



Vietnam Chamber of Commerce and Industry
WTO Center

REPORT

**THE REVIEW OF VIETNAM'S LEGAL FRAMEWORK AGAINST
COMMITMENTS UNDER EUROPEAN UNION - VIETNAM FREE TRADE
AGREEMENT (EVFTA) ON GOVERNMENT PROCUREMENT**

INTRODUCTION

At the beginning of December 2015, the European Union and Vietnam announced the conclusion of negotiations for the European Union - Vietnam Free Trade Agreement (EVFTA), one of the two largest new-generation free trade agreements of Vietnam. With a broad coverage of various trade and trade-related sectors at and behind countries' borders, EVFTA is forecasted to have a significant impact on Vietnam's legal framework and economic institutions in the coming time.

One of the aspects under the coverage of EVFTA, which is considered to have significant and direct impacts on Vietnam's legal framework is Government Procurement. This is an institutional aspect that until now the country has not been bound by any international entry-into-enforcement agreements.

The review of Vietnam's legal framework against EVFTA commitments on Government Procurement is conducted by Vietnam Chamber of Commerce and Industry (VCCI) with analyses about the compatibility of Vietnam's legal framework against commitments from the perspectives of its firms (tendering participants). From this, recommendations are made to guarantee the conformity to the Agreement in the most beneficial ways for firms.

This Review belongs to a series of reviews of Vietnam's legal framework against EVFTA commitments on five important aspects (including Government procurement, Government procurement, Intellectual property, Customs and trade facilitation, and Transparency). All of these reviews are carried out by Vietnam Chamber of Commerce and Industry (VCCI) in the Program titled "The readiness of Vietnam's legal framework in implementing EVFTA" with the supports of the Embassy of the United Kingdom of Great Britain and North Ireland in Vietnam.

This Review report is expected to be a good and useful information source for the process of reviewing the legal framework for EVFTA enforcement of the Government, and also considered a meaningful reference for the Congress's authorities in the process of approving, directing, implementing and controlling the EVFTA implementation.

Vietnam Chamber of Commerce and Industry expresses its thanks to the Embassy of the United Kingdom of Great Britain and North Ireland in Vietnam for their supports in the implementation of this meaningful program./.

TABLE OF CONTENT

	Page
Introduction	2
Section 1	5
Summary about results of the Review	
<i>I. Targets and situation of the Review</i>	5
<i>II. Coverage of the review</i>	6
1. About commitments on Government Procurement in EVFTA	6
2. About Vietnam's Tendering-related legislations	8
3. About criteria for assessment and recommendations	8
<i>III. Summary about results of the Review and Recommendations</i>	9
1. The group of EVFTA's Government Procurement commitments that Vietnam's legal framework have been compatible with	9
Review results	9
Assessments and Recommendations	13
2. The group of EVFTA's Government Procurement commitments that Vietnam's legal framework have partly or totally been incompatible with	13
Review results	13
Assessment and Recommendations	17
Section 2	25
The detailed review table of Vietnam's legal framework against EVFTA commitments on Government Procurement	

LIST OF ABBREVIATIONS

EVFTA:	European Union - Vietnam Free Trade Agreement
EU:	European Union
FTA:	Free Trade Agreement
GPA:	WTO's Government Procurement Agreement
PLVN:	Vietnam's legal framework
TPP:	Trans-Pacific Partnership agreement
WTO:	World Trade Organization

Section 1

SUMMARY ABOUT RESULTS OF THE REVIEW

I. Targets and situation of the Review

On 2nd December 2015, the official conclusion of negotiations for European Union - Vietnam Free Trade Agreement has been made. The text of the Agreement, announced on 1st February 2016 with 24 chapters, implies a new generation agreement with a very broad coverage from traditional trade sectors (such as goods, services, etc) to the trade sectors that have been committed by Vietnam for the first time (such as State-owned enterprises, Government procurement, etc), and even non-trade but closely linked to trade issues (such as environment, sustainable development, etc). The commitment and liberalization levels under the Agreement are also much higher than that under previous free trade agreements signed by Vietnam, and approximately equivalent to that under Trans-Pacific Partnership (TPP).

With its coverage and commitment levels, EVFTA is forecasted to have a significant impact on Vietnam's legal and economic institutions in the coming time. The commitments under EVFTA raise the need of adjusting Vietnam's legal framework to guarantee its seriously conforming and enforcing specific obligations in many sectors. In turn, this change expectedly creates a new institution reform wave for Vietnam, which helps enhance the quality of the legal system, improve business environment, set up a good base for sustainable development and bring considerable benefits for domestic investors and their foreign partners especially from European Union.

One of the committed aspects which is considered to directly and substantially affect Vietnam's legal system under EVFTA is the institution on government procurement - a kind of institution giving provisions regarding procurement processes of State organizations and agencies' goods and services. Under EVFTA, this institution on government procurement is mainly included in the Chapter of Government Procurement. Under Vietnam's legislations, the government procurement - related issues are covered by the legal system on tendering. By the end of 2015, Vietnam had not made any international (entry-into-enforcement) commitments on government procurement (At present, the country just takes a position of an observant of WTO's Government Procurement agreement and has commitments on government procurement under Trans-Pacific Partnership Agreement that was signed, but not approved and did not entry into enforcement). As a result, it could be understood that Vietnam's domestic legislations on Tendering have been built up so far based

on the country's own decisions, and they are not bound by any related-international agreements.

Therefore, the review of Vietnam's current legal framework against new commitments under EVFTA on government procurement is a very necessary step, especially during the preparation period for its being compatible with EVFTA as the Agreement officially takes effect.

According to Vietnam's process of negotiating and approving international agreements, this kind of review is certainly carried out by relevant State authorities (Ministry of Justice and Ministry of Government procurement and Planning) to support the Congress's approving this Agreement and the guarantee of the country's implementing its obligations under EVFTA.

Nevertheless, the active review from *the perspectives of firms* plays a very important role to make clear the beneficiary aspects of firms in implementing obligations under EVFTA, adding to the review results which have been found by State agencies, and making recommendations for adjusting domestic legislations to bring the highest benefits for firms.

The purposes of the Review are to make (i) detailed comparisons between Vietnamese legislations on Tendering and particular obligations, commitments on government procurement included in the Chapter of Government Procurement under EVFTA; (ii) analyses and assessments about the situation of domestic legislations compared with EVFTA's requirements and Vietnam's self-improvement demand and (iii) proposals of EVFTA - implementing measures from the perspectives and benefits of firms.

II. Coverage of the Review

1. About commitments on Government Procurement in EVFTA

Under EVFTA, commitments on government procurement are mainly provided Chapter 9 on Government Procurement and 03 Annexes, 02 out of which are related to Vietnam (These 03 annexes are Annex 9a about transitional measures for the implementation of the Government Procurement chapter, Annex 9b about the EU's market access offer and Annex 9c about Vietnam's market access offer).

In other chapters under EVFTA, there are no specific commitments, but just some exceptions on government procurement. It is preferential to apply commitments in Government Procurement chapter in comparison with relevant ones in the above other chapters.

Therefore, this Review is made for each commitment in:

- Chapter 9 on Government Procurement of EVFTA
- Annex 9a about transitional measures for the implementation of the Government Procurement chapter: This annex is comprised of Vietnam's particularly retaining obligations about deadlines and ways to implement some commitments provided in the Government Procurement chapter.
- Annex 9c about Vietnam's market access offer: This annex includes lists of procuring entities, types of procured goods and services and thresholds of the value of procurements, over which Vietnam offers market access for EU's suppliers.

Regarding the content, commitments in Chapter 9 - Government Procurement could be categorized in to the following groups:

Group 1: General commitments on tendering

- Commitments relating to transparency in tendering procedures (requirements of publishing information, notices in each step of the tendering procedures and deadlines, etc);
- Commitments on non-discrimination and national treatment;
- Commitments on applying open tendering for all procurements under the Agreement's coverage, except the cases that meet the conditions to apply selective or limited tendering;
- Commitments on measures of claim and dispute settlement during the tendering process;
- Commitments relating to the usage of electronic means in tendering (supplier registration system, information publishing by electronic means, electronic auction, etc).

Group 2: Commitments relating to open tendering

- Commitments on publishing information about procurements (including the Notice of intended procurements and Tender documentation) via electronic means or in newspapers, and free of charge;
- Commitments on Tender documentation;
- Commitments on publishing annual notices of planned procurement;
- Commitments on deadlines in tendering

Group 3: Commitments relating to selective tendering

- Commitments on publishing information (the content and publishing time, etc)
- Commitments on rights of suppliers in the short list

Group 4: Commitments relating to limited tendering

- Commitments relating to cases, in which limited tendering is allowed to be applied
- Commitments relating to obligations of procuring entities in cases of applying limited tendering (storing procurement information, clarifying reasons of application, etc)

2. About Vietnam's Government Procurement-related legislations

At the time of this Review, Vietnam's legal framework on tendering has just experienced a big change with Law on Tendering to be issued in 2013 and to come into effect on 1st July 2014. Except 01 Decree guiding Tendering issued and entering into enforcement in August 2014, most of the legislations guiding this Law on Tendering (comprising of 02 Decrees and 08 Circulars) have just been issued in 2015. Currently, there are some Decrees to be on drafting process (Circular providing details about professional training and improving on tendering, and Circular providing details about the preparation of tender documentation EPC, etc). In addition to legal documents on tendering generally- applied for tendering activities of all relevant subjects, in the healthcare sector, there are specific legislations on the list of must-be-tendered-pharmaceuticals and tendering process.

About the range of documents to be analyzed, in reality, in Vietnam's legal framework, there are many documents in different levels providing the similar legal issues/institutions (for example, regarding the transparency in tendering, there are provisions under all levels of Law, Decree and Circular. Apart from direct regulations provided in tendering legislations, there are also indirect ones under Law on Promulgation of Legislative documents, Decree on Legal aid for Enterprises, Decree on Controlling Administrative procedures, Decree on "Cong Bao (official gazette)", etc). This Review does just focus on documents containing direct and most broadly/highly covered provisions about the analyzed issues. It does not list any indirectly related regulations, or repeat other rules with higher legal validity.

3. About criteria for assessment and recommendations

There are different terms presenting degrees of obligations in commitments under EVFTA, ranging from "shall" to "make efforts", from "may" to "seek to". Concerning the time of implementation, while some obligations of Vietnam are required to be implemented immediately as soon as EVFTA takes effect, others just need fulfilling according to a specific schedule (calculated in years since the time that EVFTA takes effect). This Review takes particular commitments

with specific nature and content (including retained obligations) in each of these relevant obligations as standards.

Regarding recommendations, in principle, commitments under EVFTA just cover Vietnam's obligations for EU's partners, but not for others. Meanwhile, Vietnam's legal system is generally applied for all partners. Therefore, even in cases that Vietnamese legislations are incompatible with EVFTA, recommendations of amending legal documents in principle are just made for activities under the coverage of EVFTA, but not for all ones. Despite that fact, in many cases, the implementation of obligations under EVFTA, if generally carried out, is beneficiary for firms, especially Vietnamese firms. As a result, while the review is made on Vietnam's general legislations, recommendations could be either amending domestic legislations for a purpose of specific application for EU's partners, or adjusting tendering legislations for a purpose of general application for all relevant subjects.

III. Summary about Results of the Review and Recommendations

Results of the review about Vietnam's legal framework against EVFTA commitments on government procurement regarding specific obligations are as follows:

1. The group of EVFTA's Government Procurement commitments that Vietnam's legal framework have been compatible with

Review results

The detailed review presents the compatibility of Vietnam's legal framework with a majority of commitments under EVFTA on government procurement.

At first glance, these results seem to be surprising. The reason is that Vietnam has not been bound by such any international commitments relating to government procurement as the ones understood in EVFTA. The country has been an observant of WTO's Government Procurement Agreement (GPA) since December 2012 and it has not had to comply with any obligations under this GPA. Therefore, in principle, Vietnamese legislations on tendering do not need to comply with any international standards and principles on government procurement.

Nevertheless, if the origin of EVFTA's commitments and development of Vietnam's legal framework on government procurement are carefully looked into, the conformity of quite many committed obligations under EVFTA to the country's current legislations is reasonable and explainable.

At first, the texts of commitments in Government Procurement chapter under EVFTA is made totally on a basis of GPA, hence, they are not entirely new for

Vietnam as the country has been an observant of this GPA since the first day of the EVFTA-negotiating process.

Secondly, Vietnam has been making a big amendment of its entire legal system on tendering via the adjustment of the first important legal document, Law on Tendering, in 2013 after it became a GPA's observant (with the target of joining in GPA in the future). In addition, the country was simultaneously negotiating Trans-Pacific Partnership Agreement (TPP) and EVFTA on the contents that are similar to those under GPA (except market access). For that reason, at the time of Vietnam's adjusting Law on Tendering, it was definitely perceived by the country about the certainty of making changes to its legal system in conformity with commitments under GPA and similar ones under TPP and EVFTA in the future. Therefore, an appropriate solution for the country in this case was including GPA's basic principles into Law on Tendering 2013 although Vietnam did not have to fulfill these principles at that time.

More specifically, before the above mentioned point of time, Vietnam's tendering activities had faced a quite number of concerns and shortcomings due to the existence of some unreasonable and in-transparent regulations of tendering legislations. This was the main and important motivation for Vietnam in comprehensively adjusting its tendering legislations to meet its self-improvement demand better and to follow the world's general trend appropriately. Meanwhile, GPA includes many principles relating to transparency and competition in tendering procedures, which seem to be suitable standards for Vietnam's reference in its process of basically amending its legislations on tendering.

In particular, Vietnam's legal framework is **totally compatible** with the following commitments under EVFTA on government procurement:

Article I (Definitions)

- Vietnamese legislations are compatible with EVFTA about the concepts of Commercial goods and services, In writing or written, Services, Construction service, Measure, Tendering, Selective tendering, Open tendering, Notice of intended procurement, Publish, Person, Qualified suppliers, and Technical specification

Article IV (General Principles)

- The principle of complying with this Agreement during the tendering process
- The principle of using electronic means

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- The principle relating to rules of origin of tendered goods and services

Article VI (Notices)

- Commitments on publishing Notices of planned procurement

Article VII (Conditions for Participation)

- Commitments on just limiting tendering participation to criteria that relate to legal, financial, commercial and technical capacities
- Commitments on not applying the condition of experience except special circumstances
- Commitments on evaluating the satisfying conditions of participation of suppliers
- Cases that excluding suppliers are allowed

Article VIII (Qualification of Suppliers)

- Commitments relating to supplier registration system
- Commitments relating to multi-use list of suppliers
- Commitments on publishing decisions of a procuring entity about a request for participation in a procurement or application for inclusion on a multi-use list

Article IX (Technical Specifications)

- Commitments on not adopting or applying any technical specification as an obstacle to trade
- Commitments on not adopting or applying any technical specification in terms of descriptive characteristics
- Commitments on not adopting or applying any technical specification that requires or referred to a particular trademark or trade name, etc

Article IXb (Market Consultations)

- Rights to conduct market consultations with a view to preparing the procurement
- Commitments on seeking or accepting advice from independent experts or authorities or from market participants

Article X (Tender Documentation)

- Commitments on the contents that are compulsorily included in the Tender documentation

- Commitments on replying to any reasonable request for relevant information by any interested supplier

- Commitments relating to the modifications of Tender documentation (contents to be modified and procedures of informing about the modifications, etc)

Article XI (Time-Periods)

- General commitments on time-periods

- Specific deadlines for a procurement

Article XV (Treatment of Tenders and Awarding of Contracts)

- Commitments on the way of treating tenders (the treatment process is fair and allows for correction of unintentional errors of a tender's form)

- Commitments on the way of awarding contracts (awarded tender must comply with the essential requirements set out in the notice of intended procurement/ tender documentation)

- Commitments on the criteria of awarding the contract to the supplier having the most advantageous tender or the lowest price (where price is the sole criterion)

Article XVI (Post-Award Information)

- Commitments on informing the procuring entity's contract awarding decisions

- Commitments on maintenance of records about the procurement

Article XVIII (Domestic Review)

- Commitments on maintaining, establishing or designating at least one impartial administrative or judicial authority to review a challenge by a supplier of a breach of this Agreement, or of domestic legislations implementing this Agreement

- Commitments on according efficient and timely consideration to any complaints in a manner that is not prejudicial to the participation or right of ongoing participation of the suppliers

- Commitments on allowing a sufficient period of time for a supplier to prepare and submit a challenge or claim

- Commitments on maintaining, establishing or designating an impartial administrative or judicial authority to review the procuring entity's initial

decision of settling challenges or claims if the supplier continues challenging or claiming

- Commitments on guaranteeing the right of making claims to the Court of Appeals and the due rights of relevant parties in this procedure of claiming to the Court

- Commitments on rapid interim measures to guaranteeing the due rights of relevant parties

Assessments and Recommendations

Most of EVFTA's commitments on government procurement with which Vietnamese legislations on tendering are compatible are either basic obligations being general international tendering practices (such as definitions, basic principles relating to Tender documentation, etc), or general obligations on transparency and competition in tendering process and procedure (such as issues relating to notice of intended procurement and post-award information, etc). That Vietnam's legislations on Tendering (just amended in 2013) include provisions compatible with these above obligations indicates that the country's domestic legislations have made a progress towards being appropriate with international tendering practices (focusing on transparency, competition and efficiency)

For these obligations, as implementing EVFTA, Vietnam does not need to make any adjustments, amendments or changes to any contents of its current legislations.

2. The group of EVFTA's government procurement commitments that Vietnam's legal framework have partly or totally been incompatible with

Review results

The group of commitments that Vietnam's legal framework has partly or totally been incompatible with just comprises of a smaller quantity of separate commitments (just some out of many provisions about one issue) than that in the other group that the country's framework have been compatible.

In particular, Vietnamese legislations are **totally incompatible** with EVFTA's commitments on government procurement in the following issues:

Article I (Definitions)

- Limited tendering
- Procuring entity

Article II (Scope and Coverage)

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- Criteria to specify a procurement under the coverage
 - Covered procurements

Article IV (General Principles)

- The Principle of National Treatment and Non-Discrimination
- The Principle of Offsets

Article V (Information on the Procurement System)

- Commitments on publishing information about measures applied to covered procurements

Article XII (Negotiation)

- Commitments relating to cases that negotiations could be conducted
- Requirements relating to negotiation

Article XIII (Limited Tendering)

- Commitments on the principle of applying limited tendering
- Commitments on just applying limited tendering in the listed circumstances
- Commitments on reporting each contract, to which limited tendering is applied

Article XIV (Electronic Auctions)

- Commitments on applying automatic evaluation method

Annex 9c:

- Vietnam's market access offer under EVFTA

Vietnamese legislations are **partly (but not entirely) incompatible** with EVFTA's commitments on government procurement in the following issues:

Article I (Definitions)

- Electronic auction
- Offsets

Article II (Scope and Coverage)

- The value of a procurement

Article VIII (Qualification of Suppliers)

- Commitments relating to selective tendering (process and way of publishing information, time-periods, etc)

Article IX (Technical Specifications)

- Commitments on not seeking or accepting advice from a person that may have relevant interests in the procurement

Article XIV (Electronic Auctions)

- Commitments on providing participants with all information relating to the auction

Article XV (Treatment of Tenders and Awarding of Contracts)

- Commitments on verifying with suppliers in the cases of a tender having an abnormally low price
- Commitments on not using options, cancelling a covered procurement or modifying awarded contracts in a manner that circumvents the obligations under this Chapter

Article XVI (Post-Award Information)

- Commitments on publication of award information (with must-be included content)

Article XVIII (Domestic Review)

- Commitments on guaranteeing compensations if a review body has determined that there has been a breach or failure of the Agreement or the domestic legislations implementing the Agreement.

In addition, some commitments under EVFTA have not been included in Vietnamese legislations because they could be commitments on **rights** (Vietnam has the right to decide if it implements or not), or **recommended commitments** (Vietnam could non-compulsorily implement), or **scheduled commitments** (Vietnam does not have to immediately implement), or **commitments not relating to domestic legislations**. As a result, although there are no corresponding provisions under Vietnamese legislations, these above commitments are not classified to the "incompatible" subgroup. This subgroup includes the following commitments:

Article I (Definitions)

- Multi-use list

Article II (Scope and Coverage)

- Procurements not under the Agreement's coverage

Article III (Security and General Exceptions)

- Rights to take actions necessary for the protection of essential security interests

- Rights to enforce measures (regarded as exceptions) necessary to protect public morals, order or safety; human, animal or plant life or health; and intellectual property

Article VI (Notices)

- Commitments on publishing notices of intended procurement (means of publishing and must-be-published information)

- Commitments relating to summary notices (content included in these notices)

- Commitments to allow suppliers to prepare for their participation based on notices of planned procurement

Article IX (Technical Specifications)

- Commitments on preferentially basing technical specifications on international standards

- Rights to apply technical specifications to protect the environment

Article XVI (Post-Award Information)

- Commitments on provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender

- Commitments on collection and reporting of statistics relating to procurements under the Agreement's coverage

Article XVII (Disclosure of Information)

- Commitments relating to providing information relating to procurements under the Agreement's coverage on EU's requests

- Un-disclosed information

Article XVIII (Domestic Review)

- Commitments on the encouragement of settling claims via consultations between a procuring entity and suppliers

Article XIX (Modifications and Rectifications to Coverage)

- Commitments on the process and procedure of modifications and rectifications to coverage of this Chapter

Article XX (Specialized Committee on Services, Investment and Government Procurement)

- Commitments on rights of the Specialized Committee relating to government procurement

Article XXI (Cooperation)

- Commitments on VN-EU cooperation on government procurement

Article XXII (Future negotiations)

- Commitments relating to negotiations between two parties on electronic procurement
- Commitments relating to negotiations between two parties on government procurement market access

Assessments

Out of EVFTA's committed obligations with which Vietnam's legal framework have partly or totally been incompatible, apart from some just specifically provided under EVFTA, most of them are related to transparency and competition and several of them are concerning systematic issues of tendering (such as conditions for each type of tendering, technical specifications, challenges and claims in tendering, etc).

