

Factors affecting and limitations in bidding activities under Vietnam's law

Chu Minh Anh

University of Transport and Communications, No.3. Cau Giay Street, Lang Thuong Ward, Dong Da District, Hanoi, Vietnam.

Abstract: Bidding activities are one of the important and necessary activities in the process of macroeconomic management. This is also an activity aimed at making finances public and transparent and ensuring the rigor of the law for parties participating in bidding activities. However, in recent times, from a legal perspective, this activity still has many shortcomings, causing difficulties for bidding activities and hindering the process of economic transparency. This study aims to evaluate the role of bidding in the economy, the current status of bidding activities, factors affecting, and limitations in bidding law, thereby recommending solutions to improve bidding quality in the future.

Keywords: Factors affecting, bidding activities, limitations, Vietnam's law

Date of Submission: 16-05-2024

Date of acceptance: 31-05-2024

I. Introduction

Vietnam has had remarkable achievements in forming and developing the law on bidding and public procurement. However, with the change in the current socio-economic context of our country, along with international integration, the practice of applying public bidding and procurement laws has arisen, revealing many legal issues that need to be resolved further to improve bidding and public procurement laws in Vietnam. Some issues related to the current status of provisions of Vietnam law on public bidding and procurement activities are: choosing the form of bidding, bidding process, healthy competition, openness and transparency in the bidding process. bidding activities.

After moving from a centrally planned, subsidized economy to a market economy, public bidding and procurement activities in our country were gradually formed. Through many years of formation and development, to maintain and develop public bidding and procurement activities, a system of legal regulations must be established to regulate these activities. The first law regulating this field was Decree No. 43 - CP dated July 16, 1996, followed by the introduction of the Bidding Law in 2005 and currently the Bidding Law in 2013.

This study aims to evaluate the role of bidding in the economy, the current status of bidding activities, influencing factors, and limitations of bidding law, thereby recommending solutions to improve high-quality bidding in the future.

II. Literature Review

According to the Bidding Law (2013), "bidding is the process of selecting contractors to sign and perform contracts to provide consulting services, non-consulting services, goods procurement, and construction; Select investors to sign and implement investment project contracts in the form of public-private partnerships, investment projects using land based on ensuring competition, fairness, transparency and economic efficiency international."

The nature of bidding is a form of civilized competition in a developed market economy because, through this activity, contractors meet the investor's economic, technical and cost requirements. will be selected. Therefore, bidding was born and existed to achieve competitiveness, fairness and transparency.

From there, it can be seen that bidding activities play a role in ensuring 4 contents: efficiency - competition - fairness - transparency. Efficiency can be financial or time-based or some other criterion depending on the project's goals. To ensure project effectiveness, it is necessary to create conditions for contractors to compete openly on the widest possible scale to create fairness and ensure benefits for all parties. For projects with large total investment and economic or social value, bidding is an important and indispensable step and must comply with the State's or financial institutions' regulations loans.

III. Research Methods

- To clarify the influencing factors and limitations in the law on bidding, and at the same time ensure solutions to improve the quality of bidding activities, this study focuses on studying legal documents on bidding activities. The bidding is still valid, specifically as follows:
- Bidding Law 2013 (Law No. 43/2013/QH13);
- Law amending the Bidding Law 2022 (effective March 1, 2022);
- Decree 63/2014/ND-CP, Guidance on the Bidding Law on contractor selection;
- Decree 25/2020/ND-CP, Guidance on the Bidding Law on investor selection (Effective April 20, 2020, replacing Decree 30/2015/ND-CP);
- Circular 10/2015/TT-BKHDT, Detailed regulations on contractor selection plans;
- Circular 19/2015/TT-BKHDT, Detailed regulations on the preparation of appraisal reports during the contractor selection process;
- Circular 04/2019/TT-BKHDT, Guidance on training, refresher training and examination activities to grant practice certificates in bidding activities;
- Circular 09/2019/TT-BKHDT, Amending Circular 04/2019/TT-BKHDT;
- Circular 10/2016/TT-BKHDT, Detailed regulations on supervision, monitoring and inspection of bidding activities;
- Circular 88/2018/TT-BTC, Regulations on financial management for investment projects in the form of public-private partnerships and investor selection costs;
- Circular 08/2022/TT-BTC, Regulations on management and use of revenues and expenditures during the investor selection process (Effective March 25, 2022);
- Circular 08/2022/TT-BKHDT, Instructions for providing and posting information on bidding and contractor selection on the National Bidding Network System (Effective August 1, 2022);
- Circular 04/2017/TT-BKHDT, Huy detailing the selection of contractors through the National Bidding Network System (Valid until July 31, 2022);
- Circular 05/2020/TT-BKHDT, Amending Circular 04/2017/TT-BKHDT;
- Circular 05/2018/TT-BKHDT, Instructions for preparing bid evaluation reports for bidding packages organized to select contractors on the National Bidding Network System (Remaining valid until July 31, 2022);
- Circular 11/2019/TT-BKHDT, Regulations on providing and posting information on bidding, the roadmap for applying online contractor selection and management and use of bid security value, security Contract performance is non-refundable (Valid until July 31, 2022);
- Circular 06/2017/TT-BKHDT, Regulation detailed regulations on providing information on bidding, reporting on the implementation of bidding activities on contractor selection;
- Circular 09/2019/TT-BKHDT, Amending Circular 06/2017/TT-BKHDT;
- Decision 17/2019/QD-TTg on several bidding packages and procurement contents to maintain regular operations, applying the form of contractor selection in special cases according to the provisions of Article 26, Bidding Law (2013).

