



PRODUCT
[sustainable public procurement | ecolabelling]



**PROJECT “STIMULATING THE DEMAND AND SUPPLY OF
SUSTAINABLE PRODUCTS THROUGH SUSTAINABLE PUBLIC
PROCUREMENT AND ECOLABELLING” (SPPEL)**

**Legal review report and proposal to foster SPP
implementation and consider the integration of
ecolabelling**



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TABLE OF CONTENTS

I.	INTRODUCTION	4
1.1.	NATIONAL BACKGROUND OF STUDY	4
1.2.	OBJECTIVES OF THE STUDY	4
1.3.	METHODOLOGY.....	5
II.	INTERNATIONAL FRAMEWORK.....	5
2.1.	AGREEMENTS ON PUBLIC PROCUREMENT	5
2.2.	APEC STANDARDS.....	6
2.3.	INTERNATIONAL CONVENTIONS AND AGREEMENTS SIGNED BY GOVERNMENT OF VIETNAM	7
III.	PUBLIC PROCUREMENT AND SUSTAINABILITY REGULATIONS AND GOALS.....	7
3.1.	ROLES AND RESPONSIBILITIES IN THE LAW-MAKING PROCESS RELATED TO PUBLIC PROCUREMENT	8
3.1.1.	<i>Process of law making.....</i>	8
3.1.2.	<i>Roles and Responsibilities of Government Officials.....</i>	9
3.2.	PUBLIC PROCUREMENT REGULATIONS.....	11
3.2.1.	<i>State Budget Law</i>	11
3.2.2.	<i>Law on Procurement and related Decrees</i>	12
3.3.	SUSTAINABLE DEVELOPMENT REGULATION PRIORITIES	16
3.3.1.	<i>National Green Growth Strategy (NGGS) for the period 2011-2020.....</i>	17
3.3.2.	<i>Sustainable Development Strategy for the period 2011-2020</i>	18
3.3.3.	<i>National Environmental Protection Strategy to 2010 orientation towards 2020</i>	18
3.4.	NATIONAL ENVIRONMENTAL REGULATIONS	18
3.4.1.	<i>Law on Environmental Protection</i>	18
3.4.2.	<i>Law on Environmental Protection Tax.....</i>	19
3.5.	ENERGY CONSERVATION REGULATION AND POLICIES.....	20
3.6.	OTHER REGULATIONS	21
3.6.1.	<i>Labour Code</i>	21
3.6.2.	<i>Law on Occupational Safety and Hygiene</i>	22
3.7.	GREEN STANDARDS AND CERTIFICATIONS IN VIETNAM AFFECTING THE DEVELOPMENT AND APPLICATION OF THE SUSTAINABLE PUBLIC PROCUREMENT POLICY.....	23
3.7.1.	<i>Environmental Management System ISO 14001.....</i>	23
3.7.2.	<i>Green Label program.....</i>	25
3.7.3.	<i>Energy Efficiency Label Program</i>	28
3.8.	OPPORTUNITIES FOR SUSTAINABLE PUBLIC PROCUREMENT OF ECO-LABELLED PRODUCTS AND SERVICES.....	30
3.9.	IMPEDIMENT AND CHALLENGES	33
IV.	PROPOSED CHANGES IN THE LEGAL FRAMEWORK	35
4.1.	STATE BUDGET LAW	35
4.2.	AMENDMENT OF THE DECREE 63/2014/ND-CP	35
4.3.	DEVELOPMENT OF A NEW CIRCULAR ON IMPLEMENTING PUBLIC PROCUREMENT OF ECO-LABELLED PRODUCTS	36
V.	CONCLUSIONS	36

Abbreviations and Acronyms

MPI	Ministry of Planning and Investment
MONRE	Ministry of Natural Resources and Environment
MOIT	Ministry of Industry and Trade
MOF	Ministry of Finance
VEA	Vietnam Environment Administration
APEC	Asia-Pacific Economic Cooperation
TPP	Trans Pacific Partnership
WTO	World Trade Organizations
GPA	Government Procurement Agreement
SPP	Sustainable Public Procurement
SCP	Sustainable Consumption and Production
GDP	Gross Domestic Product
ILO	International Labour Organization
VNEEP	Vietnam Energy Efficiency Program
VGLP	Vietnam Green Label Program
OSH	Occupational Safety and Hygiene
MRA	Mutual Recognition Agreement
GEN	Global Ecolabelling Network
GENICES	Global Ecolabelling Network's Internationally Coordinated Ecolabelling System

I. Introduction

1.1. National background of study

In the last 20 years, Vietnam's economy has shifted from a centralized command-based economy to a socialist-oriented mixed market. In doing so, it has grown quickly, with an average annual growth rate of over eight per cent from 2004 to 2007. Vietnam also became a member of the WTO in January 2007.

