

No.: 35/2019/TT-BGTVT

Hanoi, September 9, 2019

CIRCULAR

ON DREDGING ACTIVITY IN SEAPORT WATERS

Pursuant to Maritime Code No. 95/2015/QH13 on November 25, 2015;

Pursuant to Decree No. 12/2017/ND-CP dated February 10, 2017 of the Government on defining the functions, tasks, powers and organizational structure of the Ministry of Transport;

Pursuant to Decree No. 159/2018/ND-CP dated November 28, 2018 of the Government on management of dredging activities in seaport and inland waterway waters;

Pursuant to Decree No. 58/2017/ND-CP dated May 10, 2017 of the Government on detailing a number of articles of Vietnam Maritime Code on management of maritime activities;

Pursuant to Decree No. 37/2015/ND-CP dated April 22, 2015 of the Government on detailing construction contracts;

At the request of Director of Department of Transport Infrastructure and Director of Vietnam Maritime Administration;

The Minister of Transport promulgates the Circular on dredging activities in seaport waters.

Chapter I

GENERAL PROVISIONS

Article 1. Governing scope

This Circular specifies dredging activities in seaport waters, including: dredging and maintenance of public marine fairway from state budget and socialized project of dredging in seaport waters managed by the Ministry of Transport.

Article 2. Subject of application

This Circular is applied to domestic and foreign agencies, organizations and individuals related to dredging activities in seaport waters.

Article 3. Interpretation of terms

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

1. The public non-business service provider include the Northern Vietnam Maritime Safety Corporation and the Southern Vietnam Maritime Safety Corporation.
2. Contract of provision of public non-business services funded by the State budget for dredging and maintenance of marine fairway are the contracts signed between the Vietnam Maritime Administration and the public non-business service provider regarding the dredging and maintenance of public marine fairway.
3. Construction contract means a contract signed between an Enterprise providing public non-business service and construction contractor of dredging and maintenance of marine fairways.

4. Investor is an enterprise selected by the competent state agency to execute contract of socialization project of dredging of seaport waters.

Chapter II

DREDGING AND MAINTENANCE OF PUBLIC MARINE FAIRWAY FROM STATE BUDGET

Section 1. GENERAL PROVISIONS OF IMPLEMENTING DREDGING OF PUBLIC MARINE FAIRWAY FROM THE STATE BUDGET

Article 4. Dredging and maintenance plan of public marine fairway

1. The dredging and maintenance plan of public marine fairway is under the annual marine infrastructure maintenance plan approved by the Ministry of Transport, including the contents of the plan of implementing dredging and maintenance of public marine fairway of the plan year and content of the plan of for implementing the preparation of dredging and maintenance works of public marine fairway of the following year (including search for the location for dumping the dredged materials, survey, preparation of design documents, cost estimates of works and preparation of environmental impact assessment report, sinking of dredged materials at sea, allocation of marine areas and other related tasks).

2. The planning of dredging and maintenance of public marine fairway from the state budget must comply with the provisions of law on marine work maintenance and must base on the following basic information:

a) Importance of the fairway for maritime activities, exploitation of seaports for goods import and export, socio-economic development and assurance of security and national defense in the region;

b) Statistical data on volume of goods and number of turns that ships pass through the port for the past 3 years;

c) Statistical data on sizes of ships and marine exploitation draft on fairway, frequency and altitude of effective design water level;

d) Progress of sedimentation, dredging and maintenance result for the last 03 years to forecast the dredging and maintenance volume;

dd) Plan of the appropriate dumping site of dredged materials announced and approved by the People's Committee of the province.

3. Vietnam Maritime Administration must coordinate with the public non-business service provider in researching, searching and making a list of dumping sites of dredged materials from public marine fairway dredging and maintenance works assigned to manage and work with the competent agencies to obtain the license of dumping site of dredged materials.

Article 5. Contents of inspection and supervision

Contents of inspection and supervision of public marine fairway dredging and maintenance works from the state budget must comply with the provisions of Articles 5 and 20 of Decree No. 159/2018/ND-CP dated November 28, 2018 of the Government on management of dredging activities in seaport waters and inland waterways (Decree No. 159/2018/ND-CP) and the following contents:

1. Daily Construction Report must be recorded in form specified in Appendix I attached to this Circular. The supervision consultant is responsible for checking and urging the construction contractor to record daily construction report for dredging in form specified in Appendix I attached to this Circular.

2. Every week, the supervision consultant must send the report via the post and telecommunications system or directly to the Vietnam Maritime Administration using the form as specified in Appendix II attached to this Circular and enclosed with a photocopy of daily construction report (in the reporting week).

