

**THE MINISTRY OF  
INDUSTRY AND TRADE**

No. 23/2014/TT-BCT

**SOCIALIST REPUBLIC OF VIET NAM  
Independence - Freedom - Happiness**

*Ha Noi, day 25 month 7 year 2014*

**Circular**

**Regulating on procedure for self-making, assessing and approving contracts for  
designing & manufacturing auxiliary equipment for thermal power plants in  
Vietnam**

*Pursuant to the Decree No. 95/2012/ND-CP dated November 12, 2012 of the  
Government defining the functions, tasks, powers and organizational structure of The  
Ministry of Industry and Trade;*

*Pursuant to the Decree No. 48/2010/ND-CP dated May 5, 2010 of the Government on  
contracts pertaining to construction activities;*

*Pursuant to the Law No. 43/2013/QH13 dated November 26, 2013 on Bidding;*

*In the furtherance of the Decision no 1791/QD-TTg dated November 29<sup>th</sup> 2012 of the  
Prime Minister approving the experimental mechanism for designing & manufacture  
of auxiliary equipment for thermal power plants in Vietnam during 2012 - 2025;*

*At the request of the General Director of General Department of Energy;*

*The Ministry of Industry and Trade issues the Circular regulating procedure for  
making, assessing and approving contracts for designing & manufacturing of  
auxiliary equipment for thermal power plants in Vietnam.*

**Chapter I**

**GENERAL PROVISION**

**Article 1. Scope of adjustment and subjects of application**

**1. Scope of adjustment**

This Circular promulgates the procedure for making, assessing and approving contracts for designing & manufacturing of auxiliary equipment for thermal power plants in Vietnam between the investors and Vietnamese contractors.

**2. Subject of application**

a) Investors in the thermal power plant projects assigned by the Prime Minister to engage in the experimental design & manufacture of auxiliary equipment for thermal power plants in Vietnam according to the Decision No. 1791/QD-TTg dated November 29, 2012 of the Prime Minister (hereinafter referred to as Decision No. 1791) and investors in other thermal power plant projects according to the Prime Minister's decision;

a) Vietnamese mechanical enterprises participating in designing and manufacturing auxiliary equipment for thermal power plants in Vietnam prescribed in clause 5, Article 1 of Decision No. 1791 and other enterprises appointed by the Ministry of Industry and Trade.

c) Vietnamese consultancy units are prescribed in clause 4, Article 1 of Decision No. 1791 and foreign consultancy units designated to participate in designing and manufacturing auxiliary equipment for thermal power plants.

## **Article 2. Term interpretation**

In this Circular, the terms below are construed as follows:

1. *Vietnamese contractor consortium who design and manufacture auxiliary equipment for thermal power plants* (hereinafter referred to as Consortium) is a combination of at least 02 units, including a design & manufacturing consultant and Vietnamese mechanical enterprises, according to Point b of Clause 4, Clause 5, Article 1 of Decision No. 1791 and enterprises appointed and supplemented by The Ministry of Industry and Trade.

2. *Investors* are the investors in the thermal power plant projects who have auxiliary equipment and are assigned to design & manufacture the equipment in Vietnam, according to Clause 1, Article 3 of this Circular.

3. *Foreign design consultants* are foreign organizations, individuals designated by the Consortium to provide the design copyright, transfer design technology and support the design and manufacture of auxiliary equipment for thermal power plants.

4. *Foreign materials & equipment suppliers* are foreign contractors designated by the Consortium to supply materials and equipment that cannot be manufactured in Vietnam in order to ensure conformity with the designs and specifications of equipment. With regard to the projects mentioned in Point b Clause 1 Section 1 of Decision No. 1791, it is required to have requirements for transfer of designing & manufacturing technologies.

5. *Contracts for designing & manufacturing auxiliary equipment for thermal power plants* (hereinafter referred to as Contracts) is a written agreement between the Investor and the Consortium to design and manufacture auxiliary equipment for thermal power plants in Vietnam.

## **Article 3. List of projects and equipments designed, manufactured in Vietnam**

### **1. List of projects**

a) Thermal power plant projects: Quynh Lap 1, Song Hau 1, Quang Trach 1 mentioned in Decision No. 1791;

a) Other thermal power plant projects approved by the Prime Minister;

c) Thermal power plant projects to which the form of Contracts of Build – Operate – Transfer is applied (hereinafter referred to as BOT contract projects)

## 2. List of auxiliary equipment

List of auxiliary equipment for thermal power plants to be designed & manufactured in Vietnam, according to Clause 3 Article 1 of the Decision No. 1791.