The Governing Party has determined and is committed to a strategy for development, with economic growth being accompanied by social development and equality and the protection of the environment.

In 2012, the total value of public procurement by Vietnam was estimated at USD 21.9 million, which represents a share of **16 percent of Vietnam's GDP**. Economic statistics issued by the Ministry of Planning and Investment for 2007-2012 show that Vietnam's GDP has grown over 2007-2012, from USD 71 billion to USD 156 billion, but the value of government procurement has increased two-fold, from nearly 9 per cent to 22 per cent of the GDP during this period. The total number of procurement contracts awarded has risen, as well as the total value of contracts awarded, with the latter increasing substantially, from USD 6.22 million to USD 21.9 million during 2007-2012.

Figure 1. Economic Indicators of Viet Nam 2007 – 2012

Indicators	2007	2008	2009	2010	2012
Gross Domestic Product (US\$ billion)	71.1	89.8	92	104.6	156
GDP growth rate (%)	8.48	6.2	5.3	6.78	5,03
Total contract awarded value (US\$ million)	6.22	20.03	26.84	23.05	21.9
Ratio of total value awarded to GDP (%)	8.75	22.3	29.2	22.04	15.86

This report presents an insight into Vietnam's public procurement framework. It identifies potential benefits and challenges in existing legislation for the best possible implementation of SPP.

1.2. Objectives of the study

The overall objectives of this report are to assess Vietnam's legal framework and to identify opportunities for mainstreaming sustainability in the legislation and regulations dedicated to public procurement in Vietnam. Based on the results of the status assessment report, the present research seeks to:

- Review the existing legal and policy framework relating to public procurement, sustainable development, and ecolabelling aspects in Vietnam;
- Identify the opportunities and barriers which, from a legal perspective, might support or hinder the incorporation of social and environmental concerns in public procurement;
- Propose changes in the legislation aiming at mainstreaming sustainability in the public procurement legal framework, including through the use of ecolabelling schemes or voluntary sustainability standards.

1.3. Methodology

The proposed analysis of the existing legal possibilities for the introduction of Sustainable Public Procurement (SPP) was developed based on the desk study, which included an in-depth analysis of a number of documents, in particular:

- International treaties and agreements ratified by Vietnam in the terms of which may affect SPP;
- Law on procurement, which is the main regulatory instrument for public procurement;
- Existing regulations establishing environmental and social standards which can contribute to, influence, or be used in SPP;
- Laws pertaining to environmental, social and economic sustainability, as well as laws related to construction and taxation.
- Other related ministerial decrees and decisions.

In addition, this report examines the potential adoption by the government of sustainability criteria and standards for assessing products, in the framework of the green label program and energy label program.

Throughout the above review, necessary attention was given to the challenges and opportunities which may be faced during implementation, in order to identify issues that could be generated by the inclusion of sustainability aspects in the public procurement legal framework.

II. International Framework

2.1. Agreements on Public Procurement

Vietnam became a member of WTO in 2007. After its WTO accession, Vietnam committed to join the **WTO's Government Procurement Agreement (GPA)** 'as soon as possible'. The main international agreement related to public procurement is the GPA, which establishes a legal framework of rights and obligations agreed by its signatories

with regard to their national law, regulations, procedures and practices in the area of government procurement. The GPA is a multilateral agreement, which means that it applies only to those WTO members that have agreed to be bound by it.

Vietnam has not signed the GPA but has obtained observer status under GPA in December 2012. The GPA will contribute to transparency and improve governance within Vietnam's existing procurement framework. Most importantly, the GPA will generate clarity in tendering procedures which will firstly, attract a larger number of domestic and foreign firms to bid for government contracts, thereby fostering competition. Secondly, clear rules on tendering will discourage illegal payments to state officials and address corruption in procurement. Increased transparency in bidding procedures and award criteria will address the problem of rent seeking, support governmental initiatives to avoid conflict of interests between the procuring agencies and bidders. In this manner, non-discrimination and transparency in procurement will enable Vietnam to obtain better value for money in contracting and purchases, to reduce corruption, to improve governance and to lead to sustainable public finance management.

In addition to this WTO agreement, Vietnam is also a party to the recently launched **Trans Pacific Partnership (TPP) agreement**. TPP negotiators have agreed on the basic rules and procedures for implementing procurement in such a way that it is conducted in a fair, transparent and non-discriminatory manner. Thus, these agreements will require the Government to continue reforming its Public Procurement legal framework.