3. The data inspection and storage of the dredging surveillance system installed on construction vehicles and vehicles transporting dredged materials are prescribed as follows:

a) Before executing the construction, the Investor (investor for the socialized dredging project) presides over with AIS information management and exploitation service provider, supervision consultant, construction contractor to conduct inspection of the operation of dredging surveillance system installed on construction vehicles, vehicles transporting and dumping dredging materials. The inspection result is recorded in writing in form as specified in Appendix III attached to this Circular;

b) The construction contractor is responsible for providing sufficient data obtained from the video recording equipment installed on the means of transporting, dumping dredged materials to the public non-business service provider;

c) The supervision consultant is responsible for implementing and synthesizing adequate photos taken on the means of transporting and dumping the dredged materials (dredged material storage compartment) as regulated and providing together with the weekly supervision consultancy report as specified in Appendix II attached to this Circular for the Vietnam Maritime Administration and public non-business service provider;

d) The provider of AIS information management and exploitation service for management of means of dredging is responsible for storing field data on the number of vehicles, position, travel speed and time of stopping and parking from AIS equipment installed on means of participating in the construction, transportation and dredging;

dd) The public non-business service provider is responsible for storing data from the video recording equipment installed on the construction vehicle provided by the construction contractor and photo taken on the means of transporting, dumping and dredging (dredging material storage compartment) at specified times as specified by the supervision consultant;

e) Data collected from the dredging surveillance system installed on means of construction, transporting or dumping dredged materials must be archived for 03 years.

Section 2. ORGANIZATION OF IMPLEMENTATION OF MARINE FAIRWAY DREDGING AND MAINTENANCE IN FORM OF STANDARD MAINTENANCE WITHIN A DEFINED PERIOD OF TIME

Article 6. Design and cost estimate of works

1. Preparation of construction design and cost estimate

Construction drawing design, construction cost estimates for the form of standard maintenance within a defined period of time are formulated on the basis of:

a) The dumping site of dredged materials announced and approved by the People's Committee of the province to ensure the dredged materials are received during the standard maintenance period of time;

- b) The standard maintenance of the fairways already approved by the Ministry of Transport in the plan of dredging and maintenance of public marine fairway from the state budget;
- c) The dredging volume for maintenance of fairway standards is calculated as the annual average volume, determined on the basis of development of sedimentation volume, calculated on the periodic marine notice survey data, data of measurement and handover of the work site and data of measurement, acceptance, dredging and maintenance of the fairway for at least past 03 years. The dredging volume includes the initial dredging volume (determined on the latest and accurate marine notice survey data when measuring and handing over the site) and the dredging volume for fairway standard maintenance for the period of time from the initial dredging to the end of the contract of fairway standard maintenance;
- d) The cost estimate for dredging and maintenance in the form of standard maintenance contract is determined by the dredging volume corresponding to the fairway design standards, dumping site of dredged materials and time of standard maintenance.

2. Responsibility of public non-business service provider

- a) Based on the plan of public marine fairway dredging and maintenance, annual state budget expenditure estimates assigned by the Ministry of Transport, and contract of provision of public non-business services funded by the state budget for marine fairway dredging and maintenance signed between the Vietnam Maritime Administration and the public non-business service provider and the dumping site of dredged materials approved by a competent authority, the public service provider contracts with a design consultant, verification consultant, environmental protection consultant, prepares a dumping project at sea (if any); organizes the elaboration, verification and submission to the Vietnam Maritime Administration of construction drawing design and cost estimates of marine fairway dredging and maintenance works in form of standard maintenance contract to maintain standards within a defined period of time and cost estimates of environmental protection, prepares the sea dumping project, funds for sea allocation (if any); reviews, submits the task outline and technical plan of survey, measurement and handover of the site, supervision outline, outlines of tasks and technical plan of unscheduled inspection, measurement and inspection, and technical plan for the survey and acceptance prepared by the supervision consultant, survey consultant;
- b) Based on the approved dumping site of the dredged materials of the fairway, the plan for maintenance of marine infrastructure must be approved by the Ministry of Transport to request the consultant to prepare and complete the dossier of environmental protection and submit to the competent agency for approval as regulated.

3. Responsibility of the Vietnam Maritime Administration

- a) Organize the appraisal and approval for the contents of the non-business work service provider under the provisions of Point a, Clause 2 of this Article;
- b) Approve the cost estimate of survey, measurement, inspection and sudden inspection for the fairway which is dredged and maintained in the form of standard maintenance contract with the frequency of implementation up to 03 times/fairway/year. The scope of measurement and survey each time is designated by the Investor with a maximum survey area equal to 30% of the fairway's site plan area to check the construction contractor's fairway design standard maintenance;

c) Approve the outline and cost estimate of consultancy costs for environmental protection.

Article 7. Planning of contractor selection

The public non-business service provider must make a contractor selection plan and submit to the Vietnam Maritime Administration for approval in accordance with the bidding law.