(i) About "incompatible" commitments just specifically provided under EVFTA

The commitments with which Vietnamese legislations are entirely incompatible and different are mainly the ones relating to specific issues just provided under EVFTA (for instance, commitments on the criteria to specify covered procurements, on the publishing of notices and documents just specifically applied for covered procurements, offsets, etc). About the content, these are commitments regarding procurement market access for EU's suppliers (tendering principles applied for cases that EU's suppliers are allowed to participate in a procurement in Vietnam according to EVFTA's market access commitments)

It is usual and logic that Vietnam's general legislations on government procurement do not cover these above issues. In principle, for sectors that Vietnam has committed for market access, the country just needs to make adjustments for its legislations for being compatible with the Agreement after those commitments entry into enforcement. Obviously, in reality, there are many cases that before Vietnam committed for market access, its legislations had provided equal or even higher levels of market access to foreign partners than the committed levels (for example, there are many service market access

commitments of Vietnam under WTO in 2007 with even lower levels of market access than those applied by the country previously). However, particularly for tendering, under Vietnamese legislations, this market is just for domestic suppliers and entirely close for foreign ones, except (i) the cases of procurements using ODA or international loans and compulsorily complying with donors' requirements about these procurements-related issues (including ones about suppliers); and (ii) 03 circumstances, in which international tendering is allowed to be applied according to Law on Tendering (these 03 circumstances are listed in Law on Tendering). Until now, Vietnam has just had two agreements with commitments on procurement market access, which are under TPP and EVFTA. These two free trade agreements, negotiations of which have just been concluded by parties, have not come into effect yet, hence, they have not been internalized into domestic legislations. As a result, that there are no provisions on market access for EU's partners in compliance with EVFTA under Vietnamese legislations on Tendering is understandable.

For these above reasons, the amendments of Vietnamese legislations to comply with EVFTA's commitments on market access should be carried out just by issuing a Suggested Law with provisions to internalize these commitments into domestic legislations and to be specifically applied for procurements under EVFTA's coverage.

(ii) About "incompatible" commitments regarding the issues of transparency and competition

Guaranteeing transparency and competition in tendering procedures is an issue under general coverage, hence, basically not related to specific contents under market access coverage. Logically, as the tendering procedures get more transparent and public, and the tendering conditions become more favorable and fairer, the tendering implementation will be more convenient and equal, and the suppliers' rights and obligations will improve, and the effectiveness of capital usage will be higher. Due to that reason, commitments about transparency and competition on government procurement under EVFTA in particular and under GPA in general are beneficiary for not only foreign suppliers participating in covered procurements, but also domestic suppliers and domestic legislations on tendering.

This could be an explanation for Vietnam's interests and internalization of many regulations about transparency and competition under GPA (in the same way with that under EVFTA) into its domestic legislations, which are generally applied for all procurements, during the process of amending the country's domestic legislations in 2013 comprehensively.

The question is that with the above logic analysis, why are several transparency and competition - related commitments under GPA (and also under EVFTA) excluded from Vietnam's legal system (despite the fact that Vietnam have possibly perceived about considerable efficiency of these commitments and also about compulsory requirements of implementing them (even in general coverage under GPA) as the country joins GPA or enforces EVFTA?)

The answer is the costs of implementing these regulations. The differences in the "level of difficulty in enforcement" could be easily discovered as the groups of "compatible" and "incompatible" commitments on transparency and competition are taken into consideration at the same time.

In particular, in comparison with the transparency and competition - related commitments which have been internalized by Vietnam into its domestic legislations, those in the group of "incompatible" commitments require bigger efforts and impose higher costs for implementation. For instance, the provision about the request of publishing procurement information could be met in an easier way than that about the compulsorily published contents. Moreover, the principle of specifying time-periods could be immediately applied, while the minimal periods seem to be difficult to be adopted due to a fact that they could affect significantly the speed of the whole process if extended or shortened. Perhaps in the year of 2013, Vietnam's tendering operation system (human resources and organization) was unable to meet all requirements immediately, hence, in spite of being promisingly efficient, the above commitments have not been internalized into domestic legislations.

However, if more and deeper considerations are taken into, it could be found that not a small number of these obligations are in nature not difficult and costly to be applied especially at the time that administrative reforms and e-Government applications are made in a strong manner in most levels and sectors, particularly in Central and Central-level procuring entities, and that requirements of competitions and institutional reforms get more important to meet integration requests better.

(iii) About "incompatible" commitments regarding the issue of tendering system

Several of commitments, with which Vietnamese legislations are incompatible, are on basic issues of tendering system (such as limited tendering, electronic auction, etc). For these cases, that Vietnamese legislations have not "internalize" completely all provisions under GDP (and EVFTA as well) as amendments for domestic legislations on Tendering in 2013 were made comes from the reason that the issues of system itself could not be at once dealt with,

and it is impossible to directly and immediately shift from the old to the new system, but just gradually shift due to requirements of a duration of time and a preparation of resources.

(iv) About "non-compulsory" commitments

Because these commitments are non-compulsory, Vietnam could adjust its legislations to be suitable with the real situation. It should be noticed that:

- Regarding commitments on rights: Vietnam should make use of these rights by including them into its legislations (depending on the real situation, either general or specific legislations for EVFTA could be included);
- Regarding recommended or optional commitments (non-compulsory implementation): Vietnam could consider adjusting its legislations to be suitable with its benefits in each period of time;
- Regarding commitments that Vietnam does not have to implement immediately due to its retaining obligations as scheduled (mainly commitments in Article VI about Notices, Article XI about Deadlines, Article XVI about Post-award information): Despite being considered being compatible, many of relevant provisions will become incompatible as the time of retaining obligations comes to an end. At that time, Vietnam will compulsorily amend its legislations on Tendering, at least for procurements under this Agreement's coverage to comply with EVFTA's commitments.
- Regarding commitments that are not under the coverage of domestic legislations: Although Vietnam does not have to amend its domestic legislations to be compatible with EVFTA's commitments, the implementation of these commitments (providing information for EU, collecting statistical information on EU's requests, etc) must be made. Therefore, it is necessary to build up internal mechanisms of in-charge authorities on tendering to be bases for implementing these obligations.

Recommendations

In principle, commitments under EVFTA are compulsorily complied by Vietnam as the Agreement comes into enforcement, however, those obligations are just imposed on procurements under the coverage of EVFTA.

Therefore, for EVFTA's commitments with which Vietnamese legislations are incompatible (listed above), the country's domestic legislations have to be adjusted and amended in one of these two following ways:

- Either just amending legislations in compliance with EVFTA for procurements under EVFTA's coverage (maintain the current situation of

general legislations on tendering, just amend the legislations specifically applied for covered procurements and for EU's suppliers): Vietnam could issue 01 Suggested Law on implementing EVFTA's commitments on government procurement. In this Law, the contents that current legislations are incompatible with EVFTA are amended to be compatible. This Law is specifically applied for covered procurements and EU's suppliers. General legislations on tendering will be maintained.

- Or amending legislations on tendering in compliance with EVFTA (these legislations are applied for all tendering - related activities in general): In this way, Vietnam will adjust directly legislations on tendering (general coverage) to comply with EVFTA not only for procurements under the Agreement's coverage, but also for all procurements.

According to the first way (building up a Suggested Law implementing EVFTA), Vietnam will surely comply with EVFTA and not make changes to current legislation system on tendering. However, the efficiency of commitments will not spread to the whole tendering system.

According to the second way (amending general legislations for implementing EVFTA), the efficiency of commitments will spread to the whole tendering system and all tendering activities in Vietnam, and the country will be ready not only for EVFTA, but also for TPP and GPA in the future. Nevertheless, if this way is followed for all current commitments, with which Vietnam legislations are incompatible, a very big effort is required to make on thinking, institution and resources for implementation.

Therefore, on a basis of considering the nature of incompatible commitments, together with advantages and disadvantages of each way, the Research team recommends that Vietnam be implementing both ways simultaneously to comply with EVFTA on government procurement, and each way be applied for each suitable group of commitments.

In particular:

(i) Recommendation of building up a Suggested Law implementing EVFTA

For commitments relating to market access specially provided under EVFTA, the amendment of Vietnam's general legislations on Tendering in compliance with this Agreement's commitments is infeasible and unreasonable (This amendment means the market access for all partners, not just for Parties of the Agreement). Therefore, building up a Suggested Law, with provisions internalizing commitments specially provided under EVFTA, to implement the Agreement is appropriate.

This Suggested Law is preferentially applied for procurements under the Agreement's coverage in cases that there exist provisions different between this Suggested Law and general legislations on the same issue. In case that there is no provision under this Law, general legislations on tendering will be applied.

This Suggested Law will internalize the following "incompatible" commitments:

- Article I (Definitions): concepts of "Procuring entity", "Offsets", "Limited tendering", and "Electronic auction";
- Article II (Scope and Coverage): Commitments on Criteria to specify a procurement under the coverage, Covered procurements, Value of a procurement;
- Article IV (General Principles): Commitments on National Treatment and Non-Discrimination; Offsets
- Article V (Information on the Procurement System): Commitments on publishing information about measures/regulations applied to covered procurements
- Article VIII (Qualification of Suppliers): Commitments on selective tendering (procedures and ways of publishing, deadlines, etc)
- Article XIII (Limited Tendering): All commitments in this Article (the Principle of applying limited tendering; Circumstances allowing to apply limited tendering, etc)
- Article XIV (Electronic Auctions): Commitments on applying automatic evaluation method

Because many provisions estimated to be included in the Suggested Law implementing EVFTA on government procurement are provided in Law on Tendering, for a purpose of guaranteeing their legal validity, this Suggested Law should be issue under the form of a Law-level document (Law implementing EVFTA on government procurement)

(ii) Recommendation of amending general legislations on tendering

For commitments regarding issues of transparency and competition (basically these commitments could be feasibly and widely applied), the Review recommends amending directly tendering legislations (generally applied) in compliance with EVFTA. The adjustments according to this way will be made directly on documents of tendering legal system providing the relevant issues. In cases that there are many legal documents regarding the same

"incompatible" things, the amendments will be applied to the documents with the highest legal validity.

In particular, recommendations for adjusting domestic legislations to internalize the following commitments:

- Article XIV (Electronic Auctions): Commitments on providing participants with all information relating to the auction
- Article XV (Treatment of Tenders and Awarding of Contracts): Commitments on verifying with suppliers in the cases of a tender having an abnormally low price; Commitments on not using options, cancelling a covered procurement or modifying awarded contracts in a manner that circumvents the obligations under this Chapter
- Article XVI (Post-Award Information): Commitments on publication of award information (with must-be included content)
- Article XVIII (Domestic Review): Commitments on guaranteeing compensations if a review body has determined that there has been a breach or failure of the Agreement or the domestic legislations implementing the Agreement.

In reality, due to a fact that most of the above commitments are related to detailed contents, which are currently provided in Decrees and/or Circular guiding Law on Tendering, the most practical and focused solution is to amend Decree-level documents with relevant provisions (especially Decree 63/2014/NĐ-CP), then to adjust Circulars for being compatible if there are provisions different between those Circulars and Decrees.

In conclusion

The Review of Vietnamese legal framework against EVFTA commitments on government procurement shows that in general Vietnamese legislations on government procurement have been basically compatible with EVFTA's commitments on government procurement. For the group of compatible commitments, Vietnam does not need to make any adjustments or amendments to its legislations, but the country should pay a special attention to the implementation for an aim of guaranteeing the effective adoption to these legislations in actual tendering.

EVFTA's commitments, with which Vietnamese legislations are incompatible, include the ones relating to this Agreement's specific issues (procurements under the Agreement's coverage and to the issues of transparency and competition in general. For these cases, The Review recommends implementing the Agreement in two basic ways. The first way is to build up a

Law-level document to include commitments specifically provided under EVFTA and just applied for procurements under EVFTA's coverage and for EU's suppliers. The second way is to adjust Vietnam's general legislations on Tendering to include EVFTA's commitments relating to transparency and competition in tendering, then applying these commitments to all procurements./.

SUMMARY OF REVIEW RESULTS

The Review of Vietnam's legal frameworks against commitments under European Union - Vietnam Free Trade Agreement (EVFTA) on Government Procurement

Notices:

Vietnam doesn't have to or haven't had to implement (due to its retaining, non-compulsory, scheduled obligations) issues which are not covered by general legislations
Vietnamese legislations are entirely compatible with
Vietnamese legislations are partly compatible with
Vietnamese legislations haven't met the requirements, hence, adjustments need to be made

Article	Committed obligations		
Article I - Definitions	Commercial goods and services (Vietnamese legislations have a broader coverage than the Agreement)	In writing or written (Electronic form is acknowledged under Vietnamese legislations)	Service Construction service (Equivalent to the term of "construction and installation" under Vietnamese legislations)
	Days Person Publish Qualified supplier	Electronic auction	Tendering (Government procurement/public procurement)
	Limited tendering Limited tendering regards the selection of just 01 supplier under Vietnamese legislations,	Measure Under Vietnamese legislations, there is no term of "measure", but other relevant terms, the contents of which are	Multi-use list There is no concept of multi-use list under Vietnamese legislations

	but 01 or more than 01 supplier under EVFTA	understood in the similar manner to those under the above term of "measures" as considered together.	(except pharmaceutical procurements)
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	Notice of intended procurement Vietnamese legislations provide many relevant concepts, which cover this term as considered together	Procuring entity	Offset The coverage under Vietnamese legislations is narrower than under EVFTA
	Open tendering	Selective tendering (equivalent to the concept of "open tendering with a short list of suppliers" under Vietnamese legislations)	Technical specifications
Article II - Scope and Coverage	Criteria for specifying covered procurements Under the Agreement, there are 03 criteria (Threshold of procurement value; Procuring entity; Types of procured goods and services), while under Vietnamese legislations, there are just 02 (ratio of State-owned capital out of total procurement value; Procuring entity)	Covered procurements The Agreement just covers a small group of procurements Procurements not under the Agreement's coverage This is the issue specifically provided under the Agreement, not under Vietnamese legislations	Value of the procurement (The provision under Vietnamese legislations is not as detailed as under commitments)
Article III - Security and General Exceptions	Rights to take actions to protect the national security	Rights to apply exceptional measures to protect morals, order, safety; human, animal or plant life or health; and	

		intellectual property, etc	
Article IV - General Principles	Principles of national treatment and non-discrimination	The principle of complying with this Agreement during the tendering process	The principle of using electronic means
	The principle relating to rules of origin of tendered goods and services	The principle of Offsets	
Article V - Information on the Procurement System	Commitments on publishing information about measures applied to covered procurements		
Article VI - Notices	Commitments on publishing notices of intended procurement (means of publishing and must-be-published information)	Commitments relating to summary notices (content included in these notices)	Commitments on publishing notices of planned procurement Vietnamese legislations are incompatible with the Agreement's requirements of publishing as soon as possible, however, due to the fact that the Agreement does not provide a specific requested time-periods, Vietnamese legislations are basically in compliance with the commitments
	Obligations of allowing suppliers to prepare for their participation based on notices of planned procurement		

Article VII - Conditions for Participation	Commitments on just limiting tendering participation to criteria that relate to legal, financial, commercial and technical capacities	Commitments on not applying the condition of experience except special circumstances	Commitments on evaluating the satisfying conditions of participation of suppliers
	Cases that excluding suppliers are allowed		
Article VIII - Qualification of Suppliers	Commitments relating to supplier registration system and its importance in the tendering processes	Commitments relating to selective tendering (process and way of publishing information, time-periods, etc)	Commitments relating to multi-use list of suppliers
	Commitments on publishing decisions of a procuring entity about a request for participation in a procurement or application for inclusion on a multi-use list		
Article IX - Technical Specifications	Commitments on not adopting or applying any technical specification as an obstacle to trade	Commitments on not adopting or applying any technical specification in terms of descriptive characteristics	Commitments on preferentially basing technical specifications on international standards
	Obligations of not adopting or applying any technical specification that requires or referred to a particular trademark or trade name, etc	Commitments on not seeking or accepting advice from a natural/juridical person that may have relevant interests in the procurement	Rights to apply technical specifications to protect the environment
Article IXb - Market Consultations	Rights to conduct market consultations with a view to preparing the procurement	Commitments on seeking or accepting advice from independent experts or State authorities or from market participants	

Article X - Tender Documentation	Commitments on the contents that are compulsorily included in the Tender documentation	Commitments on replying to any reasonable request for relevant information by any interested supplier	Commitments relating to the modifications of Tender documentation (contents to be modified and procedures of informing about the modifications, etc)
Article XI - Time-Periods	General commitments on time-periods	Specific deadlines for a procurement	
Article XII - Negotiation	Commitments relating to cases that negotiations could be conducted	Requirements relating to negotiation	
Article XIII - Limited Tendering	Commitments on the principle of applying limited tendering	Commitments on just applying limited tendering in the listed circumstances	Commitments on reporting each contract, to which limited tendering is applied
Article XIV - Electronic Auctions	Commitments on applying automatic evaluation method	Commitments on providing participants with all information relating to the auction	
Article XV - Treatment of Tenders and Awarding of Contracts	Commitments on the way of treating tenders (the treatment process is fair and allows for correction of unintentional errors of a tender's form)	Commitments on the way of awarding contracts (awarded tender must comply with the essential requirements set out in the notice of intended procurement/ tender documentation)	Commitments on the criteria of awarding the contract to the supplier having the most advantageous tender or the lowest price (where price is the sole criterion)
	Commitments on verifying with suppliers in the cases of a tender having an abnormally low price	Commitments on not using options, cancelling a covered procurement or modifying awarded contracts in a manner that circumvents the	

		obligations under this Chapter	
Article XVI - Post-Award Information	Commitments on publication of award information (with must-be included content)	Commitments on provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender	Commitments on publication of award information (with must-be included content)
	Commitments on maintenance of records about the procurement	Commitments on collection and reporting of statistics relating to procurements under the Agreement's coverage	
Article XVII - Disclosure of Information	Commitments relating to providing information relating to procurements under the Agreement's coverage on EU's requests	Un-disclosed information	
Article XVIII - Domestic Review	Commitments on maintaining, establishing or designating at least one impartial administrative or judicial authority to review a challenge by a supplier of a breach of this Agreement, or of domestic legislations implementing this Agreement	Commitments on the encouragement of settling claims via consultations between a procuring entity and suppliers	Commitments on according efficient and timely consideration to any complaints in a manner that is not prejudicial to the participation or right of ongoing participation of the suppliers
	Commitments on allowing a sufficient period of time for a supplier to prepare and submit a challenge or claim	Commitments on maintaining, establishing or designating an impartial administrative or judicial authority to review the procuring entity's initial	Commitments on guaranteeing the right of making claims to the Court of Appeals and the due rights of relevant parties in this procedure of claiming to

		decision of settling challenges or claims if the supplier continues challenging or claiming	the Court
	Commitments on rapid interim measures to guaranteeing the due rights of relevant parties	Commitments on guaranteeing compensations if a review body has determined that there has been a breach or failure of the Agreement or the domestic legislations implementing the Agreement.	
Article XIX - Modifications and Rectifications to Coverage	Commitments on the process and procedure of modifications and rectifications to coverage of this Chapter		
Article XXI - Cooperation	Commitments on VN-EU cooperation on government procurement		
Article XX - Specialised Committee on Services, Investment and Government Procurement	Commitments on rights of the Specialized Committee relating to government procurement		
Article XXII - Future negotiations	Commitments relating to negotiations between two parties on electronic procurement	Commitments relating to negotiations between two parties on government procurement market access	

DETAILED REVIEW OF VIETNAMESE LEGAL FRAMEWORK AGAINST EVFTA COMMITMENTS ON GOVERNMENT PROCUREMENT

EVFTA COMMITMENTS	Vietnamese legal system	ASSESSMENTS AND RECOMMENDATIONS
<p>Article 1 Definitions</p> <p>For the purposes of this Chapter:</p> <p>commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;</p> <p>construction service means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United</p>	<p>Law on Commerce:</p> <p>Article 3. Commercial activities mean activities for the purpose of generating profits, including: sale and purchase of goods, provision of services, investment, commercial promotion and other activities for the profit purpose.</p> <p>Article 3.2 Goods include:</p> <p>a/ All types of movables, including those to be formed in the future;</p> <p>b/ Things attached to land.</p> <p>Article 3.9: Provision of services means commercial activities whereby a party (hereinafter referred to as the service provider) is obliged to provide a service to another party and receive payment; the</p>	<p><u>Assessments:</u></p> <p>Basically, the concepts under Vietnamese legislations are relatively compatible with the terms defined under the Agreement. However, there are some noticeable points as follows:</p> <p>Commercial goods or services: There is no clear distinction between commercial and non-commercial goods or services under Vietnamese Commercial law. Despite this fact, as the concept of commercial activity is also considered, goods and services are regarded as commercial ones if they are the objects of commercial activities for the purpose of generating profits, including sale and purchase of goods and provision of services. In this way of understanding, the concept under Vietnamese legislations is</p>