## **Chapter II**

### **PROCEDURE FOR MAKING, ASSESSING AND APPROVING CONTRACTS FOR DESIGNING & MANUFACTURING AUXILIARY EQUIPMENT FOR THERMAL POWER PLANTS IN VIETNAM**

#### **Article 4. Procedure for approving contractor Consortium for designing & manufacturing of auxiliary equipment for thermal power plants in Vietnam**

##### 1. Suggestion for Consortium

###### a) Application's contents

In consideration of scope and work volume of designing & manufacturing auxiliary equipment of each specific project, the Mechanical Research Institute shall reach an agreement with the Investors in the projects mentioned at Point a & b Clause 1, Article 3 of this Circular and mechanical enterprises to submit an application requesting approval for Consortium establishment to The Ministry of Industry and Trade. The application includes:

- Work assignment of the Consortium and each member therein, focus on designing and manufacturing a number of auxiliary equipment that match their ability;
- A written request for approval Consortium establishment, according to Appendix 1 enclosed herewith this circular;
- A list of Consortium members and leader;
- Each member's profile;
- A plan for designing and manufacturing auxiliary equipment thermal power plants.

b) The application shall be submitted directly or by post.

##### 2. Consortium establishment approval

a) Within 05 (five) working days from the receipt of the application, the General Department of Energy must send a written request for additional contents in case the submitted application is not satisfactory.

a) Within 05 (five) working days from the receipt the request of the General Department of Energy, The Mechanical Research institute is responsible for satisfying the application for Consortium approval.

a) Within 20 (twenty) working days from the receipt of the satisfactory application, the General Department of Energy must request The Ministry of Industry and Trade to consider approving the list of Consortiums for designing and manufacturing auxiliary equipment for thermal power plants.

3. The participation of a foreign designing consultant in a Consortium

a) The Mechanical Research Institute shall reach an agreement with the members of the Consortium on proposal of a foreign designing consultant who will support designing and manufacturing and transfer technology for the auxiliary equipment for which the Consortium is responsible;

b) the Consortium shall negotiate with the Investors on scope, costs of the work done by the foreign designing consultant and report in the Consortium establishment application.

**Article 5. Procedure for making, assessing and approving plan for project bidding**

1. With regard to the projects mentioned at Point a of Clause 1, Article 3 of this Circular:

a) Bidding plan formulation

Every investor has the responsibility to formulate and submit a bidding plan to The Ministry of Industry and Trade. The auxiliary equipment mentioned at Clause 2, Article 3 of this Circular shall be separated into one or more contracts, which are executed by various Consortiums;

The bidding plan content must comply with Point a of Clause 2, Article 1 of Decision No. 1791 and the Decree of the Government on the regulation of the Law on Bidding on selecting the contractors.

a) Assessing for approving the bidding plan

a) Within 20 (twenty) working days, if the documents are satisfactory, the General Department of Energy must assess the bidding plan and request The Ministry of Industry and Trade to consider approving the plan.

a) Approving the bidding plan

a) Within 10 (ten) working days from the date on which the bidding plan is approved by The Ministry of Industry and Trade, the Investors are responsible for approving the project bidding plan.

2. With regard to the projects mentioned at Point b of Clause 1, Article 3 of this Circular:

Every investor has the responsibility to make a bidding plan for the contracts performed by the Consortiums and then request The Ministry of Industry and Trade to

consider approving the plan. The procedure for making, assessing and approving plan for the contract bidding must comply with Clause 1 of this Article.

**Article 6. Contract for domestic design and manufacture of auxiliary equipment to the Decision No. 1791**

In consideration of the request of the Investor, the Consortium shall send a proposal to the Investor for consideration. Then, the parties involved shall initiate the contract negotiation. The required contents of the Contract include:

**1. Scope of the Contract**

The scope of the contract includes all the works related to design & manufacture of auxiliary equipment for thermal power plants in Vietnam, with the following 2 major parts:

- a) The goods & services in Vietnam, i.e. Design & manufacture consultancy; equipment processing & producing performed by mechanical enterprise; equipment transportation to site; equipment installation guidance & supervision; Test run and inspection of the system of equipment and other contractual works;
- b) The foreign goods & services, i.e. Foreign design & manufacture consultancy, design copyright purchase, technology transfers and designing & manufacturing support; Materials, components that cannot be manufactured in Vietnam used for processing, producing, assembling and other contractual works.

**2. Determination of value of goods, services and currency**

**a) Goods & services in Vietnam**

- The prices of goods, services shall be determined according to the work volume of designing, manufacturing and the estimation norm of design and manufacture of auxiliary equipment for thermal power plants prescribed at the Decision No. 2572/QĐ-BCT dated April 23<sup>rd</sup> 2013, database for determining machine shift prices & unit prices of thermal power plants equipment manufacture announced at Letter No. 4233/BCT-TCNL dated May 15<sup>th</sup> 2013 of the Ministry of Industry and Trade;
- Cost of equipment transportation to site shall be calculated according to the current regulations related.

