feasibility study, design during the period of these assignments were carried out.

10 Article 36 clause 1: Eligibility of bidders/consultants as local and foreign individuals, legal entities possessing taxpayer identification or numbers or business licenses and performance of taxes certificates and other obligations in compliance with the laws. In case of joint venture of individuals, legal entities or stated-owned enterprises or foreign individuals, legal entities, it shall be followed:

10.1 if an association of a joint venture between individuals, legal entities, enterprises and state-owned enterprises, the agreement and contract among them is required. All members of the joint venture shall be jointly or severally liable as agreed for the entire assignment or shall appoint authorized person or representative with a power of attorney, for submission of bid, contract signing and contract execution.

10.2 if bidders that are state-owned enterprises, they are eligible if they are financially autonomous, operate under commercial law, and are not under supervision of such project implementing agency.

10.3 if bidders that are non-business registered enterprises in Lao PDR, a legal business license and referenced tax payment obligations in routine and complete manners in relevant country are required. In case of being a winning bidder, such enterprise is required to proceed as per regulation of tax payer registration and management in Lao PDR.

11 Article 40: Tender committees are appointed to carry out procurement (of goods, works and services) or selection of consultants. The tender committee, for each method of procurement or selection of consultants under public procurement shall be required. The tender committee consists of 3 to 7 members from project owners or procuring entities' technical team and specific experience staffs from relevant sector. In addition, the tender committee may appoint 3 to 5 members as secretariat team to assist the works. The secretariat team members shall hold experiences, technical and basic knowledge of procurement or selection consultants matters, but not engage in voting or participating in decision on this matter. The composition, for each level, of tender committee includes:

11.1 Ministry and agency level

- 1) Vice Minister or Deputy Head of equivalent Authority or assigned person as a chairman
- 2) Person in-charge of procurement/selection of consultants of project owner or procuring entity as vice-chairman
- 3) Person in-charge of relevant technical matters to be procured/selected as a member (3 to 5 persons)

11.2 Provincial level

- 1) Deputy Provincial Governor or Deputy Capital Governor or assigned person as a chairman
- 2) Person in-charge of procurement/selection of consultants of project owner or procuring entity as vice-chairman
- 3) Person in-charge of relevant technical matters to be procured/selected as a member (3 to 5 persons)

11.3 District level

- 1) Deputy Head of District, Deputy Head of Municipality or Deputy Head of city as a chairman
- 2) Person in-charge of procurement/selection of consultants of project owner or procuring entity as vice-chairman
- 3) Person in-charge of relevant technical matters to be procured/selected as a member (3 to 5 persons)

Tender committee of each level shall gain knowledges, experiences and skills relating to the nature of procurement/selection of consultants such as technical skills, understanding the target of applications, knowledge of procurement/selection of consultants, management skills and financial analysis including knowledge of laws.

Tender committee shall keep confidentiality of all procurement/selection of consultants matters. The transfer of tasks under their own responsibilities to others to do or assign others to participate in the meeting on their own behalf are not allowed.

12 Article 43: Preliminary examination of bids or proposals, it includes:

- 1) Completeness of bids or proposals, and duly signed by the authorized persons, including letters of appointment or powers of attorney;
- 2) Bid securities must in an acceptable form and meet the set amounts and validity periods;
- 3) Proposals for discounts (if any).
- 4) Examination of bids or proposals such as sealed envelope, outer envelope marking, number of original/copies, power of attorney, and other relevant information for verification and completeness purpose.
- 5) Examination of qualifications of bidders or consultants for verification and completeness purpose.
- 6) Examination of other documents for verification and completeness purpose required as indicated in the bidding documents or request for proposals.

Any amendment or modification to the documents' content must be certified by bidders.

If case of major deviations incurred for submitted bids or proposals in terms of verification and completeness aspects as indicated in the bidding documents or request or proposals, those bids or proposals may not be taken further into consideration or be rejected by the project owner or procuring entity.

13 Article 44: Detailed examination—paragraph 2: Detailed examination for works, goods and/or services and consulting services consist of the following:

13.1 Evaluation of bids or proposals

13.1.1 Detailed examination of bids or proposals shall carry out based on criteria as indicated in the bidding documents or request for proposals. The application of additional criteria shall not be allowed.