2.2. APEC Standards

The Asia-Pacific Economic Cooperation (APEC) Forum was formed in 1989 by 12 Asia-Pacific economies with the aim of becoming the region's leading economic forum. APEC has since grown to 21 members: Australia, Brunei, Canada, Chile, China, Hong Kong, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Taiwan, Thailand, the United States, and Vietnam. Anti-corruption efforts in various areas have been a crucial part of APEC's mission.

The APEC Transparency Standards on Government Procurement ("APEC Standards"), agreed in 2004 by the APEC member economies, represents an important government commitment with the potential to improve the integrity of government procurement and reduce corruption. Their impact on raising standards of practice depends on implementation and application in practice.

2.3. International conventions and agreements signed by Government of Vietnam

Vietnam can be considered as one of the active countries in participating in international conventions and agreements, including those relating to economic, environmental and social issues. The table below shows the key agreements that may affect SPP:

No.	Name of conventions	Date of entry into force
	Environmental Conventions	
1	Vienna Convention for the Protection of the Ozone Layer	1988
2	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal	5 May 1992
3	Convention on Biological Diversity (CBD)	29 December 1993
4	United Nations Framework Convention on Climate Change	21 March 1994
5	Kyoto Protocol ¹	25 September 2002
	Agreements having an effect on the social component of SPP	
6	The Convention concerning Forced or Compulsory Labour, 1930 (Nº 29)	05 March 2007
7	The Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (Nº 100)	07 October 1997
8	The Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (Nº 111)	07 October 1997

Source: Summarised from CIA World Fact Book, 2014 and www.ilo.org

Among those conventions, the Vienna Convention for the Protection of the Ozone Layer and the Kyoto Protocol are the most important agreements which regulate the production and consumption of products which release greenhouse gases. The amount of greenhouse gases released could also be one main justification to prioritise the consumption of sustainable products within SPP.

III. Public procurement and sustainability regulations and goals

¹The Kyoto Protocol will be replaced by the Paris COP21 Agreement in 2020

3.1. Roles and responsibilities in the law-making process related to public procurement

3.1.1. Process of law making

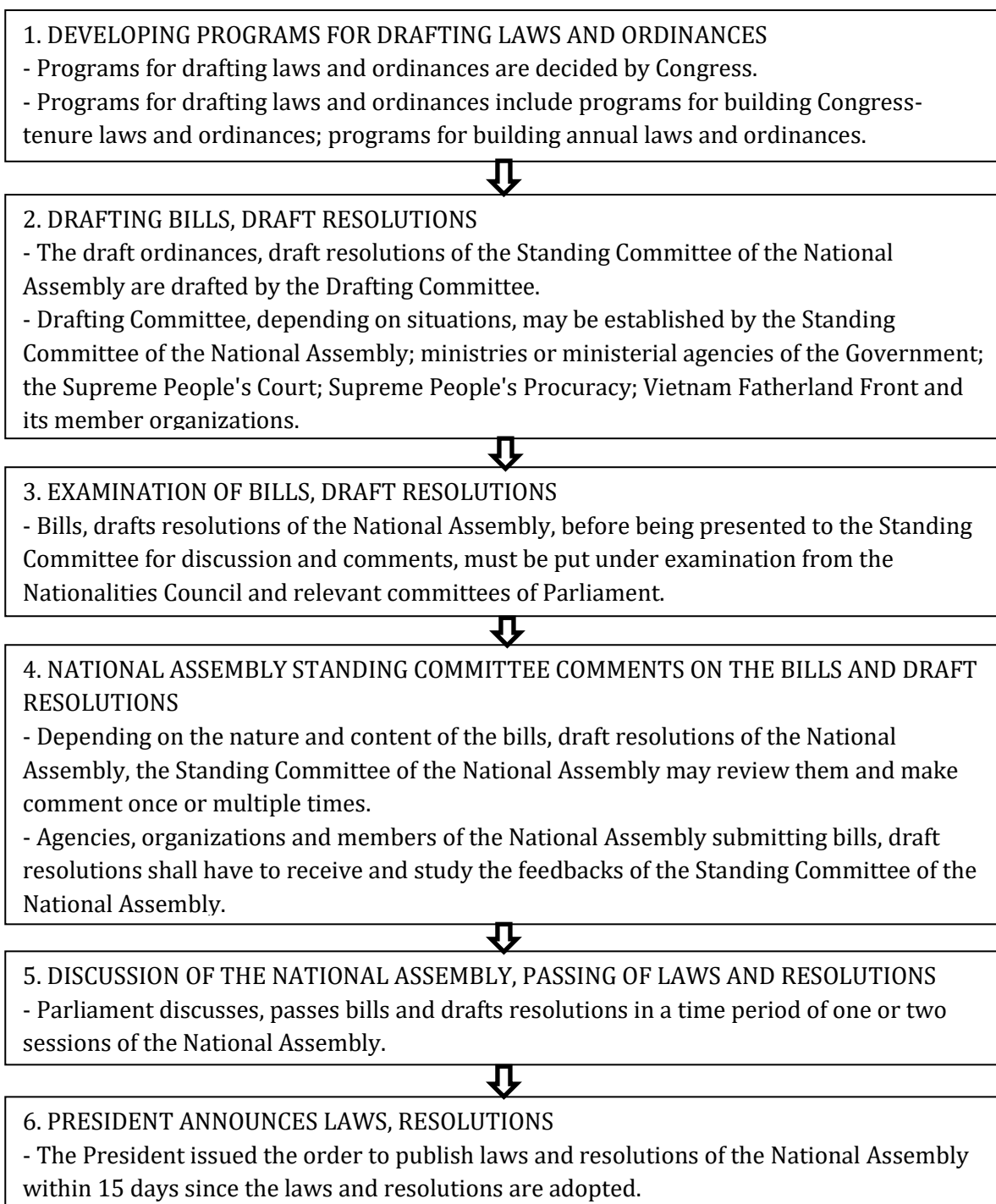
The institutions participating in the development and amendment of public procurement legislation are as follows:

- The **National Assembly** is the highest institution responsible for law-making activities. It develops overarching laws through its Legal Committee and various subordinate offices.
- The law drafting process is the task of the **functioning agencies** (ministries or ministerial agencies) in the respected fields. Depending on the level of legalization of the drafted document, it will be submitted to the appropriate levels for consideration, revision, and approval.

The figure below illustrates the process of drafting a law or an ordinance implemented by the National Assembly. In step 2, Drafting Bills and Draft Resolutions, the Drafting Committee, depending on situations, may be established by the Standing Committee of the National Assembly; ministries or ministerial agencies of the Government; the Supreme People's Court; Supreme People's Procuracy; Vietnam Fatherland Front and its member organizations.

The process of drafting a law usually lasts for a year or longer. The process of drafting an ordinance to amend a law takes less time, from 6 months to a year. After a law is developed, the Government, or its ministerial agencies would develop a Circular to instruct the implementation of the law. This task usually takes 3 months from the date of law issuance.

Figure 2. Process for the development of a law and ordinance



3.1.2. *Roles and Responsibilities of Government Officials*

Vietnam has adopted the **Law on Procurement** (Law No. 43/2013/QH13) since 2013. The Law decentralizes management of the procurement process and provides a clear definition of roles and responsibilities for each level of government.

a. **The Prime Minister:**

- Oversees the inspection and handling of procurement complaints

- Approves the direct appointment of a contractor, an investor in special circumstance.

Ministry of Planning and Investment, Department of Public Procurement:

- Is responsible for appraising the overall government procurement plan and selecting contract awardees for special procurement packages

- Administers the procurement information system on a nationwide basis

- Acts as the focal point for international cooperation

- Directs capacity building for procurement personnel

- Monitors implementation of government procurement

- Settles procurement complaints within its jurisdiction

- Conducts inspections nationwide to monitor the implementation of the procurement system.

b. Ministries, ministerial-level agencies, and People's Committees (the executive arm of provincial governments) at provincial and local levels:

- Implement and administer procurement opportunities

- Organize capacity building activities

- Summarize, assess, and report on procurement implementation

- Settle procurement complaints within their jurisdiction

- Carry out inspection of procurement by personnel under their jurisdiction

c. Where a ministry, agency, SOE, or People's Committee is designated as the "Competent Person" (the entity which has the authority to enter into contracts), it:

- Approves annual procurement plans

- Approves, or delegates the authority to approve, bidding documents and evaluates bidders

- Handles special cases

- Settles procurement complaints within its jurisdiction

d. Where a ministry, agency, People's Committee, SOE, or other governmental entity is the "Investment Owner" (the entity that provides the funding), it:

- Decides on bidders' pre-qualification, list of qualified bidders, and ranking

- Approves bidding documents and evaluates bidders (Investment Owner can contract with an independent organization or another procuring entity to draft bid documents and evaluate bids)