<p>Nations Provisional Central Product Classification (CPC);</p> <p>days means calendar days;</p> <p>electronic auction means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;</p> <p>government procurement means the process by which a procuring entity as defined hereinafter obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or</p>	<p>service-using party (hereinafter referred to as the customer) is obliged to pay to the service provider and use the service as agreed.</p> <p>Civil Code 2005:</p> <p>Article 124: Civil transactions through electronic means in form of data messages shall be considered transactions in writing.</p> <p>Law on Bidding and Decree No. 63/2014/ND-CP:</p> <p>Construction and installation include works of construction and installation of works and work items.</p> <p>Public products and services mean the essential products and services for economic-social life of country, population communities or assurance of national defense and security which the State must organize implementation in the fields:</p>	<p>compatible with the one in this commitment.</p> <p>In writing or written: Under Vietnamese legislations, there is no definition about in writing or written form. However, an electronic form, which plays a core role to the definition of "in writing or written" under this Agreement, has been included and regarded as a form of documents. Therefore, basically Vietnamese legislations are compatible with the commitment.</p> <p>Construction service: this concept is understood in the same way as that of construction and installation under the Law on Tendering. Hence, Vietnamese legislations are compatible with the commitment under EVFTA.</p> <p>Under Vietnamese legislations, there is a concept of public goods and services, separate from the ones of advisory services, goods, construction and installation. This will be specifically assessed in Article 2.</p>
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<p>supply of goods or services for commercial sale or resale;</p> <p>in writing or written means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;</p> <p>limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;</p> <p>measure means any law, regulation, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement ;</p> <p>multi-use list means a list of suppliers that a procuring</p>	<p>Health, education - training, culture, information, communications, science – technology, natural resources - environment, transport and other fields as prescribed by Government. Public products and services include the public-interest products and services, and services for public career.</p> <p>Bidding via network means bidding which is performed via use of the national bidding network system.</p> <p>Bidding means the process of selecting a bidder to sign and implement contract of provision of advisory services, non-advisory services, procurement of goods, construction and installation; selecting an investor to sign and implement contract of investment project in form of public-private partnership, investment project with land use on the basis of ensuring competitiveness, fairness, transparency</p>	<p>Days: Under Vietnamese legislations, there are provisions that are compatible with this commitment (it is noticed that under Vietnamese legislations on Tendering, in the case that the time-period is less than 10 days, "days" are understood as "working days", meaning that calendar days exclude holidays provided by relevant legislations. In the other case of from-10-day time-period, "days" means calendar days. This Agreement just regards calendar days for most of the minimal time-period. Therefore, the current way of defining "days" makes Vietnamese legislations compatible with the Agreement providing "calendar days", but more favorable than the one providing "working days".</p> <p>Tendering via networks (by electronic means) is the concept included in Vietnamese legislations on Tendering, however, the content about electronic auction as mentioned in the Agreement has not been made clear. In particular, under Vietnamese legislations, there is no</p>
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<p>entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;</p> <p>notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;</p> <p>offset means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, of domestic suppliers, the licensing and transfer of technology, investment, counter-trade and similar action or requirement;</p>	<p>and economic efficiency.</p> <p>Furthermore, Article 3 of the Law on bidding also provides that state-owned enterprises are authorised to promulgate regulations on choosing bidders providing raw materials, fuel, materials, supplies, advisory services, non-advisory services in order to ensure the continuity for production and business and procurement with the aim to maintain regular activities of state-owned.</p> <p>Direct appointment of contractor is a form of selection of contractors in which investors to determine the contractors who are eligible, sufficiently capable and experienced to come to get the dossier of requirements.</p> <p>Notice of bid invitation is a notice sent to public or published by bid solicitor to invite interested bidders to submit bid dossiers.</p> <p>Preferential treatment in selection of</p>	<p>provision that allows the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both. In fact, Vietnamese legislations just permit suppliers to submit their tenders by an electronic means, which is the National tendering network system (one-time tendering)</p> <p>Tendering (Government procurement/ Public procurement) is a concept that is basically compatible with provisions under Vietnamese legislations. In spite of that fact, for the purpose of further clarifying its content, this concept need considering together with Article 2 about the Scope and Coverage.</p> <p>Limited tendering: this concept is partly different from that provided under Decree 63/2014/NĐ-CP. While limited tendering regards the procuring entity's selection of just <u>01</u> supplier under Vietnamese legislations, it allows for the selection of <u>more than 01</u> supplier under this</p>
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<p>open tendering means a procurement method whereby all interested suppliers may submit a tender;</p> <p>person means a natural person or a juridical person;</p> <p>procuring entity means an entity covered under a Party's Annexes ;</p> <p>publish means to disseminate information through paper or electronic means that is distributed widely and is readily accessible to the general public;</p> <p>qualified supplier means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;</p> <p>selective tendering means a procurement method</p>	<p>contractors prefers the goods of which costs for domestic production occupy 25% or more or prefers the domestic or foreign bidders taking part in international bidding in circumstances imposed under Art 14 of the Law on Bidding.</p> <p>Open bidding is form of selection of contractors, investors in which the number of participating tenders, investors shall be unrestricted.</p> <p>Foreign contractor means an organization established under foreign law or an individual of foreign nationality participating in bid in Vietnam.</p> <p>Domestic contractor means an organization established under Vietnamese law or individual of Vietnamese nationality participating in bid.</p> <p>Buying authority is investor (the entity owning the financing capital or the entity</p>	<p>commitment.</p> <p>Measure: under Vietnamese legislations on Tendering, there is no specific term for this concept. However, there exist laws, regulations, administrative guidance or practice of State agencies relating to a procurement, which are similar to the content covered under the Agreement.</p> <p>Multi-use list is not provided under domestic legislations on Tendering, except the case of legislations on tendering pharmaceuticals with principles relating to this concept.</p> <p>Notice of intended procurement under this Agreement is a term used for all cases of inviting expression of interest, participation, or tender. According to Vietnam's Law on Tendering, the term of "notice of intended procurement" is just used to invite suppliers to submit their tenders. In case that a notice is published to invite suppliers to express their interest or to participate, the "notice inviting expression of interest" or "notice of intended procurement" is applied</p>
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<p>whereby only qualified suppliers are invited by the procuring entity to submit a tender;</p> <p>services includes construction services, unless otherwise specified;</p> <p>supplier means a person or group of persons that provides or could provide goods or services to a procuring entity;and</p> <p>technical specification means a tendering requirement that :</p> <p>(a) sets out the characteristics of:</p> <p>(i) goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or</p> <p>(ii) services to be procured,</p>	<p>assigned responsibility to represent such owner, or the borrower directly managing and implementing project), bid solicitors (a professional agency or organization with sufficient capability to perform bidding activities, including: Investor or organization which is decided for establishment or selected by the investor; Estimation unit directly using capital source for regular procurement; The unit of concentrated procurement; Competent state agencies or the affiliated organizations which are selected by the competent state agencies)</p> <p>publish means to disseminate information through paper or electronic means that is distributed widely and is readily accessible to the general public</p> <p>qualified supplier means a supplier that a procuring entity recognizes as having satisfied the conditions for participation as stipulated under Article 42, 43 of the Law on Bidding</p>	<p>respectively. However, terms used in Vietnamese legislations as a whole cover the general term in this commitment.</p> <p>Offset under this Agreement is a term that just mentions the nature of conditions or undertakings favoring domestic suppliers, hence, it is has a broader coverage than the term of "domestic preference" under the Law on Tendering</p> <p>Open tendering: the concept under Vietnamese legislations is compatible with this one under EVFTA</p> <p>Person: under Vietnamese legislations, there are provisions about the concept and eligibility of a supplier (a natural person or a juridical person), which are correspondingly compatible with those under this Agreement.</p> <p>Procuring entity means investor under Vietnamese legislations, which is in its nature similar to what is mentioned under the Agreement. However, due to the openness of limited procurement market, the list of procuring entities under the</p>
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<p>including quality, performance and safety or the processes or methods for their provision; or</p> <p>(b) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.</p>	<p>selective tendering means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender</p> <p>service includes advisory service, non-advisory service and public service</p> <p>contractor means a person/ a group of persons/ organizations, includes head contractor or sub-contractor providing goods or services to a procuring entity</p> <p>Technical specification means a tendering requirement set out in the bid invitation documents, dossier of requirements.</p> <p>(Circular No. 01/2015/TT-BKHDT, Circular No.03/2015/TT-BKHDT, Circular No.05/2015/TT-BKHDT, Circular No. 11/2015/TT-BKHDT detailing the formation of the bid invitation documents, dossier of requirements have detailed guidance on setting up appropriate technical specification).</p>	<p>coverage of this Agreement has a narrower scope than the one under Vietnamese legislations.</p> <p>Publish, Qualified supplier: Vietnamese legislations are compatible with the commitment.</p> <p>Selective tendering in its nature is similar to the open tendering with the usage of a short list under Vietnamese legislations on Tendering. Hence, regarding this concept, Vietnamese legislations are compatible with the commitment under the Agreement.</p> <p>Services: regarding this concept, Vietnamese legislations on Tendering are compatible with the commitment under the Agreement.</p> <p>Technical specification: Vietnamese legislations are compatible with the mentioned content under the Agreement</p> <p>Recommendations: Under Vietnamese legislations, concepts</p>
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		<p>that are different from or incompatible with commitments on procurements under the coverage of this Agreement should be amended or added. After that, corresponding provisions on tendering processes and procedures should be amended in a Suggested Law on implementing the Agreement on Government Procurement</p>
<p>Article II Scope and Coverage</p> <p>1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.</p> <p>2. For the purposes of this Chapter, covered procurement means government procurement:</p> <p>(a) of goods, services, or any combination thereof, as specified in each Party's</p>	<p><i>Scope of regulation:</i></p> <p>Law on Bidding (Article 1):</p> <p>This Law provides for state management on bidding; responsibilities of concerned parties and activities of bidding, including:</p> <p>1. Selection of provider of advisory services, non-advisory services, goods, construction and installation for:</p> <p>a) Projects on development investment financed by state of state agencies, political organizations, socio-political organizations, professional-socio-political organizations, socio-professional</p>	<p><u>Assessments:</u></p> <p>The commitment under the Agreement is basically different from what is provided under domestic legislations on Tendering in the following points:</p> <p>1. About scope</p> <p>The Law on Tendering specifies the covered procurements based on the "ratio or value of State-owned capital out of total investment or procurement estimate" and the "procuring entity", and does not list anything that is not under its coverage of the Law.</p> <p>Meanwhile, the Agreement specifies what</p>

<p>annexes</p> <p>(b) by any contractual means, including: purchase; lease; and rental, with or without an option to buy;</p> <p>(c) for which the value, as estimated in accordance with paragraphs 6 and 7, equals or exceeds the relevant threshold specified in Parties' annexes to Appendix I, at the time of publication of a notice in accordance with Article VII; and</p> <p>(d) that is not otherwise excluded from coverage in paragraph 3, or Parties' annexes, or by the effect of any other relevant parts of this Agreement.</p> <p>3. Except where provided otherwise in a Party's annexes, this Chapter does not apply to:</p>	<p>organizations, social organizations, units of People's armed forces, and public non-business units;</p> <p>b) Projects on development investment of state-owned enterprises;</p> <p>c) Projects on development investment other than cases defined at point a and point b of this Clause which are financed by state, state-owned enterprises with level equal to 30% or more or less than 30% but more than 500 billion VND in total invested capital of project.</p> <p>d) Procurement financed by state aiming to maintain regular activities of State bodies, political organizations, socio-political organizations, socio-political-occupational organizations, social organizations, socio-occupational organizations and units of the People's armed forces, and public non-business units;</p> <p>dd) Procurement financed by state aiming to supply products and services in serve of</p>	<p>is under its coverage based on (i) the threshold of the procurement value (mentioned in Section A, B, C in Annex 9-c), the procuring entity (mentioned in Section A, B, C in Annex 9-c), (iii) the types of goods, services or construction works need procuring (mentioned in Section D, E, F in Annex 9-c), and does list the specific things that are not under its coverage (mentioned in Section D, E, F, G in Annex 9-c).</p> <p>It is noticed that:</p> <ul style="list-style-type: none"> - The scope and coverage under the Agreement will gradually become broader in accordance with the schedule mentioned by Vietnam in its market access commitments - The selection of suppliers for public goods and services is under the coverage of Vietnam's Law on Tendering, but not under that of the Agreement - The implementation of BOT or licensing contracts, or a
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<p>(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;</p> <p>(b) non-contractual agreements or any form of assistance that a Party, including its procuring entities, provides, including cooperative agreements, grants, subsidies, loans, equity infusions, guarantees, fiscal incentives, and in-kind contribution;</p> <p>(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;</p>	<p>public purpose;</p> <p>e) Purchase of national reserve goods financed by state;</p> <p>g) Purchase of drugs, medical supplies financed state; medical insurance fund, revenues from services of medical examination and treatment and other lawful revenues of public medical establishments;</p> <p>2. Selection of providers of advisory services, non-advisory services, goods on Vietnam's territory for implementation of overseas direct-investment projects of Vietnamese enterprises which are financed by state with level equal to 30% or more or less than 30% but more than 500 billion VND in total invested capital of project.</p> <p>3. Selection of investors to perform the investment projects in form of public-private partnership (PPP), investment projects with land use;</p> <p>4. Selection of contractors in petroleum</p>	<p>procurement using ODA capital with the requirement of applying a tendering process or procedure from an international organizations or donors is not under the coverage of the Agreement. However, the principle of non-discrimination and competition encouragement in the case that international donors or organizations do not limit the participation of suppliers (for the procurements under the coverage of the Agreement) should be noticed</p> <p>2. About valuation of a procurement</p> <p>- Concerning the principle of valuating the procurement, Vietnamese legislations are compatible with commitments under the Agreement. However, the content mentioned in the Agreement is more detailed than and includes points different from that in Vietnamese legislations on Tendering.</p> <p>Under Vietnamese legislations, the estimated value of a procurement must</p>
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<p>(d) public employment contracts;</p> <p>(e) procurement conducted:</p> <p>(i) for the specific purpose of providing international assistance, including development aid;</p> <p>(ii) under the particular procedure or condition of an international organization or funded by international, foreign grants, loans or other assistance where the recipient Party including its procuring entities is bound to apply particular procedures or conditions imposed by the international organization or other donors for the benefit of international, foreign grants, loans or other assistance. Where the procedures or conditions of the international</p>	<p>field, except for selection of contractors to supply petroleum services related directly to activities of search, exploration and development of mines and petroleum exploitation as prescribed by law on petroleum.</p> <p>Article 4 of the Law on bidding regulates on relevant definitions, includes:</p> <p><i>Projects on development investment (hereinafter collectively referred to as projects) include:</i> programs or projects on investment in new construction; projects on renovation, upgrading, expansion of projects invested in construction; projects on procurement of assets, including equipment, machinery without installation; projects on repair, upgrading of assets, equipment; projects, schemes on planning; projects, subjects on scientific research, technology development, application of technologies, technical support, basic survey; other programs,</p>	<p>include the total cost to implement the procurement over its entire duration as specified in the Agreement.</p> <p>Nevertheless, under Vietnamese legislations, there is no guidance for including such details as what is specified in Point b of Para 6 under the Agreement. As a result, in reality, there are many cases that the price paid for the completion of the procurement in Vietnam is much higher than the price awarded for that procurement. That is due to adjustments during the process of implementing the contracts, especially alternations relating to the procurement coverage, leading to the uncertainty of transparency and equality during the tendering.</p> <p>- The valuation of recurring contracts under Vietnamese legislations is basically suitable with the calculation of the estimated maximum total value in the commitment.</p> <p><u>Recommendations:</u></p>
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<p>organization or donor do not restrict the participation of suppliers, the procurement shall be subject to Article 4.1 and .2 (National Treatment and Non- discrimination).</p> <p>(iii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project;</p> <p>4. Each Party shall specify the following information in its annexes to this Chapter:</p> <p>(a) in Annex 1, the central government entities whose procurement is covered by this Agreement;</p> <p>(b) in Annex 2, the sub-central government entities whose procurement is</p>	<p>projects, or schemes on development investment.</p> <p><i>Financed by the State</i> means the use of State Budget funds; national bonds, Governmental bonds, bonds of local authorities; official development assistance capital, concessional loans from donors; fund for development of non-business activities; credit facilities for investment and development of the State; credit facilities guaranteed by the Government, loans guaranteed by assets of state; investment and development funds of State-owned enterprises, and value of land-use right.</p> <p><i>Compliance:</i></p> <p>Law on Bidding (Article 3):</p> <ol style="list-style-type: none"> 1. Bidding activities must comply with the provisions of this Law and other related laws. 2. Case of selecting by bidding for 	<p>Due to the fact that the Agreement just covers some specific types of procurements, the amendment of Vietnam's general legislations on Tendering (applyied for all partners) to be compatible with the Agreement is infeasible and unsuitable (this amendment leads to the application of market access for all partners, not just for a party of the Agreement). Therefore, a Suggested Law guiding the Tendering specifically applied for procurements under the coverage of this Agreement should be issued (More details in the Summary Report)</p> <p>Regarding this Article II under EVFTA, the Suggested Law on Government Procurement should include:</p> <ul style="list-style-type: none"> - an article on scope and coverage (specifying procurements under the coverage of this Suggested Law according to the schedule provided in this Agreement) <p>About the way of application: this Suggested Law will be preferentially</p>
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<p>covered by this Agreement;</p> <p>(c) in Annex 3, other entities whose procurement is covered by this Agreement;</p> <p>(d) in Annex 4, the goods covered by this Agreement;</p> <p>(e) in Annex 5, the services, other than construction services, covered by this Agreement;</p> <p>(f) in Annex 6, the construction services covered by this Agreement; and</p> <p>(g) in Annex 7, any General Notes.</p> <p>5. Where domestic legislation of a Party allows a covered procurement to be carried out on behalf of the procuring entity by other entities or persons whose procurement is not covered with respect to goods and</p>	<p>provision of raw materials, fuel, materials, supplies, advisory services, non-advisory services in order to ensure the continuity for production and business and procurement with the aim to maintain regular activities of state-owned enterprises; implementation of procurements of investment projects in the form of public-private partnership, investment projects with land use of the selected investors, enterprises must promulgate regulations on choosing bidders for unified application in enterprises on the basis of ensuring objective of fairness, transparency, and economic efficiency.</p> <p>3. For selection of contractors, investors for projects financed by official development assistance (ODA) capital, concessional loans arising from International treaties, international agreements between Vietnam and donors, international treaties, international</p>	<p>applied for the procurements covered by the Agreement in the cases that there are differences between this Law and Vietnamese general legislations for the same issues. If there are no provisions under this Law, the general legislations will be applied.</p> <p>It is noticed that concerning general legislations on Tendering, for purposes of dealing with many current problems occurring during the implementation process (relating to the identifying capital sources, ascertaining if those tasks do belong to any projects or not) and simplifying regulations, Vietnam's legislations on Tendering should also take into consideration the way of providing scope and coverage of the Agreement in order to apply for the case of Law on Tendering (This Law on Tendering should be adjusted in the future).</p> <p>- specific provisions about the <i>valuation of a procurement</i></p>
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<p>services concerned, the provisions of this Chapter shall equally apply.</p> <p><i>Valuation</i></p> <p>6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:</p> <p>(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and</p> <p>(b) include the estimated maximum total value of the procurement over its entire duration, whether this procurement is awarded to</p>	<p>agreements shall be applied.</p> <p>4. If International treaties to which the Socialist Republic of Vietnam is a contracting party have provisions on selection of contractors and investors different from this Law, such International treaties shall prevail.</p> <p><i>Procurement price Valuation</i></p> <p>1. Law on Bidding (Article 4): The procurement price means the value of a procurement approved in the plan on selecting bidders.</p> <p>2. Decree No. 63/2014/ND-CP (Article 35):</p> <p>a) Price of procurement is determined on the basis of total invested capital or estimated budget (if any) for project; estimate of procurement for regular procurement. Price of procurement is included exactly and fully entire expenses for implementation of procurement,</p>	<p>(concentrated procurements, divided procurements, and specific procurements implemented in a certain time period with a regular capital source on the base of a long-term contract but annual payment)</p>
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<p>one or more suppliers at the same time or over a given period of time, taking into account all forms of remuneration, including:</p> <p>(i) premiums, fees, commissions and interest;and</p> <p>(ii) the total value of any option clause ;</p> <p>7. In the case of recurring contracts that consist, for an individual requirement for a procurement, in awarding more than one contract, or in awarding contracts in separate parts, the calculation of the estimated maximum total value shall be based on:</p> <p>(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12</p>	<p>including reserve expenses, charges, fees and taxes. Price of procurement may be updated in time limit of 28 days before day of bid opening if necessary;</p> <p>b) For procurements of advisory service provision for formulation of pre-feasible study report, feasible study report, price of procurement shall be defined on the basis of information on average price according to statistics of projects which have been made in a defined duration; the estimated total invested capital based on investment ratio norms of projects; preliminary total invested capital;</p> <p>c) If procurement include many separate parts, to clearly indicate the estimated price for each part in price of procurement.</p> <p>Circular No. 10/2015/TT-BKHDT (Section IV Form 1 Appendix):</p> <p>Basis for division of the project into procurements: [according to the project</p>	
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<p>months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months;or</p> <p>(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year</p>	<p>contents, characteristics, chronological order, and the following principles):</p> <ul style="list-style-type: none"> + Ensure technical and technological consistency of the project; do not divide the project into too small procurements that will make the project loses its technical and technological consistency; + Stick to the project schedule; + Ensure a reasonable scale (appropriate for the project condition, capacity of contractors, and development of the domestic market, etc.); <p>It is prohibited to divide the project into procurements against regulations of law on bidding for the purpose of direct contracting or restricting participation of bidders.</p>	
<p>Article III Security and General Exceptions</p> <p>1. Nothing in this Agreement shall be construed to prevent any Party from taking any</p>	<p>Vietnamese legislation has no regulations</p>	<p><u>Assessments:</u></p> <p>Under Vietnamese legislations, there is no provision about these issues, which regard the right of Vietnam (the country is allowed to make its choice to implement</p>