13.1.2 Examination of qualifications and technical specifications are the detailed examination of bidders' qualifications as indicated in the bidding documents, methodology statement of works and/or maintenance, technical specifications of goods and equipment to be provided and related services as indicated in the technical specifications required. In case of bids with non-responsiveness on technical specifications above, may be rejected by the project owner or procuring entity. Only responsive bids or proposals will be taken into price (financial) evaluation.

13.1.3 Price evaluation is to conduct the corrections on arithmetical errors for all items required (if any); if incorrect number of items incurred, the correction is based on the unit price; if some missing items incurred, the correction is assumed that the missing items are already included in the total bid price or based on the other bidders' average bid price for those items for price comparison purpose; If a multi-currency of bids is allowed to bidders, the conversion into one currency is required for evaluation. In addition, the correction of items and correspondent unit price in consistent manner is required. In case of discount for bids, the amount of discount shall be subtracted from total bid price.

If there is any correction on arithmetical errors or other relevance, the notification to the concerned bidder or consultant for acceptance is required. If any bidder or consultant that does not accept the correction of errors, shall be rejected and its bid security may be not returned.

Other additional principles (criteria) for price evaluation are allowed to apply and stipulate in the bidding documents such as schedule for completion of works or services and/or delivery of goods, frequency of related maintenance services and supply of spare-parts of goods supplied, which is the following:

13.1.3.1 Schedule for completion of works and services and/or delivery of goods is the proposal of schedule for completion of works and services and /or delivery of goods. The completion prior the expected date as indicated in the bidding documents and request for proposals is not considered to have better proposal. If the completion later than expected date as indicated in the bidding documents or request for proposals, the rate of zero point zero one (0.01) percent of the total bid price/financial proposal for each day of delay. The additional figure will be added into the bid price/financial proposal for price comparison purpose.

13.1.3.2 Frequency of related maintenance services is the method of calculation for maintenance fees, after sale services fees, and technical support fees. These, fees shall be in compliance with estimated costs against the initial expenses which refers to a basis of current value.

13.1.3.3 Supply of related spare-parts of goods shall refer to the capability of supply of spare-parts for annual spare-parts replacement on the entire frequency of usage of these goods such as within 3 years, 5 years, 7 years, 10 years or 15 years.

Besides the principles above, an assessment through application of non-value conditions which refers to scoring that shall be indicated in the bidding documents or request for proposals such as quality of methodology and workplan, method statement, capacity or usage and sustainable condition detailing as below:

- 1) Quality of methodology and workplan is an assessment of proposed tools, technology, method of construction, techniques on remedy of defects and management in execution of works and/or maintenance and supply of goods and/or services.
- 2) Method statement, capacity or usage is a quality assessment on usage of materials and tools adopted to the country environment in appropriate manner.
- 3) Sustainable condition is an assessment on usage of materials and tools that no environmental impacts under sustainable and green growth direction.

13.1.4 Clarifications on bids or proposal are the bidders or consultants' clarifications to project owners or procuring entities regarding the unclear information provided during the evaluation process. No modifications on the contents of bidders or consultants' clarifications provided allowed are listed below:

- 1) Bid price or financial proposal except the correction on arithmetical errors.
- 2) Major contents of bid or proposals.
- 3) Major deviations effected to the bid evaluation.
- 4) All of bidders or consultants' clarifications may not respond to the intention of project owner or procuring entity's request for clarifications may not be taken into consideration or may be rejected of bids or proposals.

13.1.5 An abnormally low bid is one where the bid price is considered as unreasonably low appearance leading to unreliability as to the capacity of bidder or consultant to perform the contract for the offered price.

In the event of identification of a potentially abnormally low bid, the requirement is to seek written clarifications from the bidder or consultant, including detailed price analyses of its bid price in relation to the subject matter of the scope of work, proposed methodology, schedule, allocation of risks and responsibilities of the bid price.

The clarifications to low bid price is considered in relation to cost saving production process, methodology for works and/or maintenance and supply of goods and/or services, techniques on remedy of execution, favorable conditions of bidder, supplier or service provider to propose this bid price for execution of such works and/or maintenance and supply of goods and/or services, and actual survey price.

