

Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Prime Minister's Office

No.03/PM

Vientiane Capital, Date 09 January 2004

DECREE
OF THE PRIME MINISTER ON GOVERNMENT PROCUREMENT OF
GOODS, CONSTRUCTION, MAINTENANCE AND SERVICES
(Amendment)

- Based on Law on the Government of Lao PDR, amended in 2003.
- Based on Decree 127/PM of 3 October 2000 on the organization of the Ministry of Finance.
- At the proposal of the Minister of Finance No.2190/MOF dated 10 December 2003 of the Minister of Finance,

The Prime Minister issues the following Decree

Section 1
General Provisions

Article 1: Purposes

This Decree sets the rules, forms and procedures for government procurement of goods, construction, repair and services and ensures efficient, transparent and economy in government procurement. It liberalizes and promotes equality among all economic sectors in the procurement of goods, construction, repair and services to state organizations and state enterprises.

Article 2: Definitions

The words used in this Decree have the following meanings:

1. Tender means the price and quality competition process for the supply of goods, construction, repair and services under determined procedures and steps.
2. Two-stage bidding procedures means the bidding procedures carried out in two differing stages: in the first stage, interested parties are invited to submit technical proposals and methodologies for pre-qualification for pre-selection; the second stage, the pre-selected qualified parties submit bids.

3. Goods means any object in solid, liquid or gaseous form that has an economic value which can be exchanged or traded such as equipment, accessories, machinery, vehicles and other products.
4. Works means any construction and maintenance activities under projects for the construction and maintenance of roads, irrigation, hydropower dams, plants, factories, buildings, constructions and other works.
5. Services means expert services provided by a consulting firm or individual expert in conducting research, surveys, designs, supervision of other works and services.
6. Procuring Entity or Project Owner means the Government entity and state enterprises using funds from the national budget.
7. Project Executing Agency means Ministry or equivalent agency, provinces and local entities responsible for and monitoring the contract's execution.
8. Government entity means all sectors of the Government of Lao PDR at the national and local levels, including organizing representing the Lao Government in foreign countries, which are using the national budget.
9. State Enterprise means a business entity established and managed by the State or in joint venture with other business entities which the State holds at least 51% of the shares.
10. Donor means a country or international financial institutions extending loans/credit and/or technical or financial assistance to promote economic, social and environmental development.
11. Bidder means an individual, companies, enterprises, joint venture or international enterprises meeting the selection criteria and participating in competitive bidding under a procedure selected by the procuring entity or project owner.
12. Contractor or Supplier means an individual, firms and enterprises entering a contract with the procuring entity or project owner to supply goods or works, maintenance and services.
13. Tender Committee means individuals officially appointed by the organization concerned to be responsible for and carry out the bid starting from the process of preparation until award of the contract.
14. National Budget means domestic funds and funds derived from aids and loans of foreign countries and financial institutions.
15. Pre-Qualification means the screening of capacity, experience and financial situation of the bidders.
16. National Secret means things that bear the risk of affecting national stability, security and order, such as warfare weapons, vehicles and equipment, construction aimed directly at defense and security purposes.

Article 3: Application

This Decree applies to the following targets:

- i. Government entities at the central, provincial and local levels, including overseas representative organizations of the Government of Lao PDR funded by the national budget.
- ii. State owned enterprises.
- iii. Joint ventures in which the State holds shares.

Article 4: Not Applicable

Special tenders due to reasons of national confidentiality, stability and security are not governed by the provisions of this Decree. However, in the case of procurement of goods, equipment and vehicles for general administrative purposes, construction works related to offices, schools, hospitals and houses belonging to the defense and security authorities, the provisions of this Decree shall apply.

Article 5: Bidders

Bidders include:

- 1) Individual, companies and enterprises established lawfully in Lao PDR and regularly performing their tax obligations in full.
- 2) Interested and qualified international firms may participate to competitive bidding.
- 3) In the case of high value competitive bidding for the procurement of goods, works and services, of large-scale and integrated projects for which a single company would not have sufficient capacity to perform, associations between local companies or between local and foreign companies are allowed to bid for such works in the form of a Joint Venture.