- Creates a **Procurement Specialist Team** (can be within the Procuring Entity or outsourced to a professional organization) to evaluate the procurement

- The person in charge of the Team must have a Certificate in Public Procurement Management, knowledge of procurement legislation and project management, appropriate expertise matching the requirements of the bid package, and sufficient foreign language skill level
 - Approves the technical requirements
 - Makes contract award decisions
 - Is responsible for drafting and signing procurement contracts and ensuring the contractual obligations are fulfilled
 - Provides information to the procurement newspaper and the procurement website
 - Settles procurement complaints within its jurisdiction
- e. **Procuring Entity** (which could be the Investment Owner or a professional organization hired by the Investment Owner to conduct a given procurement):
 - Conducts the procurement by organizing and evaluating the bid
 - Seeks clarification from bidders during evaluation
 - Reports to the Investment Owner for approval on bidder's qualification and bidder selection process
 - Drafts and finalizes contracts with the approved bidder
 - Provides information to the procurement newspaper and the procurement website
 - Settles procurement complaints

3.2. Public Procurement Regulations

In Vietnam, procurement activities in the public sector are important components of expenditure and make up a large part of the total budget expense of the State. Public procurement accounts for up to 20% of Government spending. In recent years, the **legal system related to managing public procurement activities** has been continuously **improved**, in order to allow for stricter control of funding. Therefore, in this section, the research team will address and review a number of regulations on public procurement in Vietnam to assess the potential of implementing sustainable public procurement.

3.2.1. State Budget Law

The **state budget spending plan** is a step that comes before the process of planning/implementing public procurement. According to **State Budget Law No. 01/2002/QH11 (December 27, 2002)** and its instructive regulations, the Ministry of Finance annually chairs the production and development of the state budget spending

plan, making plans to allocate the central budget for the following year and submitting these to the government on the basis of budget spending plans reported by the local and central agencies.

In the National Assembly session at the end of the year, the Government submits the state budget spending plan and allocation plans for the following year's central budget to the National Assembly. The National Assembly makes a decision on these by November 31 of that year. According to this law, there are many levels involved in the various steps of state budget spending planning. Each level has a certain influence on how state budget spending is planned.

Therefore, if the government sets additional targets for state budget spending, e.g. to achieve environmental sustainability and social equitabilities, this stage is one of the important steps to include further sustainable criteria into the budget planning. All of levels involved in this stage could include sustainability considerations in budget spending plans within their responsibilities.

3.2.2. Law on Procurement and related Decrees

Vietnam has since adopted a number of laws and decrees governing public procurement, most recently in 2005 and 2009. The highest regulation on public procurement is the **Law on Procurement**. The first version of this Law is the version **No. 61/2005/QH11** issued in 2005. The second version is the **Law No. 38/2009/QH12 on Procurement** which amended a number of articles in the previous version and covered some articles related to construction procurement. Subsequently, the government issued implementing regulations for the Law on Procurement in **Decree 85/2009**. Public procurement rules are also addressed in the **2003 Law on Construction**. At this time, there are many decrees and circulars implementing these laws (Annex 1).

The number and size of those documents created implementation problems for procurement officials and difficulties for the private sector in understanding the procurement system put in place. Therefore, on 26 November 2013, the National Assembly of Vietnam issued the **Law No. 43/2013/QH13 on Procurement**. The Law came into force on **1 July 2014**, repealing the Law No. 61/2005/QH11 on Procurement as amended, as well as a number of articles relating to public procurement under Law No. 16/2003/QH11 on Construction.

Basic principles underlying the Law No. 43/2013 are **fairness and transparency**. These principles, which can be found in provisions on bidding information (which requires certain kinds of information to be published in a bidding newsletter and on the

bidding website of the State bidding administrative body), include: assurance of **competitiveness in bidding process**; prohibited acts in bidding; provision on currency to be used in bidding (in Vietnam, the currency to be used in bidding should be stipulated in the bidding invitation documents on the principle of one currency for one specific volume); and all domestic costs must be quoted in Vietnamese dong.

The Law No. 43/2013 shows some significant improvements in comparison to the Law No. 61/2005 adopted in 2005, making the **procurement procedures more detailed** and approaching internationally common procedures. Notable changes include the repealing of Section 1, Chapter VI of the Law on Construction (No. 16/2003/QH11) and Article 2 of the Law Amending and Supplementing a Number of Articles of the Law relating to Capital Construction Investment (No. 38/2009/QH12). With these changes, the Law No. 43/2013 will resolve the overlaps between the Law on Procurement and other laws such as the Law on Construction.