After the bidder's clarifications are considered, the project owner or procuring entity may carry out as the following:

- 1) Acceptance of bid.
- 2) If an abnormally low bid is a result of proposed bid price which appears the significant difference to the project owner or procuring entity' forecasted estimated cost, bidder shall bear the actual additional cost (if any) during the contract execution, and this issue shall be included in the conditions of contract as additional provision.
- 3) Rejection of bid if the evidence provided is unable to reasonably explain for proposed low bid price or proposed expenses.

In the event of the proposed bid price exceeds the allocated budget, it shall carry out as below:

- 1) Review the criteria (conditions), technical specifications and requirements as indicated in the bidding documents or request for proposals in order to modify appropriately.
- 2) Take out some unnecessary items or quantities or tasks.
- 3) Cancel a procurement through rejection of all bids and conduct a new bid as per criteria, technical specifications and requirements needed but to ensure the sufficiency of time.

13.1.6 Cancellation of public procurement is a rejection of all bids or proposals which submitted to the project owner or procuring entity. Project owner or procuring entity has rights to cancel the public procurement in one of the cases below:

- 1) The lowest evaluated bid price exceeds the allocated budget which was approved by the project owner or procuring entity under a fixed budget and non-revisionable.
- 2) All bids do not meet the requirements as indicated in the bidding documents or request for proposals.
- 3) Low competition or uninterested bidders or collusion practice of procurement or selection of consultants found and considered by the project owner or procuring entity.

In case of the procurement or selection of consultants was cancelled due to low competition or uninterested bidders or consultants, the project owner or procuring entity may review and revise bidding documents or request for proposals for

competitive purpose and conduct a re-invitation for bids or selection of consultants.

13.2 Evaluation of consultant services

Evaluation of consultant services is a calculation of point system through 100 points basis and points to be assigned for criteria and sub-criteria for evaluation purpose.

The weights given to the technical and financial proposals is subject to the method of selection of consultants to be applied. The project owner shall determine such weights in the following range: not less than seventy (70) percent for technical proposal, and not more than thirty (30) percent for financial proposal. All of details of evaluation and weights for each of method of selection of consultants is specified in the request for proposals.

14 Article 45: Domestic preference shall apply for international open bidding (International competitive bidding) only and such given domestic preference shall be stipulated in the bidding documents though following conditions:

14.1 For works and/or maintenance

14.1.1 Preference for local contractors

If a local bidder's bid price is not exceeded seven point five (7.5) percent of an international bidder's bid price, the local bidder will be considered as the winning bidder for works, and/or maintenance as per international open bidding procedure and shall comply with the following

Local bidder who will enjoy that preference shall provide some information on qualifications which contains detailed rights in order to determine contractors' eligibility or to group of eligible contractors who obtain those rights. Bidding documents shall clearly indicate any reference to be granted and method of evaluation based on the principles and grouping as below:

- 1) Group A: Bids to be eligible obtaining preference.
- 2) Group B: Bids to be ineligible obtaining preference.

The ratio of seven point five (7.5) percent of bid price will apply and add to Group B's local bidders for evaluation and price comparison purpose.

14.2 Supply of goods

14.2.1 For international open bidding, preference is given to goods manufactured in Lao People's Democratic Republic in order to promote domestically manufactured goods when comparing bids offering such goods with those offering goods manufactured abroad.

14.2.2 Where preference for domestically manufactured goods is granted, the methods and stages shall be followed in the evaluation and comparison of bids as indicated in the bidding documents based on the conditions of the latest version of INCOTERMS such as EX-Works (EXW), Carriage and Insurance Paid (CIP), and Delivered Duty Paid (DDP).

14.2.3 Bidding documents shall clearly indicate any preference to be granted to domestically manufactured goods indicating production-base (origin) and the information required to establish the eligibility of a bid for such preference. The nationality of the manufacturer or supplier is not a condition for such eligibility.

14.2.4 For evaluation and comparison purpose, bids shall be classified as the following three groups:

14.2.4.1 Group A: Bids offering domestically manufactured goods and supporting information:

- 1) Labor, raw material, and components will account not less than thirty (30) percent of the EXW price of the product offered,
- 2) Goods will be manufactured or assembled has been engaged in manufacturing/assembling such goods at least since the time of bid submission.