<p>action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.</p> <p>2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures:</p>		<p>or not). However, because these are exceptions beneficiary for Vietnam, they should be included in domestic legislations and applied where necessary.</p> <p><u>Recommendations:</u></p> <p>The content of this Article should be included in an article of Scope and Coverage (as exceptions) in the Suggested Law implementing this Agreement.</p>
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<p>(a) necessary to protect public morals, order or safety;</p> <p>(b) necessary to protect human, animal or plant life or health;</p> <p>(c) necessary to protect intellectual property;or</p> <p>(d) relating to goods or services of persons with disabilities, philanthropic institutions, non-profit institutions carrying out philanthropic activities or prison labour.</p>		
<p>Article IV General Principles</p> <p><i>National Treatment and Non-Discrimination</i></p> <p>1. With respect to any measure regarding covered procurement, each Party, including its procuring</p>	<p><i>Forms of selection of contractors</i></p> <p>Law on Bidding</p> <p>Article 20.2. Open bidding is applied to procurements, projects under Scope of regulation of this Law, except for cases specified in Articles 21 (Limited bidding), 22 (Direct appointment of contractor), 23</p>	<p><u>Assessments:</u></p> <p><i>1. About National Treatment and Non-Discrimination</i></p> <p>Under Vietnamese legislations, the country's goods and suppliers are offered certain favorable treatments as mentioned in Article 14 under Law on Tendering. In other words, domestic legislations do not</p>

<p>entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering the goods or services of both Parties, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services and suppliers;</p> <p>2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:</p> <p>(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or</p>	<p>(Competitive quotation), 24 (Direct procurement), 25 (Self-implementation), 26 (Selection of contractors, investors in special cases) and 27 (Community's participation in performances) of this Law.</p> <p><i>Use of Electronic Means</i></p> <p>Law on Bidding:</p> <p>Article 8. All information must be published on the national bidding network system, bidding newspapers.</p> <p>Article 60. Selection of contractors and investors through network</p> <p>1. When selecting bidders, investors through network, the following contents and process shall be performed on the national bidding network system:</p> <p>a) Publishing information on bidding as prescribed in Article 8 of this Law;</p> <p>b) Publishing dossiers of invitation for expression of interest, dossiers of</p>	<p>follow the general principles provided in the Agreement.</p> <p><i>2. About the Compliance and Conduct of Procurement</i></p> <p>Vietnamese legislations on Tendering are basically compatible with Compliance and conduct requirements provided in Paras 3, 5 of this Article under the Agreement. It is noticed that Para 5 regards the rights, not obligations of Parties.</p> <p><i>3. About the Use of Electronic Means</i></p> <p>Vietnamese legislations on Tendering are basically compatible with commitments provided in Paras 6, 7 of this Article under the Agreement.</p> <p><i>4. About Rules of Origin</i></p> <p>In reality, the providing and applying rules of origin in Tendering follow general rules in Commercial Law. Hence, these are compatible with the Agreement.</p> <p><i>5. About Offsets</i></p> <p>At present, regarding this issue, Vietnamese legislations on Tendering are</p>
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<p>(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party</p> <p><i>Compliance and Conduct of Procurement</i></p> <p>3. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.</p> <p>4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:</p> <p>(a) is consistent with this Chapter, using one of the following methods: open tendering, selective tendering or limited tendering; (b) avoids</p>	<p>invitation for pre-qualification, dossiers of requirements;</p> <p>c) Submission of bid security, guarantee for performance of contract, partnership agreements;</p> <p>d) Submitting, withdrawing dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, bid dossiers, dossiers of proposals;</p> <p>dd) Opening bid;</p> <p>e) Assessing dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossiers of proposals;</p> <p>g) Sign contract and pay under contract;</p> <p>h) Other relevant content.</p> <p>Article 61. Requirements for the national bidding network system</p> <p>1. It must publicize, not limit the access of information.</p> <p>2. Users may realize the real time upon accessing the national bidding network system. Time on the national bidding</p>	<p>incompatible with commitments (there are still offsets, which are preferential treatments towards domestic suppliers under the country's legislations). Nevertheless, according to Annexes under the Agreement, Vietnam is allowed to have a period of transition (meaning that it follows a specific schedule). Only after the end of this duration does the country have to apply these Offset-commitments. However, it also means that Vietnam must adjust its applicable legislations for procurements under the coverage of this Agreement for a purpose of compatibility at that time.</p> <p><u>Recommendations:</u></p> <p>The content that is not or differently provided under domestic legislations should be specifically guided in a Suggested Law for procurements under the coverage of the Agreement.</p>
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<p>conflicts of interest and prevents corrupt practices, in accordance with relevant domestic laws.</p> <p>5. Nothing in this Chapter shall prevent a Party, including its procuring entities, from developing new procurement policies, procedures, or contractual means, provided that they are not inconsistent with this Chapter.</p> <p><i>Use of Electronic Means</i></p> <p>6. The Parties shall seek to provide opportunities for covered procurement to be undertaken through electronic means, including for the publication of procurement information, notices and tender documentation, and for the receipt of tenders and by using electronic auctions</p>	<p>network system is the real time and standard time in bidding through the national bidding network system.</p> <p>3. It must operate continuously, unified, be stable and safe on information, have ability to identify users, keep confidential and entire data.</p> <p>4. It must perform the storage of information and may retrieve histories of transactions on the national bidding network system.</p> <p>5. It must ensure that bidders and investors cannot send dossiers of expression of interest, dossiers of pre-qualification participation, bid dossiers, dossiers of proposals to the bid solicitor after bid closure.</p> <p>Joint Circular No. 07/2015/TT-BKHDT-BTC:</p> <p>Article 9. Bid solicitors who have already signed up into the electronic Government procurement system shall be required to post their information on the electronic</p>	
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<p>where appropriate.</p> <p>7. When conducting covered procurement by electronic means, a procuring entity shall:</p> <p>(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software;and</p> <p>(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.</p>	<p>Government procurement system</p> <p>Article 37 regulates on roadmap for application of the online contractor selection method which starts to be used from 2016.</p> <p><i>Domestic prferential methods</i></p> <p>Law on bidding</p> <p>Article 14. Preferential treatment in selection of contractors:</p> <p>1. Bidders shall be enjoyed preferential treatment when participating in domestic or international bidding to supply goods of which costs for domestic production occupy 25% or more.</p> <p>2. Entities entitled to preferential treatment in international bidding to supply the advisory services, non-advisory services, construction and installment include:</p> <p>a) Domestic bidders bidding with independent or partnership status;</p>	
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<p><i>Rules of Origin</i></p> <p>8. Each Party shall apply to covered procurement of goods or services imported or supplied from the other Party the rules of origin it applies or may apply at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.</p> <p><i>Offsets</i></p> <p>9. With regard to covered procurement and subject to the relevant Annex pertaining to this Chapter, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.</p> <p><i>Measures Not Specific to Procurement</i></p> <p>10. Paragraphs 1 and 2 shall not apply to: customs duties</p>	<p>b) Foreign bidders in partnership with domestic bidders in which the domestic bidders take over from 25% or more of work value of procurement.</p> <p>3. Entities entitled to preferential treatment in domestic bidding to supply the advisory services, non-advisory services, construction and installment include:</p> <p>a) Bidders employing female laborers of 25 % or more of laborer quantity;</p> <p>b) Bidders employing laborers being invalids, disable people of 25 % or more of laborer quantity;</p> <p>c) Bidders being small-size enterprises.</p>	
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<p>and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.</p>		
<p>Article V Information on the Procurement System</p> <p>1. Each Party shall:</p> <p>(a) promptly publish any measure of general application, including standard contract clause mandated by law or regulation, regarding covered procurement in officially designated electronic or paper medium; and</p> <p>(b) provide, to the extent</p>	<p>Vietnamese legislation has no regulations</p>	<p><u>Assessments:</u></p> <p>Under Vietnamese legislations, there is no provision about this issue, hence, domestic legislations have not met requirements of the Agreement yet.</p> <p><u>Recommendations:</u></p> <p>A specific provision about this issue should be included in a Suggested Law for procurements under the coverage of the Agreement.</p>

<p>possible, an explanation thereof to any Party, on request.</p> <p>2. Each Party shall list in Annex X the paper or electronic medium through which the Party publishes the information described in paragraph 1 and the notices required by Articles 6, 8.7 and 16.2</p>		
<p>Article VI Notices</p> <p><i>Notice of Intended Procurement</i></p> <p>1. For each covered procurement, except in the circumstances described in Article XIII (Limited Tendering-related provisions) a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in</p>	<p>Law on Bidding:</p> <p>Article 8 regulates that the procurement stipulated by this Law applying open bidding, limited bidding, and competitive quotation, selection and invitation for expression of interest must publish the notice of bid invitation, notice of quotation invitation or short list or invitation for expression of interest on the bidding newspaper and to the national bidding website. Such notice must be published in 01 period on the bidding newspaper.</p>	<p><u>Assessments:</u></p> <p><i>1. About publishing a Notice of Intended Procurement</i></p> <p>Vietnamese legislations basically provide many points which are compatible with the Agreement, such as a requirement of having an appropriate publishing medium, and requests for publishing Notice of planned procurement and Notices of intended procurement, facilitating free-of-charge access to these Notices of intended procurement via the National tendering networks for any interested suppliers, and</p>

<p>Annex X at least until expiration of the time-period indicated in the notice in the case of electronic medium. The notices shall:</p> <p>(a) for procuring entities covered under Annex 1, be accessible by electronic means free of charge through a single point of access, for at least any minimum period of time specified in Appendix III;and</p> <p>(b) for procuring entities covered under Annex 2 or 3, where accessible by electronic means, be provided, at least, through links in a single gateway electronic site that is accessible free of charge.</p> <p>Parties, including their procuring entities covered under Annex 2 or 3, are encouraged to publish their</p>	<p>Joint Circular 07/2015/TT-BKHDT-BTC:</p> <p>Form 7 Appendix II guides that the notice of bid invitation must have the following information:</p> <ol style="list-style-type: none"> 1. Name of the bid solicitors 2. Bid name <ul style="list-style-type: none"> - Bid type - Bid price - Main contents of the bid - Time of contract execution 3. Name of project (or name of estimate of procurement for regular procurement) 4. Capital source 5. Forms of selection of contractors: Open bidding domestically or internationally 6. Methods of selection of contractors 7. Bid invitation document's published time 	<p>publishing Notices of intended procurement in both Vietnamese and English for international tendering.</p> <p>It is noticed that several relevant commitments are non-compulsory (such as provisions relating to obligations to publish notices in the appropriate paper or electronic medium, but not compulsorily in electronic medium), or scheduled (for example, if electronic means is applied, a single free-of-charge point of access has to be guaranteed. This kind of obligation is retained for Vietnam for a period of 10 years). Therefore, Vietnamese legislations are considered being compatible with relevant commitments under the Agreement.</p> <p>Nevertheless, under Vietnamese current legislations, there exist several points that are not entirely compatible with the Agreement (such as the content needed publishing in the Notice of planned procurement and Notices of intended procurement).</p> <ul style="list-style-type: none"> - The content needed publishing
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<p>notices by electronic means free of charge through a single point of access.</p> <p>Annex 9a</p> <p>1. Article VI (Notices): Notwithstanding the requirement in Article VI.1 that the notices of intended procurement are accessible by electronic means free of charge through a single point of access or links in a single gateway electronic site, Vietnam may allow its procuring entities not to publish these notices by electronic means no longer than ten years from the entry into force of this Agreement. Vietnam may charge a fee for the access to these notices of intended procurement, when these notices are already made accessible by electronic means during this period.</p>	<p>8. Bid invitation document's published place</p> <p>9. Bid invitation document price</p> <p>10. Bid bond</p> <p>11. Bid closing deadline</p> <p>12. Bid opening deadline</p> <p>Article 9 provides that as for international bidding for procurements or projects, notice of invitation to submit statement of interest, notice of invitation for prequalification, notice of invitation for bid, notice of invitation for offer, shortlist of bidders, result of contractor selection, investor selection, and notice of cancellation, extension, modification and rectification of posted information (if any), must be released on the electronic Government procurement system, and the Vietnam Public Procurement Review Journal, in both Vietnamese and English.</p>	<p>under Vietnamese legislations on Tendering is less than that under the Agreement's commitment. However, due to Vietnam's right to retain this obligation in a period of 10 years, the country will not have to comply this commitment until the time of Vietnam's retaining commitments comes to an end. As a result, Vietnamese legislations are considered being compatible with this commitment under the Agreement</p> <ul style="list-style-type: none"> - About a Summary notice, there is no provision about this under Vietnamese legislations. Generally, the content included in the Notice of intended procurement according to Vietnamese legislations on Tendering is just equivalent to that in the Summary notice according to this Agreement. However, due to Vietnam's retaining this obligation for a period of 5 years, Vietnamese current legislations are basically
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<p>2. Except as otherwise provided for in this Chapter, each notice of intended procurement shall include:</p> <p>(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, including information on the cost and terms of payment, of obtaining these documents, if any;</p> <p>(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;</p> <p>(c) if possible, for recurring contracts, an estimate, of the</p>	<p>In addition to assuming responsibility for supplying information as stipulated in this Clause, bid solicitors also take on responsibility for posting notice of invitation for international prequalification (in case of investor selection) on English websites or newspapers nationwide published in Vietnam.</p> <p><i>Noticing the approved plan on selection of contractors</i></p> <p>Joint Circular No. 07/2015/TTLT-BKHDT-BTC:</p> <p>Article 9 provides that the bid solicitors on their own post the plan on the electronic Government procurement system within 07 working days from the date of grant of the written approval of the plan for contractor selection, the plan for investor selection.</p> <p>Published contents in the plan on selection of contractors includes the bid name, bid</p>	<p>compatible with this commitment under the Agreement</p> <ul style="list-style-type: none"> - About charging a fee, under Vietnamese current legislations, fees of publishing a Notice of intended procurement on the Public Procurement Newspaper (Bao dau thau) and selling tendering documents are collected. For tendering via networks, not the fee of selling, but that of submitting tenders of suppliers is charged. However, owing to the fact that under the Agreement, the requirement of charging no fees is just applied for publishing Notices of intended procurement via electronic means, Vietnamese current legislations are basically compatible with the Agreement's commitment <p>More contents under domestic legislations are tended to be compatible with that under Agreement, such as the encouragement of publishing</p>
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<p>timing of subsequent notices of intended procurement;</p> <p>(d) where appropriate, a description of any options;</p> <p>(e) the time-frame for delivery of goods or services or the duration of the contract;</p> <p>(f) the procurement method that will be used and, where appropriate, whether it will involve negotiation or electronic auction;</p> <p>(g) where applicable, the address and any final date for the submission of requests for participation in the procurement;</p> <p>(h) the address and final date for the submission of tenders;</p> <p>(i) the language or languages in which tenders or requests for participation may be</p>	<p>price, capital sources, forms of selection of contractors, method of selection of contractor, time for selection of contractors, contract type, time of contract execution.</p>	<p>procurement-related information by electronic means (rather than in paper), attaching tender documentations as publishing notices of intended procurement, and delivering free-of-charge tender documentations (however, as those necessary documents are submitted, a fee will be charged on suppliers upon requests of procuring entities).</p> <p>2. About Notice of Planned Procurement</p> <p>Under the Agreement, the publishing a Notice of planned procurement should be implemented as early as possible in each fiscal year. Meanwhile, under Vietnamese legislations on Tendering, this information has to be published within a maximal period of 7 working days since the date of approved planned procurement (unnecessary to be the beginning of each year). Nevertheless, due to a fact that no exact time is provided under this Para (just "as early as possible"), Vietnamese legislations are basically not contradictory with the Agreement.</p>
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<p>submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;</p> <p>(j) a list and brief description of any conditions for participation of suppliers, including, where appropriate, any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;</p> <p>(k) where, pursuant to Article VIII, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the</p>		<p><i>3. About allowing suppliers to prepare for their tendering participation based on the Notice of Planned Procurement</i> (Para 6)</p> <p>Under Vietnamese legislations, the content published in a Notice of planned procurement just contains very basic information about procurements, hence, it is not allowed to be used by suppliers to prepare for their tendering participation. However, because this is not considered being compulsory obligation under the Agreement (just conditionally compulsory if implemented), Vietnamese legislations are basically compatible with the Agreement</p> <p><u>Recommendations:</u></p> <p>Provisions that are suitable with the Agreement's requirements about the content of Notice of intended procurement (it is noticed to publicly publish the contents of conditions to participate in tendering, criteria to select suppliers and number of suppliers in a short list) should</p>
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<p>criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and</p> <p>(l) an indication that the procurement is covered by this Chapter.</p> <p>Annex 9a</p> <p>2. Article VI (Notices): Notwithstanding the requirement in Article VI.2 that a notice of intended procurement includes a list and a brief description of any conditions for participation of suppliers and limitations on the number of qualified supplier to be invited to tender, unless such information is included in tender documentation that is made available to all interested suppliers at the</p>		<p>be included in a Suggested Law on Government procurement.</p> <p>In long-term, domestic legislations on Tendering should be adjusted in accordance with the basic content mentioned in this Article under the Agreement to improve transparency of tendering activities (at least for procurements that are published for juridical persons via networks and that do not raise too much costs for State relevant authorities).</p>
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same time as the notice of intended procurement, Vietnam may allow its procuring entities to omit such information from notices of intended procurement no longer than ten years from the entry into force of this Agreement. For greater certainty, during this period, procuring entities shall provide such information in tender documentation in accordance with Article X.1 (b).

Summary Notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice in English that is readily accessible free of charge through an electronic medium listed in Annex X at the same time as the publication of the notice

of intended procurement
.The summary notice shall
contain at least the following
information:

(a) the subject-matter of the
procurement;

(b) the final date for the
submission of tenders or,
where applicable, any final
date for the submission of
requests for participation in
the procurement or for
inclusion on a multi-use
list;and

(c) the address from which
documents relating to the
procurement may be
requested.

Annex 9a

3. Article VI (Notices):
Notwithstanding the
requirement in Article VI.3
that a procuring entity
publishes a summary notice

in English, Vietnam may delay the implementation of this obligation for five years after the entry into force of this Agreement.

4. The EU Party shall provide technical and financial assistance in order to develop, establish and maintain the automatic system for the translation and publication of summary notices in English. This cooperation is addressed in ... of this Chapter/Agreement. The implementation of this provision is subject to the materialisation of the initiative on technical and financial assistance for the development, establishment and maintenance of automatic system for the translation and publication of summary notices in English

in Vietnam.