Article 8. Organization of the contractor selection implementation

1. Responsibility of the Vietnam Maritime Administration:

a) Evaluate and approve bidding documents and result of contractor selection for construction of dredging and maintaining marine fairway in form of standard maintenance contract within a defined period of time;

b) Select and sign contract with site plan survey, measurement and handover consultant, supervision consultant, survey, measurement and irregular inspection consultant, survey, measurement and acceptance consultant, construction inspection consultant and AIS information management and exploitation service provider under the provisions of the bidding law;

c) Accept the contents of the contract of dredging and maintenance in form of standard maintenance within a defined period of time in accordance with the legal provisions.

2. Responsibility of Public non-business service provider:

a) Select and sign contract with the bidding consultancy unit for dredging construction. Prepare bidding documents for selection of contractor for marine fairway dredging and maintenance in form of standard maintenance within a specified period and submit to the Vietnam Maritime Administration for approval;

b) Organize evaluation of bids for marine fairway dredging and maintenance in form of standard maintenance within a defined period and submit to the Vietnam Maritime Administration for appraisal and approval of result of construction contract selection as regulated;

c) Select and sign contract with a consultant to perform the environmental protection in accordance with the bidding law;

d) Negotiate content of dredging and maintenance contract: scope, scale, standards, construction facilities, equipment, contract performance time, advance, payment, contract performance guarantee, handling of violations, force majeure cases and other necessary contents; submit to the Vietnam Maritime Administration for approving the contract content; Sign dredging construction contract in form of standard maintenance within a specified period of time with the construction contractor.

Article 9. Handover of construction plan

The Vietnam Maritime Administration must take prime responsibility for, and coordinate with enterprise providing public non-business service provider, supervision consultant and design consultant in handing over the construction plan to the construction contractor before the time of dredging construction.

Article 10. Construction organization

1. Responsibility of construction contractor

a) Comply with requirements for environmental work under the approved environmental impact assessment report and the relevant regulations of law on environmental protection;

- b) Strictly comply with the approved transport safety plan during the construction process;
- c) Ensure the performance of the contract as prescribed by law and in accordance with the dredging and maintenance construction contract under the signed performance quality;
- d) Carry out the dredging construction in accordance with the provisions of the contract and the provisions of law, ensure that the design standards are always maintained (length, width of fairway, bottom height, dredged slope and other relevant contents of the entire fairway during the contract performance term;
- dd) Within at latest 02 days after detecting dry positions or being reported and requested by agencies and units related to the management, operation and exploitation of fairway, the construction contractor must survey and make dredging plan; within at latest 05 days after detecting the dry positions or being reported or requested by agencies and units related to the management, operation and exploitation of fairway, the construction contractor must conduct the dredging of dry positions to ensure the design standards of the fairway, construction completion time must not exceed 20 days, from the date of commencement of the dredging to fix the dry positions after being reported, requested; and at the same time notify the supervision consultant to carry out the construction supervision as regulated.

In case due to weather conditions, it is impossible to survey and dredging of dry positions (certified by the Port Authority in the area and accompanied by weather news at the time when it is impossible to do so), the construction contractor must immediately report to the public non-business service provider for guidance and within 02 days from the date of termination of the force majeure event, to conduct survey, make a dredging plan and immediately conduct the dredging of dry positions to ensure fairway design standards, construction completion time must not exceed 20 days, from the date of termination of force majeure events and commencement of dredging construction to overcome dry positions;

- e) Select a survey unit to conduct the internal measurement and acceptance of the construction result in field as regulated. Conduct the measurement and survey of dredging result at dry positions by the construction contractor' fund in case as specified at Point b, Clause 2 of this Article;
- g) In case the construction contractor fails to complete the dredging that meets the fairway design standards, on schedule and under the quality as agreed in the contract and is reminded, reflected but fails to complete the dredging at dry positions that meets the fairway design standards under the time specified at Point dd of this Clause, the public non-business service provider must report to the Vietnam Maritime Administration for consideration and decision to reduce costs in a contract corresponding to the period of time when the standards fails to be met (from the time of reflection to completion of the remedy);
- h) In case the construction contractor is prompted, reflected for the second time but still fails to complete dredging of the dry positions (already prompted and reflected for the first time) in accordance with the fairway design standards on the time as specified at Point dd of this Clause, the public non-business service provider must report to the Vietnam Maritime Administration for consideration and decision on selecting another qualified contractor to dredge dry positions under the standards with unit prices in accordance with construction conditions at the time of implementation. Construction contractor has to pay in full to the selected replacement contractor. If the construction contractor makes late payment or fails to pay the selected contractor in full after

completing all payment procedures as prescribed, the public non-business service provider must report to the Vietnam Maritime Administration for consideration and decision on taking necessary measures under the relevant legal provisions and the agreements of the signed construction contract to ensure the payment to the selected replacement contractor;