IV. Research Results and Discussion

The Role of Bidding in The Economy

First, bidding brings great benefits to investors, contractors and the national economy in general. Bidding is carried out in many fields, from construction, equipment procurement, project implementation, etc. Especially in the public sector, bidding contributes to improving production and business efficiency, improving the effectiveness of state management of investment and construction, limiting and eliminating losses, wasting state budget capital.

Second, because bidding needs to be public and transparent, bidding will create a fair and healthy competitive environment among construction units. This is a great driving force to promote the development of our country's construction industry and create conditions for applying science and technology, innovating construction technology, and gradually integrating with the region and the world. Public investment is key to delivering important goods and services to society, in the development of sectors, such as: transportation, healthcare, education, etc. Especially in developing countries where budget capital is limited, it is necessary to have the participation of the private sector in fields and industry groups prioritized by the Government.

Since then, we have developed manufacturing industries towards deep specialization and cooperation, and at the same time developed the bidding market. Through bidding, the seller market has been developed, many contractor businesses have grown, and many new businesses have been established or entered the bidding market, stimulating the development of the domestic market to fight against monopoly. nature. Investors and bidders are also enhanced in capacity, they have more knowledge and information and become more and more knowledgeable buyers. In addition, bidding activities contribute to creating motivation for development by

enhancing publicity, transparency, fairness, efficiency and promoting competition in procurement activities with state capital for state-funded enterprises, public construction.

Third, bidding is an important tool to help the Government manage spending and use State capital effectively and prevent loss and waste. Law on Bidding, Decree No. 50/2016/ND-CP on sanctioning administrative violations in the field of planning and investment (stipulating 39 violations in bidding and fines) along with the law on enforcement practicing thrift and combating waste and laws on preventing and combating corruption create effective tools to combat fraud, corruption and waste in spending State funds, contributing to Healthier social relations by conducting public procurement activities following State law.

Spending and using State money through bidding will help management agencies review, manage, and evaluate transparently the expenses due to the bidding process complying with regulations. strict process with the participation of many parties. Create conditions to promote the process of economic innovation from a centralized subsidy mechanism, "ask" and "give" mechanism to a competitive mechanism; Implement democratization of the economy, and overcome the disadvantages of heavy administrative procedures that hinder dynamism and creativity.

Fourth, promote technology transfer and sharing of knowledge and experience between countries and developed organizations with developing countries. Bidding activities do not only take place within a narrow scope but take place all over the world. Reputable contractors in the world - they are people who are willing and able to participate in all activities of countries, through which they are willing to transfer technology and share knowledge and experience.