Notice of Planned Procurement

5. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as “notice of planned procurement”), which should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

6. A procuring entity covered under Annex 2 or 3 may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in

<p>paragraph 2 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.</p>		
<p>Article VII Conditions for Participation</p> <p>1. A procuring entity shall limit any conditions for participation in a covered procurement to those that ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake that procurement.</p> <p>2. In establishing the conditions for participation, a procuring entity:</p> <p>(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier</p>	<p>Law on bidding:</p> <p>Article 5. Eligibility of bidders, investors</p> <p>1. A bidder or investor being an organization shall be deemed to be eligible when it satisfies the following conditions:</p> <p>a) Having registration for establishment and operation issued by the competent authority of country where it is operating;</p> <p>b) It is an independent cost accounting entity;</p> <p>c) It is not in the process of dissolution; not concluded to fall into the state of bankruptcy or to be insolvent as prescribed by law.</p>	<p><u>Assessments:</u></p> <p>According to the content mentioned in this commitment, conditions for participation are limited to requirements of legal and financial capacities, and commercial and technical abilities. In addition, relevant experiences to meet special needs of the procurement (where essential) could be required, but <i>not imposed as a type of conditions for participation.</i></p> <p>Contents of provisions under Vietnamese legislations have its nature similar to the above commitments under the Agreement (conditions for participation mean requirements in all steps from the start of evaluating the eligibility of tender documentations to the end of assessing technical aspects), despite the fact that</p>

<p>has previously been awarded one or more contracts by a procuring entity of a given Party or that the supplier has prior work experience in the territory of that Party;</p> <p>(b) may require relevant prior experience where essential to meet the requirements of the procurement.</p> <p>3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:</p> <p>(a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;and</p>	<p>d) It has registered on the national bidding network system;</p> <p>dd) To ensure competitiveness in bid as prescribed in Article 6 of this Law;</p> <p>e) It is not in time banned from bid participation;</p> <p>g) Its name is stated in short list for case where the short list has been selected;</p> <p>h) It must have a partnership with domestic contractors or use sub-contractors if it is foreign bidder when participating in international bid in Vietnam, unless domestic contractors have not full capability to participate in any part of procurement.</p> <p>2. A bidder or investor being an individual shall be deemed to be eligible when it satisfies the following conditions:</p> <p>a) Having full capacity for civil acts pursuant to the law of the country of which such individual is a citizen;</p> <p>b) Having an appropriate professional certificate as prescribed by law;</p>	<p>names or outside details of those provisions are not exactly the same as listed criteria under the Agreement.</p> <p>Under domestic legislations, there are provisions that are suitable with the principle of assessing if a supplier meets conditions for participation (in this Para 3 of the Agreement) or not.</p> <p>Reasons to exclude a supplier (provided in this Para 4 of the Agreement) are also mentioned in the part of prohibitions and evaluation criteria of tender documentation samples issued by Ministry of Planning and Investment.</p> <p>It is noticed that under Vietnamese legislations, the current provision on the condition that foreign suppliers have to join a partnership with domestic contractor or use local sub-contractors is incompatible with the commitment under the Agreement.</p> <p><u>Recommendations:</u></p> <p>Specific provisions on conditions to participate in tendering, which are similar</p>
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<p>(b) shall base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation.</p> <p>4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:</p> <p>(a) bankruptcy;</p> <p>(b) false declarations;</p> <p>(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;</p> <p>(d) final judgments by judicial court in respect of serious crimes or other serious offences;</p>	<p>c) Having lawful registration for operation as prescribed by law;</p> <p>d) Such individual is not being examined for penal liability;</p> <p>d) Such individual is not in time banned from bid participation.</p> <p>3. Bidders and investors with eligibility as prescribed in Clause 1 and Clause 2 of this Article may participate in bid with an independent status or partnership; in case of partnership, it must have written agreement among members, in which clearly stating responsibilities of head of partnership and general responsibilities, separate responsibilities of each member in partnership.</p> <p>Circular No. 01/2015/TT-BKHDT; Circular No. 03/2015/TT-BKHDT; Circular No. 05/2015/TT-BKHDT; Circular No. 11/2015/TT-BKHDT</p>	<p>to those under the Agreement (especially the conditions about experience and competition guarantee to avoid the differences in the way of understanding/explaining domestic legislations and this Agreement) should be included in a Suggested Law implementing EVFTA on Government procurement.</p>
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<p>(e) evidences of grave professional misconduct; or</p> <p>(f) failure to pay taxes.</p>		
<p>Article VIII Qualification of Suppliers</p> <p><i>Registration Systems and Qualification Procedures</i></p> <p>1. A Party may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.</p> <p>2. Each Party shall ensure that:</p> <p>(a) its procuring entities make efforts to minimize differences in their qualification procedures; and</p> <p>(b) where its procuring entities maintain registration systems, the entities make efforts to minimize</p>	<p>Law on Bidding:</p> <p>Article 5(d) regulating the eligibility of bidders stipulates that the bidder has registered on the national bidding network system.</p> <p>Joint Circular No. 07/2015/TTLT-BKHDT-BTC</p> <p>Article 37. Implementary guidance</p> <p>1. Roadmap for registration of procurement information on the electronic Government procurement system</p> <p>As from July 1, 2016 and within 02 working days prior to the bid closing deadline, if bidders and investors have yet to obtain the confirmation of information registration on the electronic Government procurement system, they shall not be</p>	<p><u>Assessments:</u></p> <p><i>1. About supplier registration systems</i></p> <p>Under Vietnamese legislations, suppliers are considered being eligible for tendering participation as they complete their registrations on the National tendering system, via which information about these suppliers with their capacities and experiences is published publicly and compulsorily as of July 2016. This provision of domestic legislations is suitable with the content mentioned in Paras 1 and 2 under the Agreement about Registration systems and Qualification procedures.</p> <p>Nevertheless, when this system is adopted or applied, it is noticed for Vietnam to meet requirements committed in Para 3 of this Article (ascertaining that the system</p>

<p>differences in their registration systems.</p> <p>3. A Party shall not adopt or apply any registration system or qualification procedure:</p> <p>(a) with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement ; or</p> <p>(b) use such registration system or qualification procedure to prevent or delay the inclusion of suppliers of the other Party on a list of suppliers or prevent such suppliers from being considered for a particular procurement</p> <p><i>Selective Tendering</i></p> <p>4. Where a procuring entity intends to use selective tendering, the entity shall:</p>	<p>allowed to participate in bidding for the bids or projects under the contractor selection procedure as prescribed in Article 20, 21, 22, 23, 24, 25 and 26 of the Bidding Law.</p> <p>Article 21. Limited bidding</p> <p>Limited bidding shall apply in case where a procurement has highly technical requirements or technical peculiarities for which only a limited number of bidders are capable of satisfying the requirements of the procurement.</p> <p>Decree No. 63/2014/ND-CP</p> <p>Article 22. Short-listing</p> <p>Based on the size and nature of a contract, short-listing process can be performed to select the qualified contractors who have proper competence and experience for the contract execution to send out the Invitation for Bids. The application of short-listing process shall be decided by</p>	<p>does not create unnecessary obstacles or delays for suppliers, etc).</p> <p>2. About selective tendering</p> <p>Terms used in Vietnamese legislations and the Agreement are relatively similar (selective tendering), but they have different natures. In particular, the selective tendering provided under the Agreement has implementation processes and procedures resembling the open tendering with a short list under Vietnamese legislations (Decree 63/2014/NĐ-CP). However, there is not enough necessary information included in Notices inviting expression of interest and Notices of participation under domestic legislations on Tendering in comparison with that under the Agreement's commitments.</p> <p>3. About multi-use list</p> <p>Under Vietnamese legislations, there is no provision about multi-use list mentioned in the Agreement, except that for the healthcare sector, principles of applying</p>
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<p>(a) include in the notice of intended procurement at least the information specified in Article VI:2(a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation; and</p> <p>(b) provide, by the commencement of the time-period for tendering, at least the information in Article VI:2 (c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article XI 3(b).</p> <p>5. The procuring entity shall:</p> <p>(a) publish the notice sufficiently in advance of the procurement to allow for interested suppliers to request participation in the procurement;</p> <p>(b) allow all qualified suppliers to submit a tender,</p>	<p>competent entities and must be clarified in the plan for the contractor selection.</p> <p>1. In terms of open bidding:</p> <p>a) Composing application for the prequalification:</p> <ul style="list-style-type: none"> - Application for prequalification must include the following contents: Summary of project or contract information; instructions on preparing and applying for the prequalification; standards in the competence and experience of the bidding contractors; - Pass/fail system shall be used to set standards in the evaluation of application for prequalification. In the criteria for evaluating applications for prequalification, the minimum requirement must stipulate that all specific contents of bidder's competence and experience must receive "pass" score; <p>b) Approving the applications for prequalification must be performed in writing and based on the statements on</p>	<p>this content are provided in the Decree. Nevertheless, maintaining this multi-use list is not a compulsory obligation under this Agreement, hence, Vietnamese legislations are considered being compatible with this commitment.</p> <p>4. <i>About information on procuring entity's decisions</i></p> <p>Vietnamese legislations are compatible with this commitment about informing procuring entity's decisions.</p> <p><u>Recommendations:</u></p> <p><i>About supplier registration systems</i></p> <p>This content should be added to current domestic legislations to clarify specific notices regarding the requirements for suppliers to adopt any registration system or qualification procedure as mentioned in Para 3 of this Article.</p> <p><i>About multi-use list</i></p> <p>Although setting up this multi-use list is not a compulsory obligation, it is considered being reasonable, convenient</p>
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<p>unless the entity has stated in the notice of intended procurement a limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.</p> <p>6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.</p> <p>7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for</p>	<p>approving and reporting verification of the request for prequalification;</p> <p>c) Request for prequalification must observe regulations stated in Point d Clause 1 Article 7 and Point b Clause 1 or Point a Clause 2 Article 8 of this Decree;</p> <p>d) Releasing the requests for prequalification:</p> <p>Requests for prequalification shall be released free of charge to bidders prior to the deadline for bid submission;</p> <p>dd) Receiving and managing the applications for prequalification:</p> <p>Procuring entities must receive and manage the prequalification applications according to regulations on the management of confidential documents till the announcement of the prequalification result;</p> <p>e) Opening and evaluating applications for prequalification:</p> <p>- Applications for prequalification that have been submitted at the venue and</p>	<p>and applicable for trial at first for procurements under the coverage of this Agreement. Therefore, a provision on the application of multi-use lists should be included in a Suggested Law implementing EVFTA on Government procurement (for procurements under the coverage of this Agreement).</p> <p>About selective tendering</p> <p>Guidance for selective tendering to be similar to that for open tendering with short-list (inviting participation and expression of interest) provided in Decree 63/2014/NĐ-CP should be included in a Suggested Law implementing EVFTA on Government procurement.</p> <p>Particularly, the content of information contained in Notices inviting participation, Notices inviting expression of interest, and the one provided for suppliers at the time of commencing the tendering should be clarified.</p>
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<p>inclusion on the list is:</p> <p>(a) published annually; and</p> <p>(b) where published by electronic means, made available continuously, in the appropriate medium listed in Annex X.</p> <p>8. The notice provided for in paragraph 8 shall include:</p> <p>(a) a description of the goods or services, or categories thereof, for which the list may be used;</p> <p>(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;</p> <p>(c) the name and address of the procuring entity and other information necessary to contact the entity and</p>	<p>time as regulated in the request for prequalification shall be opened right after the deadline for bid submission. The opening of application for prequalification shall be documented and records on the bid opening shall be sent to participating contractors. Any application for prequalification after the deadline for bid submission is not eligible to be opened and is considered invalid or eliminated;</p> <p>- Evaluation of applications for prequalification shall be implemented as prescribed in the request for prequalification; Contractors whose applications for prequalification are given "pass" score in terms of all contents regarding contractors' competence and experience shall be short-listed.</p> <p>g) Reporting, verifying and approving the prequalification result:</p> <p>- On the basis of the report on the result of the evaluation of prequalification applications, procuring entities must seek</p>	
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<p>obtain all relevant documents relating to the list;</p> <p>(d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list;and</p> <p>(e) an indication that the list may be used for procurement covered by this Agreement.</p> <p>10. Notwithstanding paragraph 8, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 8 only once, at the beginning of the period of validity of the list, provided that the notice:</p>	<p>the approval of prequalification result in which expert group's opinions on the evaluation result must be clarified;</p> <ul style="list-style-type: none"> - Prequalification result must be verified as prescribed in Clause 1 and Clause 2 Article 106 of this Decree prior to approval; - The approval of prequalification result must be conducted in writing with reference to the statements on approving and reporting the verification of prequalification result. - In case short-listed bidders have been selected, the document on approving the prequalification result must include selected bidder's name and other notes (if any). In case short-listed bidders have not been selected, the document on approving the prequalification result must determine the reasons why they are not short-listed. <p>h) Announcement of the short-list: The short-list must be publicized as prescribed in Point d Clause 1 Article 7 and Point c</p>	
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<p>(a) states the period of validity and that further notices will not be published;and</p> <p>(b) is published by electronic means and is made available continuously during the period of its validity.</p> <p>11. A procuring entity shall allow all suppliers included in a multi-use list to submit tenders for a relevant procurement.</p> <p>12. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.</p> <p>13. Where a supplier that is not included on a multi-use list submits a request for participation in a</p>	<p>Clause 1 or Point b Clause 2 Article 8 of this Decree and contractors who apply for the prequalification shall be notified as well.</p> <p>2. In terms of limited bidding:</p> <p>a) Defining and approving the short-list: the short-list must include minimum 03 bidders who prove their proper competence and experience to satisfy the requirements of the contract and wish to be awarded the bids;</p> <p>b) Announcement of the short-list: After approval, the short-list must be publicized as prescribed in Point d Clause 1 Article 7 and Point c Clause 1 or Point b Clause 2 Article 8 of this Decree.</p> <p>3. Short-listed bidders are not allowed to enter into a joint venture when participating in the same bidding.</p> <p>Article 77. Responsibilities of various authorities to medicine purchasing</p> <p>1. The Ministry of Health shall:</p>	
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<p>procurement based on a multi-use list and all required documents, within the time-period provided for in Article X:2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.</p> <p><i>Annex 2 and Annex 3 Entities</i></p> <p>14. A procuring entity covered under Annex 2 or 3 may use a notice inviting</p>	<p>dd/ Annually make a short list of medicine manufacturers and suppliers that are experienced, competent, and reliable, which is the basis for holding selective bidding.</p>	
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suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 7 and includes the information required under paragraph 8, as much of the information required under Article VI:2 as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list;and

(b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess

their interest in the procurement, including all remaining information required in Article VI:2, to the extent such information is available.

15. A procuring entity covered under Annex 2 or 3 may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

16. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application

<p>for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.</p> <p>17. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.</p>		
<p>Article IX Technical Specifications</p> <p>1. A procuring entity shall not prepare, adopt or apply any technical specification or</p>	<p>Decree No. 63/2014/ND-CP</p> <p>Article 12. Composition of the bidding documents</p> <p>2. Bidding documents must provide for the evaluation criteria of the bid envelopes</p>	<p>Assessments:</p> <p>Basically, domestic legislations on Tendering are compatible with the commitments under the Agreement. However, particularly for technical</p>

<p>prescribe any conformity assessment procedure with the purpose or the effect of creating an unnecessary obstacle to trade among the Parties.</p> <p>2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:</p> <p>(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and</p> <p>(b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.</p>	<p>including bidder's competence and experience; technical capability; the definition of lowest bid (in case of the application of the lowest bid method); the identification of evaluated price (in case of the application of evaluated price method). The bidding documents are not allowed to mention any terms and conditions that aim to restrict the participation of bidders or give priority to one or several bidder(s), which can cause unfair competition among bidders.</p> <p>b) Technical capability</p> <p>When using the pass, fail criteria system or 100 or 1,000-point grading scale to set standards of the technical evaluation, the minimum and maximum point of each general and specific standard in the grading scale must be defined. The criteria setting for the technical evaluation shall be based on relevant factors like the satisfaction with requirements for</p>	<p>specification under Vietnamese legislations on Construction, there is a provision that "construction activities must adopt national technical standards", while the commitments under the Agreement mention that the technical specification bases "on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes". Despite a little bit differences, the requirement of basing technical specification on such regulations as mentioned in the commitment is non-compulsory (just applied "where such exist"). Therefore, it is concluded that Vietnamese legislations are principally compatible about this issue.</p> <p>In addition, there are some contents which are provided in more details under the Agreement than under Vietnamese legislations (which just mention principles, but have no detailed provisions) as follows:</p> <ul style="list-style-type: none"> - Under the Agreement, as technical
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<p>3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity shall indicate that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.</p> <p>4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided</p>	<p>amount, quality and expiry date of delivery, shipping, installation, warranty and reliability of bidders through their previous performance of similar projects and other requirements mentioned in the bidding solicitation. Based on each contract, the bidding documents must provide criteria to serve as the basis of technical evaluation, including:</p> <ul style="list-style-type: none"> - Technical features and specifications of goods as well as production, fabrication and technological standards; - Practicality and economic efficiency of technical solutions, goods supply and assembling methods; - The satisfaction with requirements for warranty and maintenance; - Geographical and environmental adaptation; - Environmental impact and solutions; - Possibility of financial provision (if required); - Other requirements for trading, 	<p>specifications for a specific procurement are set up or approved, the procuring entity is not allowed to seek or accept advice from a person/organization that may have a commercial interest in the procurement in a manner that would have the effect of precluding competition. Under Vietnamese legislations, there are no direct, but just indirect provisions relating to the guarantee of competition in tendering (such as organizational and financial independence of procuring entities with consultants (natural or juridical persons)).</p> <ul style="list-style-type: none"> - Regarding the rights to adopt or apply technical specifications to promote the conservation of natural resources or protect the environment, there are no detailed provisions under Vietnam's legislations on Tendering, but just principles in specialized legislations. <p><u>Recommendations:</u></p> <p>Adjustments for Vietnamese legislations on Tendering (generally applied) should be made in order to internalize</p>
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<p>that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.</p> <p>5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.</p> <p>6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.</p>	<p>execution duration, training and technology transfer;</p> <ul style="list-style-type: none"> - Punctuality of goods supply; - Bidder's trust defined by evaluating their execution of previous contracts; - Other essential factors. <p>7. Bidding documents are not permitted to inquire about the brand and origin of goods. In case of failure to describe the specifications according to technical features, technological designs and standards, brand and catalogue of a specific product can serve as a reference and illustration for technical features of goods but must write the phrase "or equivalences" after brand and catalogue as well as clearly specify equivalent contents of such illustrating and reference goods in terms of technical features, functions, technological standards and other contents (if any) to facilitate the preparation of the bid packages. Bidders</p>	<p>commitments (just applied for procurements under the Agreement's coverage, but including reasonable and appropriate contents for general application to all procurements) into domestic legislations regarding exceptions for adopting technical specification to protect the environment, conserve natural resources and secure the Government's sensitive information.</p>
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are requested to submit the License or Authorization of goods sale from manufacturers or the Certificate of Partnership only if particular and complicated goods require the obligations of manufacturers to supply the after-sale services such as warranty, maintenance, repair and replacement components or materials.

Law on Construction:

Article 6. Application of standards and technical regulations in construction investment activities

1. Construction investment activities must comply with national technical regulations.
2. Standards shall be applied in construction investment activities on the principle of voluntariness, excluding standards referred in technical regulations or other relevant legal documents.
3. Standards applicable to works shall be

	<p>considered and approved by investment deciders when deciding the investment.</p> <p>4. The application of standards must satisfy the following requirements:</p> <ul style="list-style-type: none">a/ Meeting the requirements of national technical regulations and relevant laws;b/ Ensuring synchronism and feasibility of the applied standard system. <p>5. The application of technical solutions, technologies and new materials in construction investment activities must satisfy national technical regulations and relevant laws.</p> <p>6. The Ministry of Construction and specialized construction work-managing ministries shall formulate standards and national technical regulations applicable to specialized construction works in accordance with the law on standards and technical regulations.</p> <p>Decree No. 46/2015/ND-CP dated May 12 2015:</p>	
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Article 6. Application of technical standards and criteria in the construction investment

1. The application of technical standards or criteria in construction investment shall comply with the regulation in Article 6 of the Law on Construction and the relevant regulations promulgated by the Ministry of Construction.

2. The application of foreign criteria shall be enclosed with the description of necessity for it. Any foreign criterion that is applied shall be enclosed with its full text in computer file or a printed copy with a Vietnamese or English translation of the to-be-applied parts.

3. Any new technological solutions and materials for construction that are initially used in Vietnam shall satisfy the technical standards and conform to the relevant legislations. The contractor who proposes the application of new technological solutions or materials shall present the

	<p>basis and documents proving the safety, effectiveness and feasibility of such application to a competent agency for appraisal during the appraisal process of the construction engineering plan according to the legislations on construction.</p>	
<p>Article IX b Market Consultations</p> <p>1. Before launching a procurement, procuring entities may conduct market consultations with a view to preparing the procurement, notably for the development of technical specifications, provided that, where market research is performed by a supplier in the context of covered procurement, such procurement is subject to the rules of this Chapter.</p>	<p>Vietnamese bidding legislation has no regulations</p>	<p><u>Assessments:</u></p> <p>Under Vietnamese legislations, there is no provision that requires the compulsory market consultations with a view to preparing the procurement. Despite that fact, the procuring entity actually has to conduct such kinds of market consultations before setting up the procurement. However, this is not a compulsory obligation under the Agreement, hence, Vietnamese legislations are considered being compatible with the Agreement.</p> <p>From practical perspectives, the addition of this provision to domestic legislations</p>

<p>2. For this purpose, procuring entities may for example seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.</p>		<p>could lead to higher efficiency for procurements.</p> <p><u>Recommendations:</u></p> <p>This content should be included in a Suggested Law implementing EVFTA on Government procurement (for procurements under the Agreement's coverage) in the directions of:</p> <ul style="list-style-type: none"> - Encouraging procuring entities to conduct market consultations before setting up the procurements - Adopting requirements mentioned in the Agreement (by including these requirements in the Suggested Law) if the above procedure of conducting market consultations is implemented <p>In long-term, this content could be included in general legislations on Tendering.</p>
<p>Article X Tender Documentation</p> <p>1. A procuring entity shall promptly make available or</p>	<p>Law on Bidding</p> <p>Article 4.</p> <p>29. Bid invitation documents mean all of</p>	<p><u>Assessments:</u></p> <ul style="list-style-type: none"> - The content regarding Tender documentation under domestic legislations on Tendering is compatible