i) In case the construction contractor fails to complete the dredging in a way to meet the fairway design standards, fails to ensure the progress and quality of the work as agreed in the contract and is prompted and reflected for the third time but still fail to complete the dredging of dry positions in a way to meet the fairway design standards on the time as specified at Point dd of this Clause or commit the act of dumping the dredged materials at the wrong position, transferring the contract in contravention of law and dredging activities causing marine accidents, causing serious environmental pollution due to the subjective error of the contractor, the public non-business service provider must report to the Vietnam Maritime Administration for consideration and approval on the signed contract termination. and selecting another qualified construction contractor as prescribed to continue the construction;

k) In addition to the measures specified in point g, point h and point i of this clause, the construction contractor must also be subject to a contract penalty, remedy the consequences of the violation, and take responsibility for incidents related to the operation of the ships due to the mustow channel and other responsibilities under the legal provisions and the agreement in the signed construction contract.

2. Responsible public service provider

a) Regularly manage, inspect and supervise the contractor's construction process and the construction survey, measurement and acceptance process in field;

b) Carry out the measurement and survey of maritime notices periodically as prescribed in order to inspect the contractor's fairway design standard maintenance. In case of detecting dry positions, public non-business service provider must proactively request the contractor to immediately dredge dry positions under the fairway design standards, and at the same time notify the supervision consultant to carry out construction supervision as regulated;

c) Announce maritime notices on the basis of measurement and survey result as regulated;

d) Periodically report the result of measurement, survey and dredging and maintenance to the Vietnam Maritime Administration and local port authority as prescribed in the public non-business service provision contract funded by state budget for marine fairway maintenance dredging;

dd) Report the result of environmental quality monitoring during dredging and maintenance to the Ministry of Transport and relevant units in accordance with the law on environmental protection.

e) Organize the inspection and supervision of the construction contractor's compliance with the regulations on environmental protection and transport safety during the construction process. Propose the Investor to suspend the construction to handle violations of the contractor and related organizations and individuals (if any).

3. Responsibility of Vietnam Maritime Administration

a) Direct the public non-business service provider and related units to conduct periodic measurement and survey of maritime notices as regulated in order to inspect the contractor's maintenance of fairway design standards and serve for acceptance of works by phase or the acceptance of completion for putting into use;

- b) Direct the consultancy unit to carry out unexpected measurement, survey and inspection to check the construction contractor's maintenance of fairway design standards;
 - c) Review the quality, dredging and maintenance progress, and maritime safety during the construction; suspend construction and handle violations of contractor and related organizations and individuals as regulated.
4. Inspection and supervision: comply with the provisions of Article 5 of this Circular.

Article 11. Acceptance of the work

1. The acceptance of marine fairway dredging and maintenance work in the form of standard maintenance within a defined period of time must comply with the provisions of Clauses 1, 4 and 6, Article 21 of Decree No. 159/2018/ND-CP and related legal regulations.
2. Public non-business service provider must issue maritime notices as regulated when the work is completed.

Article 12. Payment and final settlement of the work

The payment and final settlement of the work must be done under the legal provisions.

Section 3. ORGANIZATION OF IMPLEMENTATION OF UNSCHEDULED PUBLIC MARINE FAIRWAY DREDGING AND MAINTENANCE

Article 13. Cases of unscheduled dredging and maintenance

Public marine fairway dredging and maintenance to ensure transport safety is dredging under unexpected tasks arising due to force majeure causing risks of maritime unsafety or serious impact on marine operation.

Article 14. Assignment of implementation organization

The Ministry of Transport authorizes the Vietnam Maritime Administration to exercise the authority of the person determining investment in unscheduled public marine fairway dredging and maintenance work.

Article 15. Sequence of implementation

Unscheduled public marine fairway dredging and maintenance must comply with the following steps:

1. Submission and approval of unscheduled tasks.
2. Organization of contractor selection.
3. Survey and handover of the ground, preparation of design and cost estimate of the work.
4. Organization of the construction, inspection and supervision.
5. Acceptance of the work.
6. Final settlement.
7. Assignment of state budget expenditure estimates.
8. Payment for the project.

Article 16. Submission and approval of unscheduled tasks

1. The public non-business service provider must take prime responsibility for, and coordinate with the local Port Authority in, conducting initial survey and reporting to

the Vietnam Maritime Administration on the unexpected task of public marine fairway dredging and maintenance, including the approved dumping site of dredged materials.

2. The Vietnam Maritime Administration must appraise and evaluate the level of sedimentation and landslide of fairway and the danger of maritime unsafety or serious impact on maritime operation; perform the role of investment decision maker to approve unscheduled tasks and decide on performing marine fairway dredging and maintenance in an unscheduled manner.

Article 17. Organization of Contractor selection

1. The public non-business service provider is responsible for evaluating and proposing contractors (qualified and experienced construction, supervision, survey and design) to immediately execute bidding packages due to force majeure, submit to the Vietnam Maritime Administration for approval before implementing the contractor selection.