Current Status of Vietnam Law on Bidding

These achievements:

In general, the system of legal documents on bidding continues to be improved, standardized and unified, following international standards and practices adopted by donors and participating agencies. highly appreciated, helping to maintain effective bidding activities and further enhance transparency and competition. This is shown through the completed bidding policy from the legal system (Bidding Law 2005, 2013), to guiding decrees, such as: Decree No. 53/2014/ND-CP, dated December 26. /6/2014 of the Government detailing the implementation of several articles of the Bidding Law on contractor selection; Decree No. 30/2015/ND-CP, dated March 17, 2015, detailing the implementation of several articles of the Bidding Law on investor selection; Decree No. 25/2020/ND-CP, dated February 28, 2020, detailing the implementation of some articles of the Bidding Law on investor selection... along with guiding circulars of the Ministry of Planning and Investment. In addition, there are related decrees, such as: Decree No. 35/2021/ND-CP, dated March 29, 2021, detailing and guiding the implementation of the Law on Investment in the form of public-private partnerships (PPP); Decree No. 31/2021/ND-CP, dated March 26, 2021, detailing and guiding the implementation of some articles of the Investment Law 2020, etc.

Particularly in the field of PPP, to continue to improve and promote the implementation of policies and laws on bidding, as the state management agency on bidding at the Central Government, on November 16, 2021, The Ministry of Planning and Investment issued Circular No. 09/2021/TT-BKHDT guiding the selection of investors to implement investment projects according to the public-private partnership (PPP) method and investment projects using land. Circular No. 09/2021/TT-BKHDT takes effect from January 1, 2022. According to assessment, the issuance of Circular No. 09/2021/TT-BKHDT along with some related legal documents, such as: PPP Law, Decree No. 35/2021/ND-CP, Decree No. 31/2021 /ND-CP, etc. will create a high, consistent, and stable legal framework for attracting investment from the private sector to participate in implementing socio-economic infrastructure development projects; At the same time, improve transparency, competition, and economic efficiency in selecting investors to implement investment projects using land and PPP projects.

Currently, the Ministry of Planning and Investment has developed and submitted to the Government for promulgation a Decree amending and supplementing many articles of Decree No. 95/2020/ND-CP guiding the implementation of procurement bidding under the Agreement. Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) to guide the implementation of procurement under CPTPP, Free Trade Agreement between

Vietnam and the European Union (EVFTA), Free Trade Agreement Vietnam - United Kingdom (UKVFTA) - referred to as the Amended Decree.

According to the report on the implementation of bidding activities in 2020 of the Ministry of Planning and Investment (2021), in 2020, the whole country had a total of 301,587 bidding packages implemented under the Bidding Law (an increase of 6% compared to 2019).), with a total bid price of 958,543,726 billion VND (an increase of 31% equivalent to 224,962,849 billion VND compared to 2019) and a total winning price of 911,847,824 billion VND (an increase of 32% equivalent to 219,233,000 VND). 04 billion VND compared to 2019), the difference between the total bidding package price and the total winning bid price (saving value) is

46,697.26 billion VND, equivalent to 4.87% (in 2019, the saving rate reached 5,000,000 VND, equivalent to 59%).

In general, in 2020, bidding packages increased in both quantity and scale. Although the country's savings rate decreased slightly compared to 2019, there are still many ministries, branches and localities implementing effective bidding, including some agencies and units with high savings rates. higher than 10%, such as: the Ministry of Health (15.51%); Academy of Science and Technology (13.43%); Provinces: Lang Son (11.91%), Vinh Long (11.25%), Dong Nai (12.68%); City. Da Nang (10.42%); Vietnam Oil and Gas Group (18.53%); Military Telecommunications Industry Group (22.81%); Vietnam Forestry Corporation (15.64%), etc. Among them, the state-owned economic groups and state-owned corporations that stand out have a quite high savings rate, reaching 9.81%. The proportion of the value of designated contractor bidding packages decreased significantly compared to 2019 (8.04% compared to about 15.66% in 2019).

In addition, in 2020, centralized bidding was implemented well, and the savings rate through centralized procurement of the whole country was quite high (reaching 11.59%), of which some units were very high, such as Provinces: Ha Nam (37.43%), Bac Giang (36.94%), Tuyen Quang (34.01%)... Savings rate of bidding packages using state capital to maintain operations The frequency of state agencies increased compared to 2019, reaching 8.13%.

The year 2020 also recorded the strong development of online bidding. According to reports, many ministries, branches and localities implemented online bidding very aggressively and exceeded the roadmap targets specified in Resolution No. 01/NQ-CP, dated January 1, 2020, of the Government and Circular No. 11/2019/TT-BKHDT, dated December 16, 2019 of the Ministry of Planning and Investment. Compared to 2019, the number of bidding packages using online bidding increased more than 2.4 times (98,172/39,547 bidding packages), the total price of bidding packages increased more than 2.5 times (303,236/120,321 billion VND).