Aimed at addressing certain loopholes and issues related to the current legal framework on procurement, the **new Law on Procurement** was intended to provide new provisions to clarify these issues. It **devotes a separate chapter** to each of the following subjects:

- **Selection via online or e-procurement mechanisms** to help simplify the bidding process and implement legislative information disclosure requirements for better transparency throughout the bidding process and project implementation²;

- Several options, including methods to evaluate bidding dossiers by bidding organizers. For the bidding package of goods procurement, beside the evaluation method of lowest price as provided in Law No.61/2005/QH11 on Procurement, adding the two new evaluation method are: evaluated price method, combined technical and price-based method; and

- **Foreign contractors** are now required to partner with domestic contractors or employ domestic sub-contractors, unless domestic contractors do not have the capacity to participate in any part of the bidding package (**Clause 1.h, Article 5 of the Law No.43/2013**). Formerly this requirement was only applicable to foreign contractors in the construction industry. In terms of foreign contractors partnering with domestic firms, those in which the domestic company takes charge of 25 per cent or more of the

²By 2025, all regular public procurements will be conducted through the national e-bidding system, according to Prime Minister Decision No. 1402/QĐ-TTg, approving the overall plan and roadmap for application of e-bidding in the 2016-2025 period.

work value will be rewarded with **preferential treatment (Clause 2.b, Article 14 of the Law No.43/2013)**.

As such, the amended provisions are also designed to **support local contractors** participating in international projects. In addition, the Law No.43/2013 also includes many new terms and some new principles that aim to actively enhance competitiveness and promote anti-corruption measures. It also introduces a new scope of application for official development assistance (ODA) projects. It is expected that the implementing regulations will control ODA projects to a more efficient level. Ideally, the regulations aim to determine the steps towards controlling procurement activities, ensuring fairness between the parties, and limiting corruption.

According to the **Law No. 43/2013**, when state agencies purchase goods and services, they should choose one among **seven bidding forms**. Special cases may also apply if none of these methods can be applied and the procuring entity obtains approval from the Prime Minister (Article 20 to 26): *Open bidding, Limited bidding; Direct appointment of contractor; Competitive quotation; Direct procurement; Self-implementation; Selection of tenderers, investors in special cases; Community's participation in performance.*

The Law No 43/2013 has provisions governing **modes of centralized procurement**, which refer to the best international practices and pilot results of implementation of Decision 179/2007/QD-TTg³. According to the law, instead of having a hundred different agencies conducting their own procurement, a **centralized procurement agency** will be responsible for consolidated procurement. This method is planned to be adopted in 2016. It will not only help to increase professionalism in procurement activities but also to create conditions for improving efficiency and shortening the time of procurement processes. It will also contribute to the purchase of goods and services at a lower price and to centralize decision-making when collecting procurement requirements.

The procedures to be undertaken for the procurement of assets and goods are specified in **Decree63/2014/ND-CP, detailing the implementation of several provisions of the Law No. 43/2013 regarding the selection of contractors**. The Decree has provided incentives for domestic bidders when they join international bidding processes (Clause 3, Article 4), together with incentives for the use of local products (Article 5):

³See the prior « Assessment Report, Sustainable Public Procurement Status in Vietnam », p.11, produced in the framework of the present SPPEL project.

“Article 4. Bid preferences for the international bidding

3. In terms of contracting for the procurement of goods, the **bid preference applied to domestic goods** shall be implemented as regulated in Article 5 of this Decree.”

“Article 5. Bid preference for domestic goods

1. Goods are eligible for bid preferences provided that bidders prove that domestic production costs account for above 25% of total price. Percentage (%) of domestic production cost of goods is calculated according to the following formula:

$$D (\%) = G^*/G (\%)$$

Where:

- *G**: Domestic production cost calculated by quoted price of goods defined in the bid envelope and proposal which subtracts tax values and external costs, inclusive of fees and charges;

- *G*: Quoted price of goods defined in the bid envelope and proposal subtracting tax values;

- *D*: Percentage (%) of domestic production cost of goods. *D* gains the rate of more than 25%, which can enable goods to receive the bid preferences as regulated in Clause 2 of this Article.