2. Within 15 days from the date of award of contract, the public non-business service provider must:

a) Survey and handover the ground, prepare the design and cost estimate as regulated and submit to the Vietnam Maritime Administration for approval; Complete the procedures of appointment of contractor, including: prepare and send a draft contract to the contractor, specifying the requirements for scope, content of work to be done, performance time and the quality of work to be met and the corresponding value for negotiation and finalization of the contract;

b) On the basis of the result of contract negotiation and contractor approval of Vietnam Maritime Administration, the public non-business service provider must approve the result of appointment of contractor and sign contracts with appointed contractors.

Article 18. Survey and handover of the ground, preparation of design and cost estimate of the work

1. Survey and handover of the ground

a) The public non-business service provider must organize the work of measurement and handover of the ground after the Vietnam Maritime Administration has approved the contractor selection policy (construction, supervision, survey and design) for overcoming the force majeure event;

b) The public non-business service provider, supervision consultant, design consultant, construction contractor must inspect and supervise the ground survey and measurement process of consultancy and survey contractor and conduct the acceptance of the result of survey and handover of the ground to the construction contractor.

2. The construction drawing design and cost estimates of the work must be prepared on the basis of the result of survey and handover of the fairway dredging ground that was settled, deposited and landslided due to a force majeure event.

3. The public non-business service provider must organize the elaboration, verification and submission to the Vietnam Maritime Administration for approval of construction drawing design and cost estimates of the work; review and submit task outline and technical plan for survey, measurement and handover of the ground, supervision outline, task outline and technical plan for survey and acceptance prepared by supervision and consultancy units.

4. The Vietnam Maritime Administration must appraise and approve the contents submitted by the non-business service provider in accordance with the provisions of Clause 3 of this Article.

Article 19. Organization of construction, inspection and supervision

1. Organization of construction

- a) The public non-business service provider is assigned to manage and inspect the implementation process of the construction contractor and the supervision consultant during the construction process;
- b) The Vietnam Maritime Administration must organize unscheduled inspections (if necessary) to ensure the quality and progress of the work;
- c) The public non-business service provider must organize the formulation of a transport safety assurance plan and submit to the local Port Authority for approval as regulated.

2. Examination and supervision: comply with the provisions of Article 5 of this Circular.

Article 20. Acceptance of the work

1. Comply with the provisions of Clauses 1 and 4, Article 21 of Decree No. 159/2018/ND-CP.
2. Public non-business service provider must issue maritime notices as regulated when the work is completed.

Article 21. Payment and final settlement of the work

The payment and final settlement of the work must comply with the legal provisions.

Article 22. Assignment of state budget expenditure estimates

Fund for unscheduled dredging of public marine fairway must be used from the state budget allocated to the maritime economy (unexpected task of transport safety assurance).

Section 4. MARINE FAIRWAY DREDGING AND MAINTENANCE CONSTRUCTION CONTRACT

Article 23. Marine fairway dredging and maintenance construction contract

1. Marine fairway dredging and maintenance construction contract performs the maintenance by actual volume (applicable to annual dredging and maintenance, unscheduled dredging and maintenance for transport safety assurance) is a contract that has a constant unit price during implementation for all work contents in the contract (contract by fixed unit price).
2. Marine fairway dredging and maintenance construction contract performs the maintenance by implementation quality (applicable to standard dredging and maintenance within a defined period of time) is a contract that has a fixed price throughout execution time for all work contents in the contract (package contract).

Article 24. Principles of contract performance

1. The Vietnam Maritime Administration, acting as the Investor, assigns the public non-business service provider some tasks of the Investor related to dredging and maintaining marine fairway through public non-business service provision contract using the State budget for marine fairway dredging and maintenance signed between the Vietnam Maritime Administration and the public non-business service provider.
2. The public non-business service provider must negotiate the content of marine fairway dredging and maintenance construction contract with the construction contractor on the basis of public non-business service provision contract using the

State budget for marine fairway dredging and maintenance as specified in Clause 1 of this Article.

Article 25. Contents of the construction contract

Contents of the marine fairway dredging and maintenance construction contract must comply with the Government's regulations and the Ministry of Construction's guidance on the construction contract management. In addition, the construction contract must contain the following additional provisions:

1. In case the construction contractor fails to complete the work construction under the construction progress and quality requirements as agreed in the contract after the Investor has prompted and urged for the third time, the construction contract must not be accepted and paid, and the contract must be terminated, he/she is responsible for compensating for damages and losses of the work to the Investor in accordance with the contract and relevant laws.
2. In case the construction contractor transports and dump the dredged materials at the wrong place, polluting the environment or transfers the contract contrary to the agreement, he/she must be responsible for remedying the damages caused by his/her and sanctioned for the violation in accordance with the relevant laws.
3. For dredging and maintenance construction contract by implementation quality:
 - a) The contract form must clearly state "performance expense must not be adjusted";
 - b) The contents of the contract must comply with Article 10 of this Circular and clearly specify the scope, scale, standards, performance time of the contract, advance payment, payment, contract performance guarantee, handling of violations, force majeure cases, other necessary contents.