Article 6: Bidding

Any public procurement of goods, works and services shall be duly tendered in full accordance with the regulations. Procurement through direct contracting shall comply with Article 13 of this Decree.

Article 7: Creation of Reference List of Enterprises

As reference for the assessment bidders' qualifications, the Ministry of Finance is entrusted to issue a list of companies or legal entities, including foreign firms with capacity, experience and financial situation in coordination with the ministries and sectoral agencies concerned in September of each year, and publicize the criteria for inclusion into such list. The number of firms or legal entities included in such list may be increased or reduced in the middle of each year.

Article 8: Setting Current Expenditure

As reference in setting current expenditures for government entities in public procurement by price comparison as provided under Article 14 of this Decree, the Ministry of Finance, in coordination with the Ministry of Trade and ministries and equal ranking agencies concerned, shall set a list of necessary prices, unit costs and technical standards applied in substantial number by government entities every 6 months.

Article 9: Promotion of Local Enterprises and Products

1. Local firms that are not affiliated to foreign firms and have the capacity to supply goods, works and services with equal quality will be given preferential rights in competitive biddings.
2. The use of the national budget for the procurement of foreign goods will not be authorized if such goods may be produced locally at equal quality.
3. Public procurements of goods, works and services financed in full with domestic funds will give priority to local firms.

Section 2

Procurement Methods and Procedures

Article 10: Procurement Methods

Procurement methods may follow:

- ☐ Public bidding
- ☐ Limited bidding
- ☐ Direct contracting
- ☐ Price comparison

Article 11: Public Bidding

Public bidding is carried out along the following procedures:

1. Tender documents must be complete and precise, contain information on goods, works and services, including technical specifications, place of delivery, time, bidding conditions and terms of contract, as well as the standards applied the evaluation of bids for proper acknowledgment by bidders.
2. Notification is widely publicized through the media or official means. The time limits for the preparation and submission of bids are 45 days at least before the submission's deadline.
3. All bids must be opened in public immediately at the deadline set for the bid submission at the date, time and place stipulated in the tender documents in the presence of the bidders or their representatives.
4. Following opening of the bids, bidders may not revise or add to their documents and proposals, except in the case the procurement committee requires clarification, such clarification shall be sought in writing from the concerning responsive bidders
5. The examination and evaluation of bids is carried out according to the criteria and conditions stipulated in the bidding documents. The evaluation of bids must indicate the proposals of all bidders and the reasons for award of contract and is submitted to the project executing agency for approval in accordance with the Article 36.
6. In the event that all bidders are not responsive to the criteria and conditions stipulated in the tender documents, the procurement committee may terminate the bidding process and

proceed with re-bidding in accordance with the implementing rules and regulations of this Decree.

Article 12: Limited Bidding

Limited bidding is carried out in the following cases:

1. The contract values are low; and
2. There are limited number of suppliers or contractors

Limited bidding procedure is similar to the public procurement procedure as described under Article 11 except for Clause 2 of the Article, that there is no public notification. The procuring entity or project owner shall invite bids from a list of potential suppliers or contractors broad enough to assure competitive prices and with sufficient capacity or if there are a limited number of suppliers and contractors shall invite all.

Article 13: Direct Contracting

Bidding through direct contracting may be carried out in the event public bidding and limited bidding were unsuccessful, but shall require specific approval from ministry or agency at different levels as provided under the implementing rules and regulations of this Decree.

Article 14: Price Comparison

Procurement through price comparison is applied for the procurement of limited amount and value of goods, small-scale works and low value services, supplies for daily and routine administrative activities, such as equipment, office supplies, professional research and experimental equipment. Procurement under this procedure requires solicitation of prices from at least 3 suppliers or contractors.