Legal Limitations and Inadequacies

Regarding the development of legal mechanisms and policies on bidding: Some regulations are not synchronized and unified between the Bidding Law and specialized laws even though they have existed for many years and have been responded to by the Ministry of Planning and Investment. As reflected in the bidding report submitted to the Government, however, it has not been thoroughly resolved, affecting both investors, bid solicitors and contractors during the implementation process.

Currently, the Bidding Law still allows designated bidding in cases where bidding packages need to be implemented to immediately overcome or promptly handle consequences caused by force majeure incidents; Bidding packages need to be implemented to ensure state secrets; The bidding package needs to be implemented immediately to avoid causing direct harm to the lives, health and property of the local community or to not seriously affect adjacent works or the bidding package to relocate the works. Technical infrastructure is directly managed by a specialized unit to serve site clearance work; Bidding package for clearance of bombs, mines, and explosives to prepare construction sites. Thus, in this case, the bidding party has the right to appoint the contractor. However, the law does not have a solution to prevent closed-door bidding, so the phenomenon of bid collusion between construction enterprises and between the bid solicitor and the consulting bidder is relatively common.

Regarding contractor selection: The direct contractor savings rate is still very low, only 2.15%. Meanwhile, open bidding is the most competitive form, but the savings rate is still not high (5.19%).

The effectiveness of bidding work still varies between localities and units. The savings rate in localities is still low, reaching 4.64% (state economic groups and state corporations are 9.81%, ministries are 5.14%).

The construction sector is the field with the total bid package price and winning bid accounting for a large proportion (64.37% and 65.44%), but the savings rate is not high at only 3.28%.

Centralized purchasing is strongly deployed, but the savings rate is not uniform, there are units with very low savings rates, such as: City. Hai Phong is 0%, Dien Bien Province is 0.06%; Dong Thap Province is 0.17%; Ministry of Justice is 0.18%...

Regarding implementation and implementation of bidding work: Bidding work in our country is one of the stages where many negative things arise, sometimes it is only formal, containing hidden things that are opaque, and lacking transparency and fair. From 2013 up to now, the management agency has investigated and prosecuted 11,700 cases of corruption in economic positions, including 1,900 corruption cases with 4,400 defendants, most of which were related to bidding violations. construction procurement, and public investment (News Department, 2021). The common point about these violations is that the management agency colluded with the price appraisal unit. Bidding violations take place in many different industries: infrastructure construction, healthcare, education... Especially recently, there have been violations in the production and sales of medical equipment sets. In Vitro diagnostic test for the SARS-CoV-2 virus (referred to as the Covid-19 test kit) occurred at Viet A Technology Joint Stock Company.

Violations in bidding work have caused many consequences, such as: (i) Breaking plans for implementing public spending, public procurement and public investment, not only causing projects to be behind schedule but also causing loss and waste of the country's resources; (ii) Disturbing state management order; (iii) The prestige of state agencies is reduced in the eyes of the people; (iv) Loss of staff resources due to these people violating the Bidding Law.

Recommend solutions

Firstly, develop anti-closing solutions in bidding to limit bid collusion: As analyzed above, to overcome the phenomenon of bid collusion between construction enterprises, between the bid solicitor and the bidder, to ensure transparency and objectivity in the bidding process, the law must stipulate anti-closing solutions in limited bidding to limit bid rigging.

Second, continue to review and supplement regulations related to conditions to attract effective investment sources. Accordingly, based on the new decrees issued by the Government related to the implementation of PPP projects and investment projects using land, circulars detailing the decrees need to be researched, developed, and issued. implementation to be complete, consistent with practice, transparent and more convenient in project implementation. In addition, for problems related to land law, public property and specialized law, the Ministry of Planning and Investment needs to continue to coordinate with the Ministry of Natural Resources and Environment, the Ministry of Finance and other agencies. Ministries and branches research and advise the Government and the National Assembly to more clearly define relevant policies to create a competitive, transparent and practically effective investment environment, and reduce administrative procedures.

Third, strengthen online bidding and publicize information in investor selection. The Ministry of Planning and Investment needs to continue to upgrade and perfect the function of the National Bidding Network System and add new regulations to promote the organization of online investor selection. In addition, the Ministry of Planning and Investment needs to have measures to detect and strictly handle cases of intentionally not posting, posting late, or posting inaccurate information on the National Bidding Network System.