14.2.4.2 Group B: Bids offering goods fully manufactured in the country.

14.2.4.3 Group C: Bids offering goods manufactured abroad and will be directly imported.

14.2.5 The price quoted for goods in bids of Groups A and B shall include all duties and taxes already paid or to be paid on the basic materials or components purchased in the domestic market or imported but shall exclude the Value-Added Tax on the finished product. The price quoted for goods in bids of Group C shall be on CIP, which is exclusive of duties and taxes already paid or to be paid.

14.2.6 All evaluated bids in each group shall be compared to determine the lowest bid in each group. Such lowest evaluated bids shall be compared with each other and if, as a result of this comparison, a bid from Group A or Group B is the lowest, it shall be selected for the award.

14.2.7 If as a result of the comparison under paragraph 14.2.6 above, the lowest evaluated bid is a bid from Group C, all bids from

Group C shall be further compared with the lowest evaluated bid from Group A after adding to the evaluated price of goods offered in each bid from Group C, for the purpose of this further comparison only, an amount not to exceed fifteen (15) percent of the respective CIP bid price. The lowest evaluated price from the final comparison shall be selected for the award.

15 Article 46: Complaints are bidders or consultants' complaint on public procurement, namely from unfairness, from the lack of transparency, and partiality by tender committees may file a written complaint to project owner or procuring entity for resolution within fifteen (15) days. The complaint may carry out as the following:

15.1 Bidders or consultants may file a written complaint to project owner or procuring entity or tender committee, if they found out that the non-beneficiary or loss or damage caused by the violation of laws or regulations or the officials' performance. Submission of complaint is fourteen (14) days prior the contract signing is required.

15.2 Project owner or procuring entity shall consider the complaint within fifteen (15) days from the date of receipt of the written complaint. If there is no resolution from the project owner or procuring entity within such period or improper resolution or not satisfaction to the bidder or consultant, it may refer to the financial sector for their consideration within the next fifteen (15) days from the date of receipt of the written complaint or the financial sector itself may form the ad-hoc committee consisted of relevant sectors' personnel for their consideration within the next fifteen (15) days from the date of appointment of ad-hoc committee is issued or the financial sector itself may propose to proceed solving complaints as per laws and regulations.

If the complaint is unsolved by the project owner or procuring entity, it may carry out as the following:

- 1) Suspend the procurement or selection process until the complaint is solved, except for necessity engaging to the public interest that the procurement or selection shall be required.
- 2) Provide a written response which includes the detailed reason of solving and the inspection of procurement execution within fifteen (15) days from the date of receipt of the written complaint.

If the resolution conducted by the Ministry of Finance is not to the bidders or consultants' satisfaction, matters may be referred to the method of dispute resolution as stipulated in Article 67 of the law on public procurement or may be submitted to relevant government agencies.

16 Article 47: Approval of the bid evaluation is an approval of bid and proposal evaluation from Minister, Head of Authority or Provincial Governor, Capital Governor, Head of District, Head of Municipality, Head of City or authorized person when bids and proposals evaluation reported by tender committees are seen as complying with law on public procurement and its procurement regulations. Then it shall carry out as below:

16.1 Project owner or procuring entity shall award the contract and issue a notification, within the period of the validity of bids or proposals, to the winning bidder or selected consultant attaching a draft contract for negotiations and contract signing including the timeline for contract signing, in case of no complaints about such procurement or selection of consultant.

16.2 In case of open bidding procedure, an award of contract shall also notify all other bidders containing name, address and contract amount of winning bidder, and all other name of bidders. The contract shall be signed after fourteen (14) days from the date of a notification of award of contract is issued.

16.3 If there is no performance security furnished or failing to timely come for contract signing after the performance security is furnished or no reaching to the conditions of contract, the project owner or procuring entity may notify to the next ranked-bidder from such winning bidder for negotiations and contract signing.

Project owner or procuring entity shall notify to unsuccessful bidders or unsuccessful consultants containing the reasons of rejection such bids or proposals or consultants. If there are requirements to provide the reasons of rejection such bids or proposals, it shall be in written in the timeline indicated.

If there are no requirements to provide the reasons of rejection such bids or proposals or rejection of bids or consultants, only information of date and time to be included in the letter of invitation or opening of bids or proposals are required.