Chapter III

ORGANIZATION OF DREDGING OF SEAPORT WATER AREA MANAGED BY THE MINISTRY OF TRANSPORT COMBINED WITH PRODUCT REVOCATION

Article 26. Preparation and announcement of the list of dredged areas

1. Annually, the Vietnam Maritime Administration must organize the preparation or amendment and supplementation of the list of dredged areas on the basis of the information specified in Clause 2, Article 4 of this Circular and the following information:
 - a) Name of the location, specifications, design standards of the dredged area;
 - b) Estimated volume of recovered products, product types to be recovered, implementation time;
 - b) Cost estimates of investment preparation and project implementation.
2. List of dredged areas must contain main contents as specified in Clause 3, Article 26 of Decree No. 159/2018/ND-CP.
3. Order of approval for the list of dredged areas
 - a) The Vietnam Maritime Administration must summarize and make a list of dredged areas and submit to the Ministry of Transport before June 15 every year;
 - b) The Ministry of Transport must organize consultation with the People's Committees of the provinces or cities where the dredged areas are located (if necessary) before July 1 every year;

c) The Ministry of Transport must appraise and approve the list of dredged areas.

4. List of dredged areas must be published in accordance with Article 27 of Decree No. 159/2018/ND-CP.

Article 27. Costs of investment preparation

Based on the list of dredged areas approved by the Ministry of Transport, the Vietnam Maritime Administration must prepare cost estimates for investment preparation including the costs specified at Points a, b and c, Clause 1 of Article 25, Decree No. 159/2018/ND-CP, submit to the Ministry of Transport for consideration, appraisal and synthesis of the costs of investment preparation in the annual marine work maintenance plan.

Article 28. Necessary contents of the project contract

The socialization project contract of dredging of seaport waters must comply with the provisions in Article 35 of Decree No. 159/2018/ND-CP and the guidance of the Ministry of Construction on construction contracts, in addition including some following specific contents:

1. Information about the parties in the contract

Party A: The competent state agency under Article 24 of Decree No. 159/2018/ND-CP.

Party B: Investor

Information about the parties includes: information about the legal representative, position, address, phone number, account number, fax number, tax code of each party in the contract.

2. Objectives and location of performing the project

a) Description of the project objectives;

b) Description of Location of the project.

3. Contract performance time and progress

a) Contract performance time includes site clearance time, construction commencement time and progress of implementing each work item, each area of the project, project completion time as annexed in detail, specifying the implementation progress and time of each work item, each area;

b) Cases and conditions for extending or shortening the time limit are specified.

4. Construction scale and solution

a) Description of the project scale (work items, standards, volume, scope, construction equipment, features of construction equipment, construction means supervision equipment ...);

b) Construction method, construction order, construction plan.

5. Contract price includes the following contents:

a) Expense for dredging (including expense refunded to the State for performing the works specified at Points a, b, c, Clause 1, Article 25 of Decree No. 159/2018/ND-CP; expense for compensation and site clearance);

b) Value of revoked product;

c) Payment value for the difference between the expense for dredging and the value of revoked product;

d) Adjustment of the expense for dredging, value of revoked product and payment value for the difference.

6. Handover of the construction site

The Vietnam Maritime Administration must take prime responsibility for handing over the construction site to the investor before the dredging is carried out.

7. Requirements for construction engineering and quality of the project, acceptance and handover of the project

- a) Requirements for construction engineering and quality of the project;
- b) Conditions for acceptance, bases for acceptance a and acceptance components;
- c) Acceptance and handover documents.

8. Assignment and transfer of the project

The Investor must not assign or transfer the project.

9. Before signing the construction contract, Party B must comply with the following provisions:

- a) Promulgate statute on selection of the consultant contractor, goods provision contractor, construction contractor and other contractors to apply consistently during the project implementation on the basis of ensuring fairness, transparency and economic efficiency;
- b) Send the list of construction contractors together with the construction contractor's capacity profile to Party A for approval;
- c) Party B is responsible to Party A for progress, quality, labor safety, environmental protection and his/her errors and the works performed by the construction contractors;
- d) Party B must not assign the workload under the contract to the construction contractor to perform more than the rate specified in the bidding documents for investor selection and relevant legal provisions.

10. Contract performance guarantee

- a) Before the effective date of the contract, Party B must submit the contract performance guarantee to Party A, the contract guarantee rate is between 01% and 03% of total investment of the project, contract guarantee form can be one of the forms of deposit or letter of guarantee from a bank or financial institution in Vietnam.