Article 15: Selection of Consultant or Experts

The selection of consultants or experts is carried out under the following procedure:

1. At least 3 consulting firms or individual seen as most appropriate by the project owner are short-listed. Letters of invitation containing information on objectives, targets, terms of reference, time for completion of tasks and time for the submission of proposals are sent to such consulting firms or experts.
2. The evaluation of bids is effected in accordance with two basic approaches:
 - i) Quality and price evaluation; and
 - ii) Quality evaluation, followed by price evaluation.

3. The selection of consulting firms or experts through direct contracting requires special authorization from the project executing ministry or agency at different levels as stipulated by the implementing rules and regulations of this Decree.

Article 16: Pre-qualification

The case of large-scale, technically complex and high value projects, the suitability of bidders is evaluated prior to carrying out the bidding. The qualification's evaluation process is carried out in form of public tender by stipulating standards and conditions that are notified to firms interested to submit documents for pre-qualification by the tender committee. Any firms meeting the standards and conditions stipulated in the pre-qualification documents are then invited to participate to price competition.

Article 17: The Two-Stage Bidding

For large complex plants and high value projects for which the project executing agency may be undesirable or impractical to prepare complete technical specifications in advance or detail design is of a high cost. In such a case, a two-stage bidding procedure may be used. Under which first stage involves un-priced technical proposals and methodologies for the evaluation of the responsive bids. The second stage involves the competition of the priced proposals.

Article 18: Procurement Financed by Foreign Grant or Loan/Credit

In the case of procurement financed by external aid or loan, if bidding procedures are specifically stipulated in the agreement between the Government and the donor(s), such stipulations shall apply. In the absence of such specific stipulations, the provisions of this Decree shall apply.

Article 19: Threshold (Values)

The thresholds for each form of bidding are set by the Ministry of Finance from time to time as appropriate and in accordance with the conditions of socio-economic growth.

Article 20: Bid Security

In any form of bidding, except for direct contracting and price comparison, bidders are required to provide bid securities. Such bid securities must be effective for 30 days more than the period of the bid validity. If the bid validity is required to extension in accordance with Article 21, the bid security shall be required to provide a suitable extension. Such securities will be returned by the procuring entity to unsuccessful firms after awarding the contract. If the successful bidder

refuses to enter the contract with the procuring entity or the project owner without reliable reasons, the procuring entity or project owner may cash the bid security amount.

Article 21: Bid Validity

Bids are effective for a period of at least 30 days from the date of opening of bids to afford sufficient time to the procurement committee to examine and evaluate the bids. Where an extension is necessary for the examination and evaluation of bids, the procuring entity or project owner will notify the reasons and extension to all bidders in writing.

Section 3

Types, Method of Payment and Content of Contract for the Procurement of Goods, Works and Services

Article 22: Types of Contract

Contracts for the procurement of goods, works and services include the following types:

1. Contract for the supply of equipment and goods;
2. Contract for works; and
3. Contract for services.

Article 23: Method of Payment

In the case of contracts for the procurement of goods, works and services which implementation does not exceed 1 year, the price of the contract and currency of payment are fixed and payment is made in the following forms:

1. Contracts for the procurement of goods, including the installation costs, may be paid in a single or several installments which shall be duly stipulated in the contract.
2. Contracts for the procurement of works may be paid in any of the following forms:
 - i) In a lump sum in the case of small works;
 - ii) According to “certified measured quantities” for which unit prices and volume of works are stipulated in the contract; and
 - iii) By “certified invoices” for the works that can not be measured exactly initially such as maintenance, excavation, underground survey, sanitation of canals or stream alignments.
3. Contracts for the procurement of services or experts may be paid in a lump-sum by task or based on time (man/month), in which case the tasks must be determined as precisely as

possible.