17 Article 48: Pubic procurement contracts are agreements between project owners and contractors or procuring entities and suppliers and/or service providers or consultants, it may carry out as below:

17.1 Contract signing or award of contract

17.1.1 Winning bidder or selected consultant will sign a contract in written after fourteen (14) days from the date of a notification of award of contract is issued to the winning bidder or selected consultant for contract signing purpose, in exceptional case If there are requirements to provide the reasons of rejection of such bids or proposals from other bidders or consultants.

17.1.2 Contract shall be signed by the project owner or procuring entity or authorized person and the winning bidder or selected consultant or authorized person.

17.1.3 In case of no counter-signed of both parties, a draft negotiated contract certified by the contractor or supplier

and/or service provider or consultant will be signed in two original by the project owner or procuring entity and sent to the contractor or supplier and/or service provider or consultant for signature. The contract signing date will be treated as the project owner or procuring entity's signing date. The original will be retained for each by the project owner or procuring entity and the contractor or supplier and/or service provider or consultant.

17.2 Contract registration

The signed contract shall be registered by the contractor or supplier and /or service provider or consultant, in accordance with relevant regulation. The said contract registration holder above shall bear the contract registration fee.

18 Article 53: Management of contracts—paragraph 1: Project owners or procuring entities shall appoint project management personnel for managing contracts to ensure the quantity, quality and timeframe in works and/or maintenance, supply of goods and/or services and consulting services contracts, they consist of the following:

18.1 Contract management committee

Project owner or procuring entity may appoint separately the contract management committee or this committee will be taken from tender committee or inspection committee which be already appointed in the past. The project owner or procuring entity will participate and arrange the contract management process and provide necessary tools and equipment including human resources to manage the contract execution in efficient and effective manner.

18.2 Responsibilities of contract management committee consist of the following:

18.2.1 Determine a process of acceptance and inspection of works and/or maintenance, supply of goods and/or services or consulting services in order to print into the procurement manual.

18.2.2 Inspect and certify the execution procedures for works and/or maintenance, supply of goods and/or services or consulting services as stipulated in the signed contract. If fault is found as per the signed contract, the reporting to the project owner or procuring entity is required for solving those issues.

18.2.3 Manage and seek for solution in dispute matters incurred as the signed contract, including the agreed measures on breaches of contract.

18.2.4 Record, retain documents and report on contract execution.

18.2.5 Perform other duties in accordance with laws and regulations.

18.3 Completion of contracts

Contract execution is fully completed whenever both parties fulfill all conditions of contract and timeframe of contract performance and warranty period. The signed contract, documents and procurement related information shall retain at least ten (10) years period.

19 Article 86: Fine measures

Individuals, legal entities or organizations violating the law on public procurement and this Instruction will be fined as below:

19.1 In case of a bid-securing declaration applied for the winning bidder, but the withdrawal or modification of bid incurred during the bid validity period or rejection to sign a contract or to furnish a performance security in timely manner, such winning bidder shall pay fines in the amount of two (2) percent of the proposed price to the project owner or procuring entity.

19.2 The winning contractor or supplier and/or services provider or consultant, in the event of selling, transfer of the project to others after the contract is signed, will pay fines in the amount of ten (10) percent of contract amount and be not returned the performance security.

19.3 For the execution of works and/or maintenance supply of goods and/or services and consulting services which do not meet the requirements on quality, technical specifications and professional techniques, the fines shall be made in two times of evaluated of loss or damage values.

III. Implementation and effectiveness

Authorize to the Ministry of Finance's State Budget Department, as a focal point for coordination, to advertise, disseminate, instruct and implement this Instruction in good result to concerned parties and local government authorities.

Ministries, agencies and local government authorities, state-owned enterprises, individuals, legal entities or local and international agencies shall acknowledge, understand and strictly implement this Instruction.

Any difficulty found through the actual implementation mention of this Instruction shall be reported to the Ministry of Finance for guidance, revision and solving in timely manner.

This Instruction enters into force from the date of signing and after fifteen days of the notification of this Instruction in the Official Gazette.

Deputy Prime Minister, Minister of Finance

Signed and stamped

Somdy Douangdy