<p>provide on request to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:</p> <p>(a) the procurement, including the nature, the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings or instructional materials;</p> <p>(b) any conditions for participation of suppliers,</p>	<p>the documents used for open or limited bidding stipulating the requirements for a project, procurement and providing the legal basis for bidders, investors to prepare their bid dossiers and for the bid solicitor to assess bid dossiers aimed at selection of a winning bidder, or investor.</p> <p>30. Dossier of requirements mean all of the documents used for direct appointment of contractor, direct procurement, competitive quotation including the requirements for a project, procurement and providing the basis for bidders, investors to prepare their dossier of proposals and for the bid solicitor to assess dossier of proposals aimed at selection of a winning bidder, or investor.</p> <p>Article 7.1</p> <p>b) The approved bidding dossiers, dossier of requirements include contents of requirements on procedures for bidding, tables of bidding data; criteria for evaluation, forms of bidding, volume table</p>	<p>with that under the Agreement.</p> <ul style="list-style-type: none"> - Under the Agreement, the content of Tender documentation, with which Vietnamese legislations are compatible, is principal and basic. - The principles and ways of modifying Tender documentation under domestic legislations on Tendering are compatible with that under the Agreement. <p>Regarding conducting procurements by electronic means, at present, the Ministry of Planning and Investment is working on the Decree detailing the set up of Tender documentation via Networks, which is estimated to be issued in 2016 and gives guidance compatible with the commitments mentioned in Points d, e and g, Para 1 of this Article.</p> <p><u>Recommendations:</u></p> <p>No recommendations for amending any legislations</p>
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<p>including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;</p> <p>(c) all evaluation criteria to be applied in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;</p> <p>(d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means, if any;</p> <p>(e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements</p>	<p>of bid invitation; requirements on progress, techniques, quality; general conditions, specific conditions of contracts, model contracts and other necessary contents.</p> <p>Decree No. 63/2014/ND-CP (Article 14.2):</p> <p>2. Issuing, amending and clarifying the bid solicitation: a) The bidding documents are released for contractors to participate in the open bidding or for those who are short-listed bidders. In case of bidders as joint ventures or consortiums, only one of the partners is required to purchase or receive the bid solicitation, even if the joint venture or consortium has not been founded yet when purchasing or receiving the bid solicitation;</p> <p>b) In case of correcting the bid solicitation after release, procuring entities must make the decision on this correction as well as specify the corrected contents in the bid solicitation, which shall notify the</p>	
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<p>of the tender related to the evaluation criteria, on which the auction will be conducted;</p> <p>(f) where there will be a public opening of tenders, the date, time and place for the opening of tenders and, where the domestic legislation of a Party stipulates that only certain persons are authorized to be present, , the indication of these persons</p> <p>(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means;and</p> <p>(h) any dates for the delivery of goods or the supply of services.</p>	<p>bidders who have purchased or received the bid solicitation;</p> <p>c) In case the bid solicitation need to be clarified, bidders must send the written requests to procuring entities within a minimum period of 03 working days (applicable to domestic bidding) and 05 working days (applicable to international bidding) before the deadline for the submission of bid packages for any possible consideration and solution. The clarification of the bid solicitation shall be undertaken by procuring entities by means of one or more form(s) as follows:</p> <ul style="list-style-type: none"> - Dispatch their clarification in writing to bidders; - When necessary, a pre-bid conference must be held to discuss and clarify these confusing contents. Discussion contents for the clarification of the bid solicitation must be recorded in the form of the minutes and documented to send to bidders; 	
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<p>2. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account, where appropriate, such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.</p> <p>3. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.</p>	<p>- Clarified contents must not contrast with approved contents in the bid solicitation. If the bid solicitation needs amending or modifying after this clarification, this amendment or modification to the bid solicitation must be carried out as prescribed in Point b of this Clause;</p> <p>d) The written decision on the amendment or modification as well as the record of the bid solicitation constitutes the bid solicitation.</p> <p>Article 16. Clarification of the bid packages</p> <p>1. Upon completion of the bid opening, bidders are responsible to clarify their bid packages as requested by the procuring entities. In case bidder's evidence for their validation, competence and experience have been lacked, procuring entities request bidders to clarify and provide further documents to prove their validation, competence and experience. In</p>	
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<p>4. A procuring entity shall promptly reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.</p> <p><i>Modifications</i></p> <p>5. Where, prior to the award of a contract, a procuring entity modifies the evaluation criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation to</p>	<p>respect of technical and financial proposals of bidders, the clarification must ensure no change in the basic contents of bid packages and quoted bids.</p> <p>2. In case bidder's evidence for their validation, competence and experience have been lacked after the bid closing, bidders are allowed to send further documents for clarification. Procuring entities are responsible to accept the documents on clarification for consideration and evaluation; further documents on clarifying bidder's validation, competence and experience shall be considered a part of the whole bid packages.</p> <p>3. This clarification is only involved by procuring entities and participating bidders, which must ensure rules for no change to the actual nature of concerned bidders. The clarification contents must be shown in writing and kept by procuring entities as a part of the bid packages.</p>	
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<p>all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, or otherwise publish or provide such documents in the same manner as the original information was made available; and in adequate time to allow such suppliers to modify their initial tenders and submit amended tenders, as appropriate.</p>	<p>Joint Circular No. 07/2015/TTLT-BKHDT-BTC (Article 9) regulates that Notification of cancellation, extension, modification and rectification of posted information must be published on the bidding magazine and the electronic Government procurement system.</p>	
<p>Article XI Time-Periods</p> <p><i>General</i></p> <p>1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to obtain the tender documentation and to prepare and submit requests</p>	<p>Law on Bidding (Article 12):</p> <p>1. Time-limits applicable during selection of contractors:</p> <p>a) The maximum time for approval of plan on contractor selection shall be 05 working days after receiving report on appraisal;</p> <p>b) Dossiers of invitation for expression of</p>	<p><u>Assessments:</u></p> <p>Basically the principles to specify time-periods in tendering specifically provided in the Law on Tendering are compatible with those mentioned in this Article under the Agreement. However, the principles under Agreement focus on two following points:</p> <ul style="list-style-type: none"> - The time-periods for preparing

<p>for participation and responsive tenders, taking into account such factors as:</p> <p>(a) the nature and complexity of the procurement;</p> <p>(b) the extent of subcontracting anticipated; and</p> <p>(c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used. Such time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.</p> <p><i>Deadlines</i></p> <p>2.A procuring entity that uses selective tendering shall establish that the final date</p>	<p>interest, dossiers of invitation for pre-qualification, bidding dossiers, dossier of requirements shall be issued after 03 working days from the first day of publishing notice of invitation for submission of dossiers of expression of interest, notice of pre-qualification invitation, notice of bid invitation, notice of quotation invitation, sending of letters inviting submission of bidding before time of bid closure;</p> <p>c) Duration for preparing dossiers of expression of interest shall be at least 10 days for domestic bidding and 20 days for international bidding, from the first day when dossiers of invitation for expression of interest are issued until day of bid closure time; Bidders must submit dossiers of expression of interest before time of bid closure;</p> <p>d) Duration for preparing dossiers of pre-qualification participation shall be at least 10 days for domestic bidding and 20 days</p>	<p>documents for participation in the initial step of being preliminarily evaluated or for expression of interests for procurements under the Agreement, in case that conditions for reducing time-periods are not taken into consideration, is longer than that for procurements in international tendering under the Law on Tendering. However, as conditions for reducing time-periods (mentioned in Paras 4 and 5 of this Article and retained in Annex 9a) are taken into consideration, Vietnam's current legislations are compatible with the Agreement.</p> <p>- The time-periods for preparing documents for tendering in procurements under the Agreement, in case that conditions for reducing time-periods are not taken into consideration, is suitable with that for procurements in international tendering under the Law on Tendering. Therefore, Vietnam's current legislations are compatible with the Agreement's commitments on time-periods.</p>
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<p>for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.</p>	<p>for international bidding, from the first day when dossiers of invitation for pre-qualification are issued until day of bid closure time. Bidders must submit dossiers of pre-qualification participation before time of bid closure;</p> <p>d) Duration for preparing dossiers of proposals shall be at least 05 working days, from the first day when dossiers of requirements are issued until day of bid closure time. Bidders must submit dossiers of proposals before time of bid closure;</p> <p>e) Duration for preparing the bid dossiers shall be at least 20 days for domestic bidding and 40 days for international bidding, from the first day when bidding dossiers are issued until day of bid closure time. Bidders must submit the bid dossiers before time of bid closure;</p> <p>g) The maximum time allowed for assessment of dossiers of expression of interest, dossiers of pre-qualification</p>	<p><u>Recommendations:</u></p> <p>No recommendations about amending any legislations</p>
<p>Annex 9a</p> <p>4. Article XI (Time Periods): Notwithstanding the requirement in Article XI.2 that a procuring entity using selective tendering provides no less than 25 days for the final date for submission of requests for participation, Vietnam may allow its procuring entities to establish a final date for</p>		

<p>submission of requests for participation that is not less than 15 days from the date of publication of the notice of intended procurement no longer than ten years from the entry into force of this Agreement.</p> <p>3. Except as provided for in paragraphs 4, 5 and 7, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:</p> <p>(a) in the case of open tendering, the notice of intended procurement is published; or</p> <p>(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.</p>	<p>participation shall be 20 days, for dossier of proposals shall be 30 days, for bid dossiers shall be 45 days in the case of domestic bidding, as from the date of bid closure time until the date the bid solicitor submits to investment owner for approving the results of contractor selection. The maximum time allowed for assessment of dossiers of expression of interest, dossiers of pre-qualification participation shall be 30 days, for dossier of proposals shall be 40 days, for bid dossiers shall be 60 days in the case of international bidding, as from the date of bid closure time until the date the bid solicitor submits to investment owner for approving the results of contractor selection. In necessary case, time for assessment of dossiers of bid dossier, dossier of proposals may be prolonged but not exceed 20 days and must ensure implementation schedule of project;</p> <p>h) The maximum time for appraisal shall</p>	
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Annex 9a

5. Article XI (Time Periods): Notwithstanding the requirement in Article XI.3 that a procuring entity provides no less than 40 days for the final date for submission of tenders, Vietnam may allow its procuring entities to establish a final date for submission of tenders that is not less than 25 days from the date on which: (a) in the case of open tendering, the notice of intended procurement is published; or (b) in the case of selective tendering, the entity notifies the suppliers that they will be invited to submit tenders; no longer than ten years from the entry into force of this Agreement.

4. A procuring entity may

be 20 days for each content of appraisal: plan on selection of contractor, dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, bidding dossiers, dossier of requirements, result of selection of contractor after receiving full the submitted documents;

i) The maximum time for approving dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, dossier of requirements, bidding dossiers shall be 10 days, as from the date of receiving the written request for approving dossiers of invitation for expression of interest, dossiers of invitation for pre-qualification, dossier of requirements, bidding dossiers of the bid solicitor or the appraisal report in case of having appraisal requirement;

k) The maximum time for approving or giving the handling opinion on result of contractor selection shall be 10 days, as from the date of receiving the written

<p>reduce the time-period for tendering established in accordance with paragraph 3 to not less than 10 days where:</p> <p>(a) the procuring entity has published a notice of planned procurement as described in Article VI:4 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:</p> <p>(i) a description of the procurement;</p> <p>(ii) the approximate final dates for the submission of tenders or requests for participation;</p> <p>(iii) a statement that interested suppliers should express their interest in the</p>	<p>request for approving the result of contractor selection of the bid solicitor or the appraisal report in case of having appraisal requirement;</p> <p>l) The maximum period of validity of a bid dossier, dossier of proposals shall be 180 days as from the bid closure; in case of procurement with bid scale, complex nature, procurement under two-phase bidding method, the maximum period of validity of a bid dossier shall be 210 days, as from the bid closure. In necessary cases a bidder may request extension of the period of validity of his bid dossier, dossier of proposals, and must ensure progress of project;</p> <p>m) Time for sending a document to modify a bidding dossier to bidders already received bidding dossier shall be 10 days minimally for domestic bidding and 15 days minimally for international bidding before day of bid closure; for modification of dossier of invitation for expression of</p>	
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<p>procurement to the procuring entity;</p> <p>(iv) the address from which documents relating to the procurement may be obtained;and</p> <p>(v) as much of the information that is required for the notice of intended procurement under Article VI:2, as is available;</p> <p>(b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph;</p> <p>(c) the procuring entity procures commercial goods or services or;</p> <p>(d) a state of urgency duly substantiated by the</p>	<p>interest, dossier of invitation for pre-qualification, dossier of requirements, it shall be 03 working days minimally before day of bid closure. If time for sending a document to modify dossiers fail to meet provision at this point, the bid solicitor shall perform extension of bid closure time respectively in order to ensure provision on time for sending a document to modify a dossier of invitation for expression of interest, dossier of pre-qualification invitation, bidding dossier or dossier of requirements;</p> <p>n) Time-limit for sending notice of contractor selection result to bidders bidding via post, facsimile shall be 05 working days, as from the date of approving the result of contractor selection.</p>	
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<p>procuring entity renders the time-period for tendering established in accordance with paragraph 3 impracticable.</p> <p>5. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:</p> <p>(a) the notice of intended procurement is published by electronic means;</p> <p>(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and</p> <p>(c) the entity accepts tenders by electronic means.</p> <p>6. The use of paragraph 5, in conjunction with paragraph</p>		
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<p>4, shall in no case result in a reduced time-period for tendering established in accordance with paragraph 3 of less than 10 days from the date on which the notice of intended procurement is published.</p> <p>7. Where a procuring entity covered under Annex 2 or 3 has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.</p>		
<p>Article XII Negotiation</p> <p>1. With regard to covered procurement, a Party may provide for its procuring</p>	<p>Law on Bidding:</p> <p>Article 38. The process of contractor selection 1. The process of contractor selection for open bidding, limited bidding</p>	<p><u>Assessments:</u></p> <p>Under Vietnamese legislations, there are provisions on negotiations with the first ranked suppliers. These provisions are</p>

<p>entities to conduct negotiations:</p> <p>(a) where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article VI:2; or</p> <p>(b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.</p> <p>2. A procuring entity shall:</p> <p>(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or</p>	<p>shall be implemented as follows:</p> <p>a) Prepare for selection of contractor;</p> <p>b) Organize selection of contractor;</p> <p>c) Assess the bid dossiers and negotiate contract;</p> <p>d) Submit, evaluate, approve and publicize result of contractor selection;</p> <p>dd) Finalize and sign contract.</p> <p>Decree No. 63/2014/ND-CP:</p> <p>Article 19. Contract negotiation</p> <p>1. The bidder who has seized the first position in the bidder's rating shall be eligible for the contract negotiation. If any bidder who is invited to negotiate the contract has not turned up or refused to proceed to the contract negotiation, they are not allowed to reclaim their tender guarantee.</p> <p>2. Contract negotiation shall be based on the followings:</p> <p>a) Report on evaluation of the bidding documents;</p> <p>b) Bid package and bidder's records of</p>	<p>applied for all procurements and not included in Notices of intended procurement.</p> <p>The principles and contents of negotiations under domestic legislations are incompatible with that under the Agreement (According to the commitments, there is a limitation for cases of negotiations. For example, negotiations are allowed to be conducted if they are indicated in the notice of intended procurement. In addition, regarding the negotiation finalizing, while new or revised tenders are allowed to be submitted by suppliers under the Agreement, it is not permitted under Vietnamese legislations).</p> <p>Recommendations:</p> <p>Specific provisions for procurements under the Agreement's coverage should be made and included in the Suggested Law implementing the Agreement.</p>
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<p>tender documentation;and</p> <p>(b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.</p>	<p>clarification of bid package;</p> <p>c) Bidding solicitation.</p> <p>3. Rules of the contract negotiation:</p> <p>a) Contents of the bid package that satisfy the requirements of the bidding documents do not need to be negotiated;</p> <p>b) Contract negotiation is not allowed to change the quoted bid after error correction, deviation adjustment and discount deduction (if any). While evaluating bid packages and negotiating contracts, if workloads specified in the bill of quantities are lower than these mentioned in the design documentation, the soliciting party must request contractors to make up for this inadequacy on the basis of the quoted price; if a bid package has not provided the quoted price, procuring entities shall send reports to investors for consideration and decision on fixing the price in the approved estimate for these inadequate workloads or the price quoted</p>	
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	<p>by other bidders who have passed the technical evaluation</p> <p>c) Negotiation over the negative deviation value shall comply with regulations specified in Point d Clause 2 Article 17 of this Decree.</p> <p>4. Contents of contract negotiation:</p> <p>a) Unspecified, inappropriate and inconsistent contents between bidding documents and bid packages or in the same bid package shall be negotiated to prevent any possible dispute or unexpected impact on the contractual obligations of contracting parties;</p> <p>b) Deviations that have been found by the contractor and contractor's recommendations (if any), including possible alternatives which contractors are allowed to provide according to relevant bidding regulations;</p> <p>c) Personnel issues in respect of construction and mixed contracts:</p> <p>In the course of negotiation, selected</p>	
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	<p>bidder is not allowed to change their key personnel as proposed in the bid package for those who are in charge of design and survey (in respect of construction and mixed contracts that require contractors to implement one or two design steps prior to construction), construction site, except the case in which the evaluation time is extended longer than the regulated time or because of unexpected events that dissuade these key personnel from participating in the contract execution. In such case, contractors have the right to change other personnel but must ensure the substitute employees prove qualification, experience and capability equivalent to or higher than proposed personnel and bidders are not allowed to change their quoted bids;</p> <p>d) Any issue that arises during the selection of contractors (if any) in the aim of completing detailed contents of the contract;</p>	
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	<p>dd) Other necessary issues.</p> <p>5. In the course of contract negotiation, negotiating parties must proceed to draft and complete the official agreement, specific terms and conditions and annexes that determine detailed list of workloads, price list and contract execution progress (if any).</p> <p>6. If the negotiation fails, procuring entities must report investors for their consideration and decision on soliciting bidders who are ranked at the next positions for contract negotiation; if the successive negotiations also fail, procuring entities must report investors for their consideration and decision on the bid cancellation as regulated in Clause 1 Article 17 of the Bidding Law.</p>	
<p>Article XIII Limited Tendering</p> <p>1. Provided that it does not use this provision for the</p>	<p>Law on Bidding:</p> <p>Article 22. Direct appointment of contractor</p>	<p><u>Assessments:</u></p> <p><i>1. About principles of limited tendering application</i></p>

<p>purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles VI through VIII, X, XI, XII, XIV and XV only under any of the following circumstances:</p> <p>(a) where in response to a notice of intended procurement, or invitation to tender:</p> <p>(i) no tenders were submitted or no suppliers requested participation;</p> <p>(ii) no tenders were submitted that conform to the essential requirements of the tender documentation;</p>	<p>1. Direct appointment of contractor for contractor shall apply in the following cases:</p> <p>a) Procurements need be performed to immediately overcome or timely handle consequences caused by force majeure event; procurements need be performed to ensure national secret; procurements need be carried out immediately to not cause damages directly to life, health and assets of population communities on geographical areas or to not severely affect to adjacent projects; procurement of purchasing drugs, chemicals, supplies, and health equipment in order to carry out the work of prevention and fighting of epidemics in urgent cases;</p> <p>b) Urgent procurements need be carried out aiming to protect national sovereignty, national borders, and islands;</p> <p>c) Procurements of provision of advisory services, non-advisory services, procurement of goods which must buy</p>	<p>Vietnamese legislations are compatible with the Agreement regarding the following principles:</p> <ul style="list-style-type: none"> - In order to apply limited tendering, procuring entities have to meet specific conditions under particular circumstances. - In order to apply limited tendering, reasonable explanations and evidences (showing that procuring entities meet conditions of limited tendering application) have to be included in the statement approving the notice of planned procurement - Results of limited tendering are published publicly on the Public Procurement Newspaper (Bao dau thau) and the National tendering networks. <p>2. About circumstances of limited tendering application</p> <p>The circumstances of limited tendering application under Vietnamese legislations are not exactly the same as that under the Agreement. In particular, according the</p>
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<p>(iii) no suppliers satisfied the conditions for participation;or</p> <p>(iv) the tenders submitted have been collusive, provided that the procuring entity does not substantially modify the essential requirements set out in the tender documentation;</p> <p>(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:</p> <p>(i) the requirement is for a work of art;</p> <p>(ii) the protection of patents, copyrights or other exclusive rights;or (iii) due to an absence of competition for technical reasons;</p>	<p>from contractors performed previously due to ensuring the compatibility of technologies, copyright which not able to buy from other contractors; procurements with nature of research, test; purchase of intellectual property copyright;</p> <p>d) Procurements provide advisory service for making feasible study reports, construction designs which have been appointed for authors of designs of works architectures who won in selection or are selected when authors have full conditions and capability in accordance with regulations; procurements of construction of statues, reliefs, monumental paintings, art works in association with author right from the creation stage to stage of construction of the works;</p> <p>dd) Procurements of relocation of technical infrastructure works managed directly by a specialized unit in order to serve the work of ground clearance; procurements of detection and disposal of</p>	<p>commitments, there are more circumstances that limited tendering could be applied, but there is no case that is based on the <i>limit</i> of the procurement value.</p> <p><i>3. About the procedure and way of limited tendering application</i></p> <p>The way of selecting (<i>one or several</i>) suppliers via limited tendering is mentioned in Article 1 under this Agreement. This selection is not the same as that under the Law on Tendering, which just allows for only one supplier.</p> <p><u>Recommendations:</u></p> <p>The following content, which is suitable with the Agreement, should be included in the Suggested Law implementing EVFTA on Government Procurement:</p> <ul style="list-style-type: none"> - Circumstances under which procuring entities are allowed to apply limited tendering (close list); - Ways of selecting limited-tendering suppliers;
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<p>(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:</p> <p>(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement or conditions under original supplier warranties;and</p> <p>(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;</p> <p>(d) insofar as is strictly</p>	<p>bombs, mines, explosives in order to prepare construction of works;</p> <p>e) Procurements of providing public products and services, procurements with procurement price in the limitation allowed to apply direct appointment of contractor as prescribed by Government in line with economic-social conditions in each period.</p> <p>2. Implementation of direct appointment of contractor for procurements defined at points b, c, d, dd and e Clause 1 this Article must satisfy all the following conditions:</p> <p>a) Having an approved decision on investment, except for advisory procurements for project preparation;</p> <p>b) Having an approved plan on selection of contractors;</p> <p>c) Having been allocated capital at the request of the implementation schedule of procurement;</p> <p>d) Having an approved estimate in accordance with regulation, except for</p>	<p>- Publicly publishing reasons (conditions and circumstances meeting the conditions for applying limited tendering) leading to the application of limited tendering in the notice of intended procurement</p>
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<p>necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time by means of an open tendering or selective tendering;</p> <p>(e) for goods purchased on a commodity market or exchange;</p> <p>(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a prototype or a first good or service may include limited production or supply in order to</p>	<p>case of EP, EC, EPC procurements, turnkey procurements;</p> <p>dd) Having time for implementation of direct appointment of contractor as from the day of approving dossier of requirements to day of signing contract not exceeding 45 days, case of procurements with big scale, complex content not exceeding 90 days;</p> <p>e) Contractor who is suggested for direct appointment of contractor must have name in the database on contractors of state management agencies on bidding operation.</p> <p>3. For procurements under cases of direct appointment of contractor specified at Clause 1 this Article and satisfy conditions for direct appointment of contractor specified at Clause 2 this Article but still able to apply other forms of selection of contractor defined at Articles 20, 21, 23 and 24 of this Law, encouraging to apply other forms of selection of contractor.</p>	
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<p>incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;</p> <p>(g) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein;</p> <p>(h) for purchases made</p>	<p>Decree No. 63/2014/ND-CP:</p> <p>Article 54: Limits on no-bid contract awarding</p> <p>Limits on no-bid contract awarding prescribed in Point e Clause 1 Article 22 of the Law on Bidding:</p> <ol style="list-style-type: none"> 1. Contracts for consulting services, non-consulting services, and public services: VND 500 million; contracts for goods procurement, construction, installation, procurement of medicines, medical equipment, public procurement, mixed contracts: VND 01 billion; 2. Contracts for regular procurements: VND 100 million. <p>Circular No. 10/2015/BKHDT:</p> <p>Article 4. Application for contractor selection plan approval</p> <ol style="list-style-type: none"> 1. The rules for making the contractor selection plan are specified in Article 33 of the Law on Bidding. 	
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<p>under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers;or</p> <p>(i) where a contract is awarded to a winner of a design contest provided that:</p> <p>(i) the contest has been organized in a manner that is consistent with the principles of this Chapter,in particular relating to the publication of a notice of intended procurement;and</p> <p>(ii) the contest is judged by an independent jury with a view to a design contract being awarded to a winner.</p> <p>2. For each contract awarded</p>	<p>2. The basis for making the contractor selection plan is specified in Article 34 of the Law on Bidding.</p> <p>3. The application for contractor selection plan approval is made according to Form 1 enclosed herewith, which contains:</p> <p>a) Completed tasks including tasks related to preparation of project and procurements to be completed first with corresponding values and legal basis;</p> <p>b) Tasks that do not apply any contractor selection method include: operation of project management board, provision of compensation for land clearance, loan interest payment, tasks performed by the investor including making, appraising the request for expression of interest, pre-qualification documents, bidding documents, request for proposals; assessing expressions of interest, pre-qualification applications , bid-envelopes, proposals; appraising the contractor selection result, and other tasks that do</p>	
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<p>in accordance with paragraph 1 a procuring entity shall prepare a report in writing, or maintain a record. The report or record shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.</p>	<p>not apply contractor selection with corresponding values;</p> <p>c) The tasks that require the contractor selection must specify the quantity of procurements, content of each procurement, according to Article 5 of this Circular, and explanation for such contents. This part must specify the basis for dividing the project into smaller procurements. It is prohibited to divide the project into procurements against regulations of the Law on Bidding for the purpose of direct contracting or restricting participation of bidders. Provision of explanation for procurements competitive bidding and all-inclusive contracts is not required.</p>	
<p>Article XIV Electronic Auctions</p> <p>Where a procuring entity intends to conduct a covered</p>	<p>Joint Circular No. 07/2015/TTLT-BKHDT-BTC:</p> <p>Article 22. Evaluation of bid package, negotiation, appraisal, approval of</p>	<p><u>Assessments:</u></p> <p>Under Vietnamese legislations, as procuring entities intend to conduct a covered procurement via networks by</p>