Article 24: The Currency of Payments

The stipulated currency for payment shall be made based on contracts entered with local individuals or firms will be denominated in Kip, whereas contracts for the procurement of goods or services from overseas or works provided by a foreign firm are governed by Presidential Decree 01/PR of 9 August 2002 on the management of foreign currency and precious metals.

Article 25: Price Adjustment

The price adjustment is applicable in the case of contracts which duration exceeds 1 year and in the case the unit price strongly fluctuates in the market. Each party may seek an adjustment of unit prices when supported by market prices compared with prices at the time of the contract's signing. Downward or upward unit price adjustment is specifically permitted only in relation with costs of labor and construction materials. Costs of administration, transport, insurance and profit of contractors may not be adjusted.

Article 26: Terms of Payment

All payments under contracts are carried out under the following rules:

1. Payments for goods procured from local individuals or firms are paid in Kip after due receipt and storage of goods by the procuring entity as evidenced by complete delivery documents.
2. Payments for imported goods requiring overseas transfers are made through the banking system on the basis of internationally recognized letters of credit or other methods, if any.
3. Advance payments are made partially after the contract's signing. Such payment will not exceed 15% of the contract value against a bank guarantee to be provided by the contractor at equal value or no more than 20% of the contract value if the required machinery, equipment and labor have been mobilized by the contractor. Thereafter, payments are made according to work progress.
4. Payments based on work progress is made when supported by reports of inspection committees appointed by the project executing agency in coordination with the works supervising engineer of actual work volume performed.
5. Payment of consultant or expert fees is based on the contract's value:
 - ☐ Payment upon completion of tasks in case of high value contract; or
 - ☐ Lump sum payment upon full completion of services in case of low value contract.

Article 27: The Content of Contract

The contents of each type of contract are to be agreed between contracting parties in accordance with the Contract Law 02/90/PSA of 10 July 1990.

Article 28: Performance Securities

The performance securities are applied as provided under Article 25 of Decree 58/PM of 22 May 2002 on the management of public investment.

Section 4

Organization, Right and Duty of the Tender Committee

Article 29: Tender Committee

All procurement procedures require the appointment of a tender committee by the project executing agency at the central or local levels. The tender committee is comprised of:

- ☐ At the ministry or equal ranking agency's level, from 1 to 3 representatives of the ministry and representatives of the procuring entity or project owner, 1 representative of the Ministry of Finance, 1 representative of the Committee for Planning and Cooperation, and 1 representative from each technical department concerned.
- ☐ In addition, there will also be 1 representative of the Ministry of Foreign Affairs (External Economic Cooperation Department) to specifically monitor the use of external aids and loans.
- ☐ At the local and provincial department's levels. From 1 to 3 representatives of the Province Administrative Office and the procuring agency or project owner, 1 representative of the province Finance Department, 1 representative of the Planning and Cooperation Department, and 1 representative of each technical division concerned.

Article 30: Tender Committee for Direct Contracting

In the case of direct contracting, the project executing agency appoints 3 to 5 members of the tender committee from within the ministry or equivalent agency only.

Article 31: Tender Committee for Price Comparison

In the case of price comparison, the project executing agency or equivalent agency appoints a committee of 3 to 5 members from within the agency, or the project executing agency may assign the responsibility of price comparison to the procuring entity or project owner.

Article 32: Tender Committee for Foreign Grant or Loans

In the case of procurement financed with external aids or loans, when stipulated in the agreement between the Government and Donor, the appointment of the tender committee and award of the specific contract is governed by the terms of that contract. Where such appointment and award are not provided for or where no other provisions exist, this Decree applies.

Article 33: Rights and Duties of Tender Committee

The Tender Committee at all levels has the duty to prepare bidding documents, carry out and evaluate bids, and propose the award of contracts. Tender committees are required to notify unsuccessful bidders and return deposited bidding securities within 7 days after the ministry or project executing agency approves the selected bidder and the selected bidder agrees to enter the contract.