2. Bid preference calculation:

a) In the case of the application of the **lowest price** method, goods that do not receive bid preferences must add a **monetary amount** accounting for 7.5% of quoted bid after correction of errors, adjustment of deviations and deduction of discounts (if any) of these goods to the quoted bid price after correction of errors, adjustment of deviations and deduction of discounts (if any) of bidders for comparison and ranking;

b) In the case of the application of **evaluated price** method⁴, goods that do not receive bid preferences must add a **monetary amount** accounting for 7.5% of quoted bid after correction of errors, adjustment of deviations and deduction of discounts (if any) of these goods to the evaluated price of these bidders for comparison and ranking;

⁴In this method, evaluated price is bidding price after correction of errors, adjustment of deviations (if any) so that bids can be compared on a common basis (technical, financial, commercial) for whole use life cycle of goods. Criteria for evaluation of bidding dossier include: criteria of capability, experiences in case of not applying pre-qualification, criteria of technical aspect; criteria for determination of the evaluated price. For bidding dossiers which have passed step of technical assessment, comparison and ranking are based on the evaluated prices. The tenderer with lowest price shall be ranked the first.

c) In the case of the application of **combined technical and price-based methods**⁵, goods that receive the bid preferences are given **additional preferential scores** to total combined scores as follows:

Preferential score = 0.075 x (preferential goods price / bid price) x combined scores

Where: Preferential goods price is quoted bid after correction of errors, adjustment of deviations and deduction of discounts (if any) of goods that receive bid preferences”.

With such incentives, **domestic bidders and local products will get priority** over foreign bidders and imported products, respectively.

Moreover, **Item 3.b, Article 12 of the Decree No.63/2014/ND-CP** also **raises the criteria for evaluation of bids**, which will help procuring agencies and entities to effectively select contractors meeting the demands of each bidding package:

“Item 3.b, Article 12:

...Based on each contract, the bidding documents must provide criteria to serve as the basis of technical evaluation, including:

- **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;*
- *Compliance with requirements related to warranty and **maintenance**;*
- *Geographical and environmental adaptation (with regard to specific geographic and climatic conditions);*
- **Environmental impact and solutions;**
- *Financial capability (if required);*
- *Other requirements for trading, execution duration, training and technology transfer;*
- *Punctuality of goods supply;*
- **Evaluation of Bidder** based on their execution of previous contracts; and
- *Other essential factors”.*

3.3. Sustainable development regulation priorities

⁵In this method, criteria for evaluation of bidding dossier include criteria of capability, experiences, criteria of technical aspect; and the overall criteria for evaluation. The overall criteria for evaluation are formulated on the basis of combination between technical aspect and price. For bid dossiers which have passed step of technical assessment, comparison and ranking are based on the overall points score respectively. The tenderer with the highest overall points score shall be ranked the first.

In addition, to the adoption of sustainable development goals, many directives, resolutions of the Party, and many legal documents of the State were enacted and implemented, such as Decision No. 1393/2012/QĐ-TTg of the Prime Minister dated 15/9/2012 on approval of the **National Green Growth Strategy**⁶, Decision No. 432/QĐ-TTg of the Prime Minister dated 12/4/2012 on approval of the **Sustainable Development Strategy for the 2011-2020**⁷ period, and **National Environmental Protection strategy to 2010 and orientation towards 2020**. These provided the general legal orientations for the ministries, branches, localities, organizations and individuals associated with implementing and coordinating actions to ensure the sustainable development of the country.

3.3.1. National Green Growth Strategy (NGGS) for the period 2011-2020

In September 2012, the Prime Minister issued **Decision 1393/2012/QĐ-TTg** to promulgate the **National Green Growth Strategy (NGGS)**. It has been inspired by **green growth core principles** but also encompassing a cultural dimension. Implementation priorities focus on integrating green growth into local and sectorial socio-economic development plans, reviewing legal documents and national strategies to identify issues that are not in line with green orientation and propose a roadmap for completing the institutional framework and enhancing the state management apparatus to promote the coordination among concerned agencies in implementing green and sustainable development. NGGS is structured around three strategic goals:

- **Reducing GHG emissions** and promoting the use of **clean and renewable energy**. After 2020, it targets an absolute decoupling of GHG emissions from economic growth, i.e. a decrease of damages linked to emissions.

- **Greening production** based on the i) Implementation of a clean industrialization strategy by adjusting sector master plans; ii) Development of green industry, agriculture, technologies and equipment; iii) Investment in natural capital; iv) Prevention and treatment of pollution.

- **Greening traditional lifestyle** with means to create quality and traditionally rooted living standards, including the **creation of green jobs**. New consumption modes

⁶National Green Growth Strategy. Available at: <https://www.giz.de/en/downloads/VietNam-GreenGrowth-Strategy.pdf>

⁷Sustainable Development Strategy for the 2011-2020. Available at:

<http://www.chinhphu.vn/portal/page/portal/English/strategies/strategiesdetails?categoryId=30&articleId=10050825>

should avoid seeing environmental benefits being counterbalanced by increased consumption.