<p>procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:</p> <p>(a) the automatic evaluation method that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;</p> <p>(b) any other relevant information relating to the conduct of the auction.</p>	<p>contractor selection result, contract perfection and conclusion</p> <p>2. Evaluation of the bid package, contract negotiation, appraisal and approval of contractor selection result shall conform to regulations laid down in the Bidding Law and the Decree No. 63/2014/ND-CP</p>	<p>electronic means, they have to announce publicly their Notice of planned procurement and Notice of intended procurement with attached Tender documentation on the networks. These provisions make Vietnamese legislations compatible with commitments under the Agreement.</p> <p>However, the evaluation of Tender documentation during the current time for the cases of tendering via networks is carried out in the same way with that for the cases of traditional tendering. Under Vietnamese legislations, there is no provision regarding the application of automatic evaluation method as mentioned in the commitment (at present, in-charge authorities are doing researches to adopt this automatic evaluation method to small scaled and technically standardized procurments).</p> <p><u>Recommendations::</u></p> <p>The provision on applying the automatic evaluation method and supplying suppliers with this information before</p>
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		<p>commencing the tendering via networks (understood as electronic auction under the Agreement) should be included in the Suggested Law implementing EVFTA on Government Procurement (for procurements under the Agreement's coverage).</p>
<p>Article XV Treatment of Tenders and Awarding of Contracts <i>Treatment of Tenders</i></p> <p>1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.</p> <p>2. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of</p>	<p>Circular No. 63/2014/ND-CP Article 14.</p> <p>3. Preparing, submitting, receiving, managing, amending and withdrawing the bid packages:</p> <p>a) Bidders are responsible for the preparation and submission of their bid packages as prescribed in the bidding documents;</p> <p>b) Procuring entities shall receive and monitor the bid packages, which adheres to the regulations on the management of confidential files until the result of contractor selection is made known to the public; under no circumstances is the information of the bid packages revealed</p>	<p><u>Assessments:</u></p> <p><i>1. About correcting errors of form</i></p> <p>According to the Agreement, "where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers". Under Vietnamese legislations, there is no provision regarding the exclusion of a supplier's tender with error form, and all suppliers enjoy opportunities to clarify information about their tenders. However, it is necessary to make clear the nature of the term of "form of a tender" for a purpose of understanding this</p>

<p>the contract, the procuring entity shall provide the same opportunity to all participating suppliers.</p> <p><i>Awarding of Contracts</i></p> <p>3. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be submitted by a supplier that satisfies the conditions for participation.</p> <p>4. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the</p>	<p>to any other bidders, except for the information that need disclosing during the bid opening. Those sent to procuring entities after the deadline for the bid submission shall not be opened and considered invalid and subject to being eliminated. Any further document that arrives after the deadline for bid submission with the aim of amending the existing bid packages shall be invalid, except for any document sent to clarify the bid packages as requested by the procuring entities or any of such documents that serve to certify the validation, competence and experience of the bidders;</p> <p>c) Upon wishing to amend or withdraw the bid packages, bidders must lodge a written request to procuring entities. Procuring entities shall only give consent to this amendment or withdrawal from bidders if written requests are submitted prior to the deadline for the submission of</p>	<p>commitment accurately.</p> <p>2. About awarding of the contracts</p> <p>Vietnamese legislations are basically compatible with the commitment under the Agreement. However, it is essential to clarify the nature of the term of "at the time of opening". This term should be understood that a supplier's tender is considered for an award if at the time of opening it complies with the essential requirements set out in the notice of intended procurement and tender documentation and is submitted by a supplier that satisfies the conditions for participation as mentioned under the Agreement.</p> <p>3. About conditions to award a contract for suppliers</p> <p>Vietnamese legislations are basically compatible with the commitment under the Agreement (The contract is awarded to the supplier, the tender of whom is the most advantageous or has the lowest price (where price is the sole criterion)).</p>
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<p>evaluation criteria specified in the notices and tender documentation, has submitted:</p> <p>(a) the most advantageous tender; or</p> <p>(b) where price is the sole criterion, the lowest price</p> <p>5. where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.</p> <p>6. A procuring entity shall not use options, cancel a covered procurement or modify awarded contracts in a manner that circumvents the obligations under this</p>	<p>bid packages;</p> <p>d) Procuring entities are obliged to receive all of the bid packages from all bidders that arrive before the deadline for bid submission, even those who have not purchased or received the bid solicitation directly released by the procuring entities. In case bidders have not yet purchased the bidding documents, they must pay a sum equal to the selling price of the bidding documents to procuring entities to enable the bid packages to be accepted.</p> <p>4. d) Open the bid packages:</p> <p>a) The opening of the bid packages must be performed in the witness of all bidders and start in 01 hour after the deadline for bid submission expires. Only bid packages that have been submitted by the required deadline shall be opened in the witness of legal representatives of bidders who attend the bid-opening session, which is not dependent on the presence or absence of bidders;</p>	<p>4. About the case of abnormal low prices</p> <p>Regarding the price being abnormally or 50% lower than the contract price under Vietnamese legislations, there are provisions similar to those under EVFTA. Nevertheless, according to domestic legislations, no specific regulations are provided in case of the price being abnormally lower than the prices in other tenders submitted.</p> <p>In addition, under EVFTA, the condition to verify this case is just comprised of "abnormal low price", while under Vietnamese legislations, an additional condition is "affecting the quality of the procurement".</p> <p>5. Para 6 of this Article presents the warning to procuring entities to avoid wrong application or not implementation of the Agreement's provisions (but this Para does not include cases, in which the cancelling a covered procurement or modifying awarded contracts is allowed). Under Vietnamese legislations, there exist</p>
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<p>Chapter.</p>	<p>b) Bid packages shall be opened in the alphabetical order of bidder's names and the following processes must be observed:</p> <ul style="list-style-type: none"> - Request each legal representative of bidders to confirm whether letter of discount is attached to the bid packages or not; - Check whether the seal is broken; - Open the bid packages and clearly read the information regarding bidder's names, amount of originals and copies of the bid packages; the quoted bid specified in their bid packages; discount value (if any); validity period of the bid packages; defined time of contract execution; value and validity of tender guarantee and other relevant information; <p>c) Records on the bid opening: All information mentioned in Point b of this Clause must be recorded. Records on the bid opening must be countersigned by representatives of procuring entities and bidders who participate in the bid opening</p>	<p>provisions regarding these above cases, in which cancelling a covered procurement or modifying awarded contracts is allowed, but no specific provisions about the cases of using options.</p> <p><u>Recommendations:</u></p> <p>The provisions that are still different between EVFTA and Vietnamese legislations, or need clarifying under domestic legislations should be included in the Suggested Law implementing EVFTA on Government Procurement. Noticeably, it is necessary to include clarifications for the cases, in which a procuring entity is allowed to cancel a covered procurement or modify awarded contracts, and specific guides for the cases, in which that entity could use options, in the above Suggested Law.</p> <p>Relating to the cases of abnormally low price, the Law on Tendering (generally applied) should be amended towards excluding the condition of "affecting the quality of the procurement" because this kind of condition is qualitative and could</p>
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	<p>session. Such records must be delivered to the participating bidders;</p> <p>d) Representatives of procuring entities must also append their signature in the original bid, letter of discount (if any), authorization letter conferred on bidder's legal representatives (if any); joint venture or consortium agreement (if any); tender guarantee; financial proposals as well as other significant contents of the bid packages.</p> <p>Article 117:</p> <p>6. If the unit prices in the bid-envelope and proposals are remarkably low, which seriously affects the contract, the procuring entity shall request the bidder to make a written explanation for the feasibility of such unit prices. If the explanation of the bidder is not clear and persuasive, such unit prices shall not be accepted. Such case shall be considered deviation and such deviation shall be</p>	<p>lead to many concerns in reality of application.</p>
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	<p>adjusted under the regulations similar to the regulations on the deficient quoted value and proposals compared with the requirements in the invitation for bid and request for proposals in accordance with the regulations in Article 17 of this Decree.</p> <p>Law on Bidding:</p> <p>Article 17. Cases of bidding cancellation</p> <ol style="list-style-type: none">1. All bid dossiers, dossiers of proposals failed to satisfy the requirements of the bid invitation documents, dossier of requirements.2. Alteration of the objectives or scope of the investment stated in the bid invitation documents, dossier of requirements.3. The bid invitation documents, dossier of requirements failed to comply with legislation on bidding or other relevant legislation that lead to the failure of the selected bidder or investor to meet requirements to perform procurement, project.4. There is evidence showing the handing,	
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	<p>taking, brokerage of bribes, conclusion with each other in bidding, fraud, taking advantage of positions, powers aiming to interfere illegally in bidding activities that lead to the falsified result of selecting the bidder, investor.</p> <p>Article 42. Consideration for recommendation as the winning bidder for procurements of the advisory service provision</p> <p>1. The advisory bidder being organization shall be considered for recommendation as the winning bidder upon satisfying the following conditions:</p> <ul style="list-style-type: none">a) Having valid bid dossier and dossier of proposals;b) Having technical proposals satisfying requirements;c) Having the bidding price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any) being lowest	
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	<p>price for method of lowest price; having the highest technical points for method of fixed price and method of basing on technical aspect; having the highest overall points for the method of combination between technical aspect and price;</p> <p>d) Having the proposed bid-winning price not exceeding the approved procurement price. If the approved estimated budget of procurement is lower than or higher than the approved procurement price, this estimate shall replace the procurement price as basis for consideration for recommendation as the winning bidder.</p> <p>2. The advisory bidder being individual shall be considered for recommendation as the winning bidder upon satisfying the following conditions:</p> <p>a) The bidder has the best dossier of scientific curriculum vitae, technical proposals (if any) and satisfying requirements of reference provisions;</p>	
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b) The bidder has the proposed bid-winning price not exceeding the approved procurement price. If the approved estimated budget of procurement is lower than or higher than the approved procurement price, this estimate shall replace the procurement price as basis for consideration for recommendation as the winning bidder.

3. For bidders fail to be selected, in notice of bidder-selection result must clearly state the reason thereof.

Article 43. Consideration for recommendation as the winning bidder for bidding the non-advisory service provision, goods procurement, construction and installation and mixture content

1. The supplier of non-advisory service, goods, construction and installation, mixture content shall be considered for recommendation as the winning bidder

	<p>upon satisfying the following conditions:</p> <ul style="list-style-type: none">a) Having valid bid dossier and dossier of proposals;b) Having capability and experiences satisfying requirements;c) Having technical proposals satisfying requirements;d) Having deficient discrepancies not exceeding 10% of bidding price;dd) Having the bidding price after the errors have been rectified and discrepancies have been adjusted, minus value of discount (if any) being lowest price for method of lowest price; having the lowest assessment price for method of assessment price; having the highest overall points for the method of combination between technical aspect and price;e) The bidder has the proposed bid-winning price not exceeding the approved procurement price. If the approved estimated budget of procurement is lower	
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	<p>than or higher than the approved procurement price, this estimate shall replace the procurement price as basis for consideration for recommendation as the winning bidder.</p>	
<p>Article XVI Post-Award Information</p> <p><i>Information Provided to Suppliers</i></p> <p>1. A procuring entity shall promptly inform suppliers that have submitted a tender or application for participation of the entity's contract award decisions and, on the request of a supplier, shall do so in writing.</p> <p>2. Subject to paragraphs 2 and 3 of Article XVII, a procuring entity shall, on request, provide an</p>	<p>Decree No.63/2014/NĐ-CP: (Article 20)</p> <p>4. If the winning contractor has been selected, the documents on approving the result of contractor section must include the followings:</p> <p>a) Winning contractor's name;</p> <p>b) Winning bid;</p> <p>c) Type of contract;</p> <p>d) Contract execution period;</p> <p>dd) Other notes (if any).</p> <p>5. In case of the bid cancellation as prescribed in Clause 1 Article 17 of the Bidding Law, documents on approving the result of contractor selection or deciding</p>	<p><u>Assessments:</u></p> <p>The principle of publishing award information and maintaining records under the Agreement is basically suitable with that under domestic legislations, except the following points:</p> <ul style="list-style-type: none"> - Regarding the published award information, there are no compulsory requests for including the address of the successful supplier, the date of award, the type of procurement method used, and a brief description of the circumstances justifying the use of limited tendering under Vietnamese legislations as those provided under EVFTA.

<p>unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and for suppliers meeting the conditions for participation whose tenders pass technical specifications, the relative advantages of the successful supplier's tender.</p> <p><i>Publication of Award Information</i></p> <p>3. Not later than 30 days after the award of each contract covered by this Agreement, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Appendix III. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at</p>	<p>the bid cancellation must clarify reasons for this cancellation and responsibility for concerned parties.</p> <p>6. On receipt of the decision on approving the result of contractor selection, procuring entities must disseminate the information about the result of contractor selection according to Point d Clause 1 Article 7 and Point c Clause 1 or Point b Clause 2 Article 8 of this Decree; send a written notification about the result of contractor selection to the bidding contractors within the required period as regulated in Point n Clause 1 Article 12 of the Bidding Law. The notification must specify the following contents:</p> <p>a) Information specified in Point a, b, c and d Clause 4 of this Article;</p> <p>b) List of unselected bidders and a summary of reasons for elimination;</p> <p>c) Plan for completing and signing the contract with selected bidders.</p>	<p>However, specifically for the inclusion of a brief description of the circumstances justifying the use of limited tendering, due to the fact that Vietnam retain this obligation for a period of ten years from the entry into force of this Agreement (mentioned in Annex 9a), Vietnamese legislations are considered being basically compatible with this commitment under the Agreement.</p> <p>Under the Agreement, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender (there is an equivalent provision under Vietnamese legislations), and the relative advantages of the successful supplier's tender (there is no equivalent provision under Vietnamese legislations).</p> <p>- Regarding collection and reporting of statistics, this is about the</p>
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<p>least the following information:</p> <p>(a) a description of the goods or services procured;</p> <p>(b) the name and address of the procuring entity;</p> <p>(c) the name and address of the successful supplier;</p> <p>(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;</p> <p>(e) the date of award;and</p> <p>(f) the type of procurement method used , and in cases where limited tendering was used in accordance with Article XIII, a brief description of the circumstances justifying the use of limited tendering.</p> <p>Annex 9a</p>	<p>Circular No. 03/2015/TT-BKHDT (Section 37 Chapter 1)</p> <p>37.3. After the announcement of the results of the selection of contractors as stipulated under Section 37.1 of Part Instructions to contractors, if the contractor who is not selected submits written questions on the reason of not being selected, within a time period of 5 days prior to the contact signature day, the bid solicitors must send written answer to the contractors.</p> <p>Section 38. Along with the written notice of the results of the selection of contractor, the bid solicitors must send the notice of the acceptance of bid dossiers and the contract, including requirements on measures to ensure the implementation of the contract, time of contract execution in accordance with Form No 23 Chapter VIII – Form of Contract, to the winning contractor on condition that the</p>	<p>information exchange between the Parties, but not related to domestic legislations.</p> <p><u>Recommendations::</u></p> <ul style="list-style-type: none"> - The content regarding collection and reporting of statistics should be included in the Suggested Law implementing EVFTA on Government Procurement. - The provisions that are still different between EVFTA and Vietnamese legislations (as mentioned in the above part of Assessment) play an important role in improving transparency, and they are feasible to be generally applied. Therefore, Law on Tendering (generally applied) should be amended towards adding these provisions under the Agreement.
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6. Article XVI (Post Award Information): Notwithstanding the requirement in Article XVI.3 that the post-award notice includes a brief description of the circumstances justifying the use of a limited tendering procedure, Vietnam may allow its procuring entities to omit such 2 information from post-award notices no longer than ten years from the entry into force of this Agreement.

Maintenance of records

4. Each procuring entity shall maintain:

(a) the documentation, records and reports relating to tendering procedures and contract awards for covered procurement, including the records and reports

contractor is proved to be sufficient capable to perform the contract. Notice of the acceptance of bid dossier and exchange of contract are parts of contract documents. In case the contractor does not come to fulfill the document or not submit the contract performance guarantee within time limit specified in the Notice of the acceptance of bid dossiers. The contractor will be disqualified and not get back the bid security as stipulated under Section 18.5.dd of Part Instructions to contractors.

Decree No. 63/2014/ND-CP

Article 10. Safe custody for bid packages during the selection of contractors

1. All of documents regarding the selection of contractors shall be kept to a minimum of 03 years after the contract finalization, except for those prescribed in Clause 2, 3 and 4 of this Article.

2. If the Proposals for financial contents by

<p>required under Article XIII for a period of at least three years from the date it awards a contract; and</p> <p>(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.</p> <p><i>Collection and Reporting of Statistics</i></p> <p>5. The Parties shall endeavour to communicate the available and comparable statistical data relevant to the procurement covered by this Chapter.</p>	<p>the bidders that do not pass the technical evaluation shall be fully returned to the bidders as scheduled below:</p> <p>a) In terms of consulting service supply contract: Within the period of 10 days from the date on which the contract with selected contractors are signed;</p> <p>b) In terms of the contracts for non-consulting service, goods purchase, construction works and mixed contracts applying the single-stage two-envelope bidding process: scheduled at the same time when the tender guarantee of eliminated bidders is refunded or cleared.</p> <p>Within the time limit regulated at Point a, b of this Clause, if bidders that do not reclaim their financial proposals, procuring entities shall consider and decide the cancellation of financial proposals but ensure the confidentiality of information enclosed in these financial proposals.</p> <p>3. In case of the bid cancellation, all of</p>	
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	<p>relevant documents shall be kept within the period of 12 months from the date on which the decision on the bid cancellation is made.</p> <p>4. Financial statements, as-built dossiers and other documents regarding the selected bidders shall be kept in a safe manner according to legal regulations on the document custody.</p>	
<p>Article XVII Disclosure of Information</p> <p><i>Provision of Information to Parties</i></p> <p>1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including, where applicable, information on</p>	<p>No regulations</p>	<p><u>Assessments:</u></p> <p>This is not an issue under the coverage of domestic general legislations.</p> <p>However, directly providing information to Parties about procurements under the Agreement coverage could be useful (convenient for applications).</p> <p><u>Recommendations:</u></p> <p>This content should be included in the Suggested Law implementing EVFTA on Government Procurement</p>

the characteristics and relative advantages of the successful tender. The Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that would prejudice legitimate commercial interests of another particular supplier or that might prejudice fair competition between suppliers.