Article 34: Bid Examination and Evaluation

Tender committees are required to examine and evaluate bids within 15 days and submit a report to the project executing agency for approval of the successful bidder except in necessary cases, in which case prior approval is required from Ministry of Finance.

Article 35: Confidentiality

Any information related to the examination and evaluation of bids and proposal to select the successful bidder are to be kept confidential by the tender committees and may not be disclosed to competing bidders or unrelated parties until the successful bidder is selected and has agreed to enter the contract.

Article 36: Approval of the Bid Evaluation

Upon completion of the bid evaluation, the project executing agency is required to hold a meeting to adopt bidding results. Representatives of the Ministry of Finance will be present at each such meeting, which will be chaired by the Minister or his assignee, to adopt or reject the award decision when inconsistent with the basic principles of this Decree.

Where the award decision may not be adopted, the project executing agency may not modify the evaluation report of the procurement committee, but may request the tender committee to review the main reasons for which the award decision could not be adopted and is required to send the evaluation report to the State Inspection Authority for review.

Article 37: Conclusion of Contract

Upon adoption of the award decision by the project executing agency, the procuring entity or project owner is required to notify the successful bidder and the successful bidder's acceptance is sought. Before entering a contract with a supplier or contractor, the procuring entity or project owner is required to check whether the successful bidder's qualifications (financial situation) have not changed since the bid's submission and still has sufficient ability to perform. If the qualifications have changed in a manner that is likely to affect the contract's performance, the procurement committee is required to re-consider and award the contract to the next highest evaluated bidder. Contract documents must be signed by the duly authorized representative of the project executing agency and the duly authorized representative of the selected firm.

Section 5

Supervision, Sanctions and Complaints

Article 38: Supervision

In the case of important and high value procurement financed by the national budget, the Ministry of Finance (Procurement Monitoring Office) will monitor each stages starting from the preparation of bidding documents until the conclusion of contracts and execution of the contracts.

Article 39: Sanctions

- ☐ Any individual, legal entity or organization breaching or acting inconsistently with the provisions of this Decree will be punished through educational measures, warnings and disciplinary measures provided under the civil service rules, fined or punished as provided by law according to the seriousness of such acts.
- ☐ Any breach to this Decree constituting a criminal offense, such as falsification of documents, abuse of authority, negligence in the performance of duties will entail criminal proceedings.
- ☐ In case of collusion with firms or individuals in the unrealistic design and costing of works or in favoring awards of contracts for joint or personal interest, thereby causing loss to national or collective property, court proceedings and punishments will be carried out as provided by law.
- ☐ Contracts for the procurement of goods, works and services that are entered without passing through any of the bidding procedures described under Section 2 of this Decree and contracts entered on the basis of bidding procedures lacking transparency are considered as void.
- ☐ Any bidder bribing or promising material or other rewards either directly or indirectly to the procurement committee or an individual involved in decision making for the purpose of obtaining the contract through non-transparent bidding and improper bidding procedures may be disqualified by the procuring agency or the project executing agency. A report will also be made and sent to all bidders or court proceedings may be induced.

Article 40: Complaints

Bidders knowing about an improper act by the procuring entity or project executing agency in relation with procurement may file a written complaint and submit evidence to the chairperson of the tender committee. Such complaint must be considered and resolved in accordance with the rules and regulations on the implementation of this Decree.

Section 6

Final Provisions

Article 41: Implementation

To ensure the proper and efficient implementation of this Decree, the Ministry of Finance is entrusted to develop and issue appropriate and adequate decisions, regulations, recommendations and detailed measures from time to time and has the duty to monitor and control their actual implementation within the scope of its mandate.

Ministries and equivalent agencies are required to implement this Decree and the relevant regulations and decisions in a strict and efficient manner.

Article 42: Effectiveness

This Decree is effective from the date it is signed and replaces Decree 95/PM of 5 December 1995 on the public procurement of goods, works and services.

Prime Minister of Lao PDR