In case Party B is a partnership contractor, each member must submit a contract performance guarantee to Party A, the guarantee rate is corresponding to the value of the contract performed by each member. If the partnership has an agreement that the head investor of the partnership must submit the contract performance guarantee, the head investor of the partnership must submit the guarantee to Party A, each member must submit the contract performance guarantee to the head investor of the partnership corresponding to their corresponding contract value.

The contract performance guarantee must be valid until Party B has constructed and completed the project corresponding to the signed contract accepted by Party A. If the terms of the contract performance guarantee specify the expiration date and Party B has not fulfilled the contractual obligations 10 days before the expiration date, Party B must extend the value of the contract performance guarantee until the work has been completed and all errors have been corrected;

- b) Party B must not take back the Contract performance guarantee in case of refusing to perform a valid contract and other cases (agreed by the parties). Party A must refund

to Party B the contract performance guarantee when Party B has completed the works under the contract.

11. Rights and obligations of Party A:

- a) Hand over landmarks, construction ground in service of construction under the contract to Party B.
- b) Organize the inspection and supervision of the project implementation in accordance with the applicable law.
- c) Instruct the investor to select a qualified independent supervision consultant to supervise the project implementation in accordance with regulations on construction investment management and the applicable law.
- d) Organize the inspection, supervision and evaluation of the investor's compliance with obligations in the implementation of requirements on scale, technical standards, construction quality and project implementation progress, environmental protection, fire prevention and fighting.
- dd) Conduct the acceptance of completion and putting the work into use and receive the work handed over by Party B
- e) Assist Party B in contacting local authorities to solve problems arising (if any).
- g) Review Party B's proposals for reasonable change in total investment capital, technical designs and other conditions to ensure the effectiveness of the project and submit to the competent authority for decision.
- h) Other rights and obligations as prescribed by law.

12. Rights and obligations of Party B:

- a) Complete all procedures on natural resources, environment, fire prevention and fighting and related procedures as prescribed by law.
- b) Prepare and submit a transport safety plan in accordance with Article 6 of Decree No. 159/2018/ND-CP.
- c) Select and sign a contract with a qualified independent supervision consultant (at the expense of Party B) after consulted by Party A to supervise the project implementation process, and at the same time proceed with contract acceptance and final settlement under the regulations on the construction investment management and the applicable legal provisions.
- d) Organize the reception and handover of landmarks and dredging construction ground.
- dd) Manage or select, sign contract with a qualified independent consultant (at the expense of Party B) to manage construction, perform periodic survey and measurement, at the same time, to conduct the acceptance and put the work into use, make payment and final settlement of the contract under the regulations on construction investment management and legal provisions.
- e) Implement the project in accordance with the contents of the feasibility study report, approved construction drawing design dossier and this contract.
- g) Fully comply with regulations on environmental protection, fire prevention and fighting, and plan for ensuring maritime safety during the construction. Take responsibility for the safety of equipment and workers during the project implementation.

- h) Fully implement tax regime, fees, charges and other financial obligations as prescribed.
- i) Perform contract performance guarantee in accordance with Clause 10 of this Article.
- k) Conduct periodic survey and measurement of project implementation result (based on detailed construction time and progress of the project work to specify the periodic survey and measurement time) with the supervision of representatives of the Ministry of Transport, Vietnam Maritime Administration, local Port Authority and other relevant agencies and units selected by the Vietnam Maritime Administration. After the periodic survey and measurement data is completed, Party B must immediately send to the competent agency or organization to announce the maritime notice to publish the maritime notice in accordance with the provisions of Decree No. 58./2017/ND-CP dated May 10, 2017 of the Government.
- l) Submit weekly reports to the local Port Authority and monthly to the Vietnam Maritime Administration on the project implementation situation and result, together with a copy of the construction log (reporting weeks). Construction log must be recorded in form specified in Appendix I issued with this Circular. The supervision consultant is responsible for checking and urging the construction contractor to record dredging construction log in form specified in Appendix I attached to this Circular.
- m) Request the supervision consultant to make monthly reports on project implementation result of the investor, the supervision consultant in form specified in Appendix II attached to this Circular, enclosed with the copy of the construction log (in the reporting week) to the local Port Authority and Vietnam Maritime Administration.
- n) Other rights and obligations as prescribed by law.

13. Penalty for a breach of the contract

- a) Party A breaches any term of the contract, leading to the termination of the contract before maturity, Party A is responsible for compensating Party B reasonable costs that Party B has performed up to the time of stopping the contract but not more than 3% (three percent) of the cost of dredging. The compensation amount will be reported by Party A to the competent authority for considering and approving the payment to Party B;
- b) Party B executes behind schedule (based on each project to specify the time and penalty level), this amount will be taken from the Contract Performance guarantee, in case of being not enough, the investor must make additional payment;
- c) Party B violates any term of the contract that directly results in the progress and quality of the project or the contract must be terminated before maturity due to Party B's fault (except in case of force majeure). Party B is subject to a contract fine (specify the penalty level based on each project), this amount will be taken from the Contract Performance guarantee, in case of being not enough, the investor must make additional payment.