3. Nothing in this Chapter

<p>shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:</p> <p>(a) would impede law enforcement;</p> <p>(b) might prejudice fair competition between suppliers;</p> <p>(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or</p> <p>(d) would otherwise be contrary to the public interest.</p>		
<p>Article XVIII Domestic Review</p>	<p>Law on Administrative Complaints, Law on Administrative Procedures,</p>	<p><u>Assessments:</u> <i>1. About mechanisms of settling claims</i></p>

<p>1. Each Party shall maintain, establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to review, in a non-discriminatory, timely, transparent and effective manner, a challenge by a supplier of:</p> <p>(a) a breach of this Chapter; or</p> <p>(b) where the supplier does not have a right to challenge directly a breach of this Chapter under the domestic law of a Party, a failure of a procuring entity to comply with a Party's measures implementing this Chapter, arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all</p>	<p>Law on Bidding</p> <p>Article 91. Resolution of protests regarding bidding</p> <p>1. When consider that lawful rights and benefits are severely affected, the contractors and investors have rights:</p> <p>a) To make protests to the bid solicitor, investment owner, competent person about matters during selection of contractor, investor; result of selection of contractor, investor according to the process of resolution of protests specified in Article 92 of this Law;</p> <p>b) To institute court proceedings at any time, including time of resolution of protests or after having result of resolution of protests.</p> <p>2. In case where contractors, investors instituted court proceedings, they are not entitled to send protest to the bid solicitor, investment owner, or the competent person. If in the process of resolution of</p>	<p><i>and resolving challenges of a breach of the Agreement</i></p> <p>Under Vietnamese current legislations, there is no provision about challenging directly a breach of articles under international commitments, but just about that under domestic legislations. However, provided that international commitments need internalizing into domestic legislations, the requirements in Para 1 have been met.</p> <p>In particular, under Vietnam's legislations on Tendering, there exists specific provisions about the mechanisms of settling tendering-related claims by a Consultation Committee and of proceedings at the Court according to the civil procedures. These kinds of regulations ensure the objectivity and independence of procuring entities as mentioned under the Agreement.</p> <p><i>2. About procedures of consultations and claim settlements of a procuring entity</i></p> <p>The mechanism of settling direct claims</p>
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<p>challenges shall be in writing and made generally available.</p> <p>2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage, where appropriate, the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to</p>	<p>protests, contractors, investors instituted court proceedings, the resolution of protests shall be terminated immediately.</p> <p>Article 92. The process of resolution of protests</p> <p>1. The process of resolution of protests regarding matters during selection of contractors shall be implemented as follows:</p> <p>a) A contractor may send a written protest to the investment owner for project; the bid solicitor for regular procurement, concentrated procurement since happening matters and prior to having notice of result of contractor selection;</p> <p>b) The investment owner, the bid solicitor shall be responsible to have a document to resolve a protest made by a bidder within a time-limit of a maximum 07 working days from the date of receipt of the written protest of the bidder;</p> <p>c) If the investment owner, the bid solicitor has no document to resolve the</p>	<p>against procuring entities during the tendering process to meet the requirements of being non-discriminatory, timely, transparent and effective (as mentioned under the Agreement) has been provided under Vietnam's legislations on Tendering.</p> <p>Nevertheless, the procedure of settling claims under domestic legislations does not include consultation mentioned in Para 2 under the Agreement. However, due to the fact that this obligation just need implementing "if appropriate" (meaning that it is non-compulsory), Vietnamese legislations are basically compatible with the Agreement</p> <p>It is noticed that under Vietnamese legislations on Tendering, tendering-related conflicts are considered as civil ones (in other words, from the perspective of a tendering relationship, a procuring entity is regarded as a civil subject, not a State administrative agency or authority). As a result, domestic legislations on administrative claims or proceeding are</p>
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<p>seek corrective measures under the administrative or judicial review procedure. Each Party or its procuring entities shall make information on such complaint mechanisms generally available.</p> <p>3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.</p> <p>4. Where a body other than an authority referred to in paragraph 1 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative</p>	<p>protest or if the bidder disagrees with the result of resolution of protest, the bidder shall have the right to lodge the protest with the authorized person within 05 working days, as from the expired day of replying or day of receiving document of resolution of protest made by investment owner, the bid solicitor;</p> <p>d) The authorized person shall be responsible to resolve a protest made by a bidder within a time-limit of a maximum 15 working days from the date of receipt of the written protest of the bidder.</p> <p>2. The process of resolution of protests regarding result of selection of contractors shall be implemented as follows:</p> <p>a) A bidder may send a written protest to the investment owner for project; the bid solicitor for regular procurement, concentrated procurement in period of 10 days after having notice of result of contractor selection;</p> <p>b) The investment owner, the bid solicitor</p>	<p>not applied for claims or proceeding relating to procurements.</p> <p>3. About the guarantee of objectivity in resolving challenges</p> <p>Under the Law on Tendering, a period of 10 days for suppliers to prepare and submit a challenge about the award is provided, hence, domestic legislations are compatible with the Agreement.</p> <p>Under the Law on Tendering, there is no provision about the deadline for preparing and submitting a challenge regarding issues arisen during the period of selecting suppliers, but that deadline is limited to be prior to the date of the award.</p> <p>4. About possibility of asking for reviewing initial decisions</p> <p>Under Vietnamese current legislations, there exist provisions about the reviewing initial decision of the Consultation Committee or the submitting proceedings to the Court. Therefore, domestic legislations are compatible with the</p>
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<p>or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.</p> <p>5. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:</p> <p>(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;</p> <p>(b) the participants to the proceedings (hereinafter referred to as "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;</p> <p>(c) the participants shall have the right to be</p>	<p>shall be responsible to have a document to resolve a protest made by a bidder within a time-limit of a maximum 07 working days from the date of receipt of the written protest of the bidder;</p> <p>c) If the investment owner, the bid solicitor has no document to resolve the protest or if the bidder disagrees with the result of resolution of protest, the bidder shall have the right to lodge the protest with the authorized person and the Consulting Council for resolution of protests within 05 working days, as from the expired day of replying or day of receiving document of resolution of protest made by investment owner, the bid solicitor. The Minister of Planning and Investment shall establish a Consulting Council for Resolution of Protests at central level; the Ministers, Deputy Ministers of Ministerial agencies shall establish the Councils at ministerial level; the heads of state management agencies</p>	<p>requirements in Para 4 under the Agreement.</p> <p>In case that relevant parties claim to the Court (of State authorities) for reviewing initial decision, Vietnam's Civil legislations are compatible with regulations mentioned in Para 5 under the Agreement.</p> <p>5. About measures to protect legal benefits of suppliers</p> <p><i>About interim measures</i></p> <p>Under Vietnamese current legislations on Tendering, there is a provision about the possibility of suspending procurement process during the duration of considering the challenges (implemented by the authorities on a basis of the Consultation Committee's proposal) if this measure is necessary and suitable with requirements in Point a, Para 7 under the Agreement. However, under the Agreement, other factors such as the interests concerned, including the public interest, may be taken into account when such measure is decided to be applied. In contrast, under</p>
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<p>represented and accompanied;</p> <p>(d) the participants shall have access to all proceedings; and</p> <p>(e) the review body shall make its decisions on a supplier's challenge in a timely fashion, in writing, and shall include an explanation of the basis for each decision .</p> <p>7.Each Party shall adopt or maintain procedures that provide for:</p> <p>(a) rapid interim measures, pending the resolution of a challenge, to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process.</p>	<p>on bidding at localities shall establish the Councils at local level;</p> <p>d) When receiving written protest, the Consulting Councils for Resolution of Protests shall be entitled to request the bidders, investment owners, the bid solicitor and relevant agencies for information provision in order to consider and have written report to the competent person about the plan and content or replying protest within 20 days, after receiving the written protest made by the bidder;</p> <p>dd) In necessary case, the Consulting Councils for Resolution of Protests shall, based on the written protest made by the bidder, suggest the competent person to consider for temporary suspension of the bid. If accepting, within 05 working days, after receiving the document of the Consulting Council for Resolution of Protests, the competent person shall issue a written notice about temporary</p>	<p>Vietnamese legislations, just general provisions, with the granting all rights for the authorities (on the basis of Consultation Committee's proposal) as procurement process is suspended (if regarded being necessary), are made.</p> <p>This is Vietnam's right according to the Agreement (not compulsorily applied), hence, Vietnamese legislations are considered being compatible. Nevertheless, this provision is meaningful in protecting public benefits relating to the tendering process, hence, it should be included in the legislations and applied where necessary.</p> <p><i>About measures to resolute challenges and claims</i></p> <p>Regarding the compensation for suppliers where a review body has determined that their challenges or claims are correct, under Vietnamese legislations, there is a provision that "relevant organizations or people are in charge of paying suppliers (who did challenge) the amount of money that those suppliers paid the Consultation</p>
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<p>The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and</p> <p>(b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered. The compensation may be limited to either the costs reasonably incurred in the preparation of the tender or in bringing the challenge, or both.</p>	<p>suspension of the bid. The document of temporary suspension of the bid must be sent to the investment owner, the bid solicitor, bidder within 03 working days after issuing the written notice about temporary suspension of the bid. Duration of temporary suspension of the bid shall be calculated from the date the investment owner, the bid solicitor receive the notice of temporary suspension until the competent person issues a document to resolve protest;</p> <p>e) The competent person shall issue decision on resolution of protest regarding result of selection of contractor within 05 working days, after receiving the written opinion of the Consulting Council for Resolution of Protests.</p> <p>5. If a bidder or investor sends a written protest directly to the competent person without observance with the processes of resolution of protests specified in this Article, such written protest shall not be</p>	<p>Committee". This provision is not entirely compatible with the content mentioned in Para 7 under the Agreement (the compensation is based on either the costs reasonably incurred in the preparation of the tender or in bringing the challenge, or both)</p> <p>Recommendations::</p> <ul style="list-style-type: none"> - No recommendations about amending any general legislations - The principle mentioned in Para 7 of this Article should be included in the Suggested Law implementing EVFTA on Government Procurement
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	<p>considered for settlement.</p> <p>Decree No. 63/2014/NĐ-CP:</p> <p>Article 119. Advisory Council</p> <p>1. President of Advisory Council</p> <p>a) The President of the Central Advisory Council is the competent representative of the Ministry of Planning and Investment. The Central Advisory Council shall give advice on the consideration of the petitions as required by the Prime Minister;</p> <p>b) The President of the Advisory Council of Ministries, ministerial-level authorities, Governmental authorities and other central authorities (hereinafter referred to as Ministerial Advisory Council) is the competent representative of the units in charge of administering the bidding of such authorities). b) The Ministerial Advisory Council shall give advice on the consideration of the petitions regarding the contracts of the projects approved and administered by the Ministers, Heads of</p>	
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	<p>ministerial-level authorities, Governmental authorities and other central authorities other than the contracts prescribed in Point a this Clause;</p> <p>c) The President of the provincial Advisory Council is the competent representative of the provincial Departments of Planning and Investment. The provincial Advisory Council shall give advice on the consideration of the competitiveness regarding the contracts of the projects in the provinces including the contracts of the enterprises established and operated in such provinces other than the contracts prescribed in Point a this Clause.</p> <p>2. Members of Advisory Council: Members of Advisory Council are the representatives of the competent persons and relevant professional association. Depending on the nature of each contract, in addition to the abovementioned members, the President of the Advisory</p>	
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	<p>Council can invite other individuals for the Advisory Council. The members of the Advisory Council must not be the relatives (biological parents, parents in law, biological children, adopted children, in-laws, biological sisters and brothers) of the persons signing the petition, of the persons directly evaluating the bid-envelopes and proposals, of the persons directly assessing the result of the selection of contractors and of the person approving the result of the selection of the contractors.</p> <p>3. Activities of Advisory Council:</p> <p>a) The President of the Advisory Council shall make a Decision to form the Advisory Council within 05 working days from the receipt of the petitions of the bidders. The Advisory Council shall be formed depending on each case;</p> <p>b) The Advisory Council shall work on the principle of collectives, conduct polls based on the majority rule and send</p>	
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	<p>Reports to the competent persons for consideration; each member can stick to their opinion and take legal responsibility for it.</p> <p>4. Standing assisting division of Advisory Council:</p> <p>a) The standing assisting division shall be in charge of administering the bidding excluding the persons directly assessing the contracts for which the bidders file the petitions;</p> <p>b) The standing assisting division shall be assigned the administrative tasks by the President of the Advisory Council; receive and manage the cost paid by the bidders submitting the petitions.</p> <p>Article 120. Handling of petitions for selection of contractors</p> <p>1. The duration of the consideration of any petition prescribed in Clause 1 and Clause 2 Article 92 of the Law on Bidding counted from the day on which the administrative</p>	
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	<p>division of the person in charge of considering such petition receives the petition.</p> <p>2. The person in charge of considering the competitiveness shall send the bidder a written report that the petition shall not be considered if such petition does not meet the requirements prescribed in Article 118 of this Decree.</p> <p>3. The bidder can send a written request for the withdrawal of the petition during the consideration of such petition.</p> <p>4. The conclusion of the petition must be written on the reply to the petition; in case such petition is approved, there must be measures, methods and time to remedy the consequences (if any) and the standing assisting division shall request the relevant entities to reimburse the amount that the bidder submitting the petition pay to the Advisory Council. In case of disapproval, the written reply must specify the reasons.</p>	
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	<p>Law on Bidding:</p> <p>SECTION 2. RESOLUTION OF DISPUTES IN BIDDING BY COURTS</p> <p>Article 93. The principles of resolution Resolution of disputes in bidding by courts shall comply with law on civil procedures.</p> <p>Article 94. The right to request Court for application of temporary emergency measures When instituting, parties have the right to request the Court for immediate temporary suspension of bid disclosure; approval of short list; approval of result of selection of contractor, investor; conclusion in a contract; performance of contract, and other temporary emergency measures as prescribed by law.</p>	
Article XIX Modifications	Vietnamese legislation has no regulations.	<u>Assessments:</u>

<p>and Rectifications to Coverage</p> <p>1. A Party shall notify the other party in writing of any proposed modification or rectification to its coverage referred to generally in this Article as "modification".</p> <p>2. For any proposed withdrawal of an entity from its coverage in exercise of its rights on the grounds that government control or influence over it has been effectively eliminated, the Party proposing the modification ("modifying Party") shall include in the notification evidence that such government control or influence has been effectively eliminated.</p> <p>2a. Government control or influence over an entity is deemed to be effectively</p>		<p>This is not an issue under the coverage of domestic general legislations.</p> <p><u>Recommendations:</u></p> <p>No recommendations about amending any legislations</p> <p>However, it is noticed that after modifications and rectifications to Coverage of this Chapter are implemented and come into effect, corresponding changes need to be made in the Suggested Law implementing EVFTA on Government Procurement.</p>
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<p>eliminated when the notifying Party, including for the EU its central government entities and its subcentral entities, and for Vietnam its central government and subcentral government:</p> <p>(i) does not own directly or indirectly more than 50% of the entity's subscribed capital or the votes attached to the shares issued by the entity; and</p> <p>(ii) cannot appoint directly or indirectly more than half of the members of the entity's board of directors or an equivalent body.</p> <p>3. For any other proposed modification, the modifying Party shall include in the notification information as to the likely consequences of the change for the mutually</p>		
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<p>agreed coverage provided in the Agreement. Where the modifying Party proposes to make rectifications of a purely formal nature and minor modifications to its coverage not affecting covered procurement, modifications of this kind shall be notified at least every two years.</p> <p>Proposed modifications of coverage are deemed to constitute rectifications of a purely formal nature and minor modifications to its coverage for following cases:</p> <ul style="list-style-type: none">(i) changes in the name of an entity;(ii) merger of one or more entities listed in its Annexes;(iii) the separation of an entity listed in its Annexes into two or more entities that		
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are all added to the entities listed in the same Section of the Annex;

4. The modifying Party may include in its notice an offer of compensatory adjustments for the change to its coverage, where necessary to maintain a level of coverage comparable to that existing prior to the modification. The modifying Party needs not provide compensatory adjustments to the other Party when a proposed modification concerns:

(a) a procuring entity over which a Party has effectively eliminated its control or influence in respect of covered procurement by that entity; or

(b) rectifications of a purely formal nature and minor modifications to its Annexes

Notwithstanding the provisions of (a) under this paragraph, should the withdrawal by a notifying Party of a significant number of procuring entities from its coverage on the ground that these entities are no longer under government control or influence in accordance with the criteria set out in Paragraph (2a) of this Article result in a significant imbalance of coverages agreed between the Parties, the notifying Party shall accept to enter into consultation with the other Party to discuss the modalities for redressing such imbalance without prejudice

5. The other Party shall notify the modifying Party of any objection to the proposed

<p>modification within 45 days of the notification, if any.</p> <p>6. In case of objection by the other Party (“objecting Party”) to the notification by the modifying Party, the Parties shall seek to resolve the objection through bilateral consultations. During the consultations, the objecting Party may request further information with a view to clarifying the proposed modification, including the nature of any government control or influence.</p> <p>7. Where a solution to the objection has not been found through the bilateral consultations under paragraph 6, the Parties may use the dispute settlement mechanism under the Chapter XXX of the</p>		
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<p>Agreement.</p> <p>8. A proposed modification shall become effective only where:</p> <p>(a) The other Party has not submitted to the modifying party a written objection to the proposed modification within 45 days from the date of the notification of the proposed modifications or ,</p> <p>(b) The Parties have reached an agreement after due consultations under paragraph 6.</p>		
<p>Article XXII</p> <p>Cooperation</p> <p>1. The Parties recognize their shared interest in cooperating in the promotion of international liberalization of government procurement markets with a view to achieving enhanced</p>	<p>Vietnamese legislation has no regulations.</p>	<p><u>Assessments:</u></p> <p>This is not an issue under the coverage of domestic general legislations.</p> <p><u>Recommendations:</u></p> <p>No recommendations about amending any legislations</p>

<p>understanding of their respective government procurement systems and to improving access to their respective markets.</p> <p>2 Without prejudice to Article 6.3, the Parties shall endeavour to cooperate in matters such as:</p> <p>(a) exchanging experiences and information, such as regulatory frameworks and best practices;</p> <p>(b) developing and expanding the use of electronic means in government procurement systems;</p> <p>(c) building capability of government officials in best government procurement practices;</p> <p>(d) institutional</p>		
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<p>strengthening for the fulfilment of the provisions of this Chapter; and</p>		
<p>Article XX Specialised Committee on Services, Investment and Government Procurement</p> <p>1. In accordance with article XX in the institutional chapter, the Specialised Committee on Services, Investment and Government Procurement may:</p> <p>(a) discuss on the exchange of statistical data conducted in accordance with article XV, paragraph 4;</p> <p>(b) review pending notifications of modifications to coverage and endorse updates to the list of entities in Annex I to Annex III of each Party's Appendix I;</p> <p>(c) endorse the</p>	<p>Vietnamese legislation has no regulations.</p>	<p><u>Assessments:</u></p> <p>This is not an issue under the coverage of domestic general legislations.</p> <p><u>Recommendations:</u></p> <p>No recommendations about amending any legislations</p>

<p>compensatory adjustments resulting from modifications affecting coverage;</p> <p>(d) consider issues regarding government procurement, that are referred to it by a Party;and</p> <p>(e) discuss any other matters related to the operation of this Chapter</p>		
<p>Article XXIII Future negotiations</p> <p><i>Electronic procurement</i></p> <p>1. Parties agree to review the provisions of Article XIV once Vietnam’s electronic procurement system has been fully developed to take into account possible technological changes and in particular to consider other aspects such as the mathematic formula used for automatic evaluation method</p>		

<p>and the possible communication of the results of any initial evaluation to the participants in the auction.</p> <p>2. Parties agree to conduct further negotiations on the duration of the period for the storage of data relating to procurement by electronic means once Vietnam's electronic procurement system is operational.</p> <p><i>Market access</i></p> <p>3. Parties agree to conduct further negotiations on the coverage of additional subcentral entities no longer than 15 years after the entry into force of this Agreement.</p>		
<p>Annex 9a</p> <p>7. Notwithstanding Chapter.X (Dispute Settlement), Vietnam shall not be subject</p>	<p>Vietnamese legislation has no regulations.</p>	<p><u>Assessments:</u></p> <p>This is not an issue under the coverage of domestic general legislations.</p>

<p>to dispute settlement with respect to its obligations under Chapter.X (Government Procurement) for five years from the date of entry into force of this Agreement. During this transitional period, upon the EU's request, both Parties shall enter into consultations on issues concerning Vietnam's implementation of its obligations.</p>		<p><u>Recommendations:</u></p> <p>No recommendations about amending any legislations</p>
<p>Annex 9c</p> <p>VIETNAM'S FINAL MARKET ACCESS OFFER ON GOVERNMENT PROCUREMENT</p>	<p>Vietnamese legislation has no regulations.</p>	<p><u>Assessments:</u></p> <p>Under Vietnamese legislations, there is no provision regarding the market access on Government procurement just applied for EU's partners, but not for suppliers from other foreign countries.</p> <p><u>Recommendations:</u></p> <p>All of the content in Annex 9c under the Agreement should be included in the Suggested Law implementing EVFTA on Government Procurement (the article of</p>

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