Fourth, strengthen training activities and improve the capacity of staff participating in bidding and selecting investors. In the coming time, the Ministry of Planning and Investment needs to continue to organize conferences and seminars to propagate and disseminate new regulations related to investor selection nationwide. In addition, agencies and units also need to increase the organization of seminars and training courses on PPP investment and investor selection bidding to improve the professionalism of relevant staff. present this work.

Fifth, strengthen the organization of inspection, examination, supervision and monitoring of the implementation of the investor selection process. Ministries, branches and localities need to strengthen the organization of inspection, examination, supervision and monitoring of the implementation of the investor selection process to promptly detect violations, handle them following regulations, and punish them. Adjust investor selection activities in the fields, industries and areas under your management; At the same time, summarize the shortcomings and shortcomings in this work to reflect to the Ministry of Planning and Investment for research and synthesis in the process of developing legal documents.

Sixth, it is necessary to regulate in the direction of increasing the level of sanctions for handling regulations on bidding and public procurement and perfecting regulations on dispute resolution in bidding and public procurement activities, most of which use banks. state policies, so the problem of corruption and taking advantage of positions for personal gain, causing loss and waste of state capital and assets, has occurred quite a lot in recent times. To prevent these acts, it is necessary to improve legal regulations to create a sanction strong enough to deter and punish those involved, and at the same time must cover all sensitive areas. easy to violate during processing. For the mechanism to resolve petitions and disputes to be truly effective, and objective and minimize negative behaviors, it is necessary to build an independent petition resolution mechanism to specialize in resolving related petitions. relating to public bidding and procurement activities

V. Conclusion

The Bidding Law has been proven to be one of the effective tools for the State to monitor investment and manage public assets. Furthermore, in the context of international integration and the State promoting public investment, bidding regulations must also be amended following relevant regulations. For that reason, although

Decree 25/2020 Circulars No. 11/2019 and Circular No. 08/2022 have just been issued, the Bidding Law needs to continue to be amended to make it more complete. At the last meeting of 2022 on comments on amending the Bidding Law, the Minister of Planning and Investment shared that editing does not mean opening up, but still ensures strict management, avoiding profiteering and negative corruption; At the same time, there must be harmony between the State's interests and openness and convenience for investors when procuring bidding packages. In the process of managing bidding activities, it is necessary to further strengthen budget

disclosure according to the set of criteria of IBP (International Budget Cooperation), because this is a set of budget disclosure survey tools. (OBS Tracker) to increase budget management efficiency with people's participation. According to IBP, publicizing the budget is very important because the budget is the people's tax money, people need to know, track and monitor whether this money is used effectively or not.

References

- [1]. Congress. (two thousand and thirteen). Bidding Law (Law No. 43/2013/QH13), Hanoi.
- [2]. Government. (2014). Decree No. 53/2014/ND-CP, Detailed regulations implementing several articles of the Bidding Law on contractor selection. Hanoi.
- [3]. Hang, N.T. (2014). Law on Bidding 2013 – Legal basis to ensure the principle of competition and fairness, transparency and economic efficiency. *The Journal of Democracy and Law*. Retrieved from <https://moj.gov.vn/qt/tintuc/Pages/nghien-cuu-trao-doi.aspx?ItemID=1675>
- [4]. Ministry of Planning and Investment. (2021). Report on the implementation of bidding activities in 2020. Hanoi.
- [5]. Ministry of Planning and Investment (2022). Report on the implementation of bidding activities in 2020. Hanoi.
- [6]. National Assembly. (2013). Law on Bidding, No. 43/2013/QH13, dated November 26, 2013. Hanoi.
- [7]. News Department. (2021). A series of illegal bidding cases were prosecuted, many related to health and education, accessed from <https://vtv.vn/phap-luat/hang-loat-vu-an-sai-pham-ve-dau-tau-bi-khoi-to-many-vul-quan-den-y-te-Giao-duc-20211116175332056.ht>
- [8]. Ninh, T. T. (2021). Improve the efficiency of public investment in the context of Covid-19. *Journal of Economics and Forecasting*, No. 20, pp. 27-31.
- [9]. Quan, V. H. (2014). The role of bidding in public spending efficiency. *Journal of Finance*, No. 11, pp. 77-81.