14. Termination of contract

- a) Terminate on the expiry date of the contract if there is no request for extension agreed by both parties and approved by the competent authority or when Party B completes the project and hands over the work to Party A (depending on whichever comes first);

b) Party A has right to terminate the contract before maturity if: Party B fails to perform the contract performance guarantee; Party B leaves unfinished the work or fails to continue performing the contractual obligations; Party B has no plausible reason but has not performed the contract work for 15 consecutive days; Party B subcontracts the whole work or transfers the contract without agreed by Party A; Party B goes bankrupt or is in default, has its business registration certificate revoked and has its assets managed.

c) Party B has right to terminate the contract before maturity if: Party A fails to perform its obligations under the contract; The suspension of the project due to Party A's fault or the Government's regulations is prolonged for more than 45 days;

d) In case of termination of the contract before maturity, the party requesting for termination must send the other party a notice of such termination prior to 10 days and proceed with the contract termination procedure, unless either party goes bankruptcy or is in default, has its business registration certificate revoked and has assets managed, the contract can be terminated immediately.

dd) The termination of the contract must not affect or release either party from any debt, obligation or liability that occur or arise before the date of termination of the contract.

15. Final settlement of the Contract

a) After the Minutes of Completion of all work contents in accordance with the contract are signed by the parties, Party B will submit to Party A the contract final settlement dossier with the following documents: minutes of acceptance of all completed works within the scope of the contract; spreadsheet of contract final settlement value (called A-B final settlement), clearly stating the dredging cost, value of revoked product, contract payment value; as-built documents, work construction records; other documents as agreed in the contract (if any).

b) In case there is any change in the dredging volume between the minutes of completion and volume in the contract, it's required to calculate the offset of contract final settlement value under the financial plan in the feasibility study report, submit to the Ministry of Transport for approval before making payment.

16. Liquidation of the contract

a) The contract is liquidated in the following cases: the parties fulfill the obligations under the signed contract; the contract is terminated (canceled) in accordance with clause 14 of this Article.

b) Contract liquidation must be completed within 30 days from the date the contracting parties fulfill the contractual obligations or the contract is terminated as prescribed in Clause 13 of this Article. Unless Party A or Party B go bankrupt, are in default, or have business registration certificate revoked, the contract will automatically expire without liquidation.

17. When either Party falls into a state of force majeure, that Party must notify the other party in writing as soon as possible and be exempt from liability caused by force majeure.

18. Documents attached to the contract

a) Documents attached to the contract are an integral part of the contract, including: written notification of award or appointment of contractor; specific terms of the contract; general terms of the contract; Bidding documents or proposals of Party A; design drawings and technical instructions; Bids or proposals submitted by Party B;

Contract negotiation minutes, written contract amendments and supplements; appendices to the contract; Other relevant documents.

b) Order of priority for applying documents attached to the contract

The order of priority for applying documents attached to the contract is agreed upon by the parties. In case the parties fail to agree, the order specified at Point a of this Clause must be applied.

19. Dispute resolution

a) The contract is adjusted and explained in accordance with Vietnamese law;

b) During the contract performance, if there is any problem arising, two Parties must actively coordinate and prioritize settlement by negotiation within 30 days from the date of the dispute;

c) In case two parties fail to negotiate, the Parties must report to the project approving agency for consideration. In case of disagreement, the dispute must be resolved by arbitration at the Vietnam International Arbitration Center.

Chapter IV

ORGANIZATION OF IMPLEMENTATION

Article 29. Effect

1. This Circular takes effect from November 1, 2019.

2. Marine fairway dredging and maintenance in the form of standard maintenance within a defined period of time will be implemented from 2020.

3. Annul Circular No. 25/2013/TT-BGTVT dated August 29, 2013 of the Minister of Transport on the order and procedures for dredging marine fairway, water zones and seaport waters combined with full use of products, not use state budget and state management on maritime for mineral exploration and exploitation activities in seaport waters and marine fairway and Circular No. 28/2015/TT-BGTVT dated June 30, 2015 of the Minister of Transport on amending and supplementing a number of articles of Circular No. 25/2013/TT-BGTVT dated August 29, 2013 of the Minister of Transportation.

Article 30. Organization of implementation

Chief of Office of the Ministry, Chief Inspector of the Ministry, Directors, Director of Vietnam Maritime Administration and relevant agencies, organizations and individuals are responsible for the implementation of this Circular./.

**FOR MINISTER
DEPUTY MINISTER**

Nguyen Van Cong

FILE IS ATTACHED TO THE DOCUMENT



Appendix