**a) Foreign goods & services**

With regard to the materials, equipment, components that cannot be manufactured in Vietnam (the Consortium directly imports or buys from an importer in Vietnam):

- The prices in the design & manufacture Contract shall be temporarily calculated according to the reference prices of the similar equipment manufactured or quoted by the materials and equipment supplier at the time the estimation is made;

- The final price shall be calculated according to the signed Contract between the Consortium and the foreign supplier of materials & equipment (designated by the Consortium through bidding and approved by the Investor).

c) Currency

- For the materials & services available in Vietnam and the materials, equipment, components bought from an importer in Vietnam: Vietnam Dong (VND);
- For the materials, equipment, components are directly imported and foreign design consultancy services: USD (to be converted to VND at the time the Contract is signed);

d) Apply 5% reduction to the value of the contracts performed by appointed Consortiums (without bidding).

3. Forms of design & manufacture contracts

A design & manufacture contract is a combination of design contracts and manufacture contracts, includes:

- a) For goods & services in Vietnam, the contract is made according to adjusted unit price. The unit price shall be adjusted when a Decision on adjusting unit price of labor, raw materials is made by competent State agencies;
- b) For the foreign design & manufacture consultancy services, the contract is made according to duration and fixed unit price;
- c) For the materials, equipment, components that cannot be manufactured in Vietnam and are directly imported or bought from an importer in Vietnam, the contract is all-exclusive.

**Article 7. Application for approving the equipment design & manufacture contract**

1. Every Investor shall send the General Department of Energy an application for Contract approval, which includes:

- a) A written request for Contract approval according to Appendix 2 enclosed herewith this circular;
- b) 01 (one) set of drafted contract signed by the parties, enclosed with related documents i.e. Decision on investment project approval, Decision on bidding plan approval, Consortium's assignment of design & manufacture, Minute of Contract negotiation between the Investor and the Consortium.

2. The request shall be submitted directly or by post.

**Article 8. Approving the equipment design & manufacture contract**



1. Within 10 (ten) working days from the receipt of the satisfactory request, If the General Department of Energy does not offer any opinion, the design & manufacture contract is considered approved.
2. In case of the General Department of Energy offer opinions on the Contract, within 5 (five) working days from the receipt of the opinions, the Investor must send a written explanation to the General Department of Energy before the contract is officially signed.

**Article 9. Contract for designing and manufacturing auxiliary equipment for the other thermal power projects to the Prime Minister's Decision**

1. Provided that the Consortium is approved by The Ministry of Industry and Trade, the investors of the thermal power projects have the responsibility to conclude contracts with the Consortia to design and manufacture auxiliary equipment in Vietnam for the projects.
2. The investor shall request the Engineering - Procurement & Construction Contractor (hereafter referred to as EPC applied to projects executed under EPC contracts), the main equipment supplier (applied to projects that are not executed under EPC contracts) to give technical requirements for equipment to be designed and manufactured in Vietnam and manage the interface between main & auxiliary equipment.
3. The required content of contract must comply with Article 6 of this Circular. With regard to materials, equipment, components that cannot be manufactured in Vietnam, the final price is according to the selection of foreign supplier, according to current regulations.
4. The documents and procedure for Contract approval must comply with Article 7 & 8 of this Circular.

**Article 10. Contract for designing, manufacturing auxiliary equipment for the BOT contract projects**

1. The Ministry of Industry and Trade shall negotiate with the investors in the BOT contract projects about the equipment, which are to be designed and manufactured in Vietnam by the Consortia.
2. The investors of the BOT contract projects have the responsibility to conclude contracts with the Consortium approved by The Ministry of Industry and Trade to conduct designing and manufacturing auxiliary equipment in Vietnam for the projects.
3. The investors shall give technical requirements for the equipment and manage interface between main & auxiliary according to Clause 2, Article 9 of this Circular.

4. The required contents of contract, the final price for the materials, equipment, components that cannot be manufactured in Vietnam must comply with Clause 3, Article 9 of this Circular.

#### **Article 11. Report regime on contract implementation**

Quarterly, the Consortium is responsible for sending a report on their domestic design and manufacture of auxiliary equipment for thermal power plant to the General Department of Energy – The Ministry of Industry and Trade. The content of the report must comply with the attached to this Circular.

### **Chapter III**

#### **IMPLEMENTATION PROVISION AND ORGANIZATION**

#### **Article 12. Implementation effect**

This Circular takes effect on September 10, 2014.

#### **Article 13. Implementation organization**

1. The General Department of Energy is responsible for monitoring, supervising, inspecting this Circular's implementation.
2. The Investors in the thermal power plant projects, mechanical design & manufacture enterprises and related organizations, individuals are responsible for implementing this circular.
3. Any difficulties arising on the implementation of this Circular should be reported in writing to the General Department of Energy for collecting and suggesting the amendments and supplements to the Ministry of Industry and Trade.

*For the Minister of Industry and Trade*

*Le Duong Quang*