3.3.2. Sustainable Development Strategy for the period 2011-2020

Decision No. 432/QĐ-TTg (17 April, 2012) initiated the Sustainable Development Strategy in Vietnam. The Strategy relates to cleaner production, environmental friendliness, and clean industrialization.

One of the priorities of the Strategy is sustainable consumption and production. Mass application of cleaner production in order to increase the efficiency of natural resources, materials, energy, water while reducing emissions and pollution rate and quality protection of the environment is to be prioritized. Gradually, implementation of **ecolabelling and green procurement** and **development of an eco-product market** and community-based initiatives for sustainable consumption and production have also been acknowledged as priorities.

3.3.3. National Environmental Protection Strategy to 2010 orientation towards 2020

This was the fundamental strategic document that encompassed the breadth of environmental fields and natural resources for Vietnam. In order to aim for sustainable production and consumption, the strategy set target to be reached to 2020: 100% of export products and 50% of domestically consumed products in terms of quantity using environmental labels under ISO 14021. One of the core principles of the strategy is promotion of clean technology and environmentally friendly technology in the manufacturing industry. **Modern technology and clean technology are to be prioritized.**

The strategy set out that this would be best achieved by a review and revision of technical standards, including an upgrade of technology to improve environmental efficiency of products, as well as encouraging innovation and inventions that will save energy and materials and create less waste. There should also be incentives to an application of environmentally friendly technologies and waste recycling technologies. Enterprises that implement technology innovation shall be entitled to enjoy tax exemption and/or reduction or preferences on tax rates, enterprise income tax, import tax of advanced machinery and equipment as well as environmentally friendly technologies.

3.4. National Environmental Regulations

3.4.1. Law on Environmental Protection

The **Law 55/2014/QH13 on Environmental Protection** was enacted in 2014, giving a comprehensive legal framework for environmental protection activities, including sustainable production and consumption.

Article 44 of the Law states that: Heads of agencies and units funded by the state budget shall **prioritize the use of environmentally-friendly products and services which have been eco-labelled** in accordance with the law. To promote this, the Ministry of Natural Resources and Environment has a responsibility to collaborate with information and communications agencies for the introduction and **advertisement of environmentally friendly products and services**.

The Law is then further explained in Decree 19/2015/ND-CP dated February 14, 2015 which gives detailed directions for its implementation. The Decree addresses the following areas particularly:

• ***Incentives for environmentally-friendly products and services***. The supplier or the producer of the following products and services shall be entitled to the incentives for land rent, exemption and reduction in export tax and preferential enterprise income tax:

- *Production of environmentally-friendly products which are certified by the Vietnam green label; products from the recycling and treatment of waste which the competent state authorities have certified.*

- *Production of biogasoline, biodiesel and bioenergy which conforms to National Technical Regulation; biochar⁸, energy from the use of wind power, sunlight, tidal, geothermal energy and other forms of renewable energy.*

• ***Consumption assistance for products***. The head of agencies and units using state budget must prioritize the public procurement of products as specified above when purchasing products. The Ministry of Finance shall take charge and coordinate with the Ministry of Natural Resources and Environment to develop the regulations on public procurement of environmentally-friendly products.

3.4.2. Law on Environmental Protection Tax

The Law on Environmental Protection Tax No. 57/2010/QH12, (15 November, 2010), establishes regulations on what is subject to tax, not subject to tax, taxpayers, tax bases, taxation, and the environmental protection tax refund. Environmental Protection Tax Law includes four chapters and 13 articles, and took effect on 1st January, 2012.

⁸Biochar is defined as a fine-grained charcoal made by pyrolysis, the process of heating bio-mass (wood, manure, crop residues, solid waste, etc.) with limited to no oxygen in a specially designed furnace capturing all emissions, gases and oils for reuse as energy.

Under the provisions of the Law, there are eight taxable commodity groups: petroleum, coal, liquid HCFC (HCFC solution), plastic bags, herbicides, and preservatives in forestry production, storage disinfectants, and a small range of pesticides. The Law on Environmental Protection Tax was issued to encourage the decoupling of economic development from environmental pollution, in accordance with current economic circumstances and future predictions. This law contributes to raising societal awareness of environmental issues, thus changing perceptions and behaviours of organizations and individuals in their production and consumption of goods and services. While not immediately linked to procurement, it is a good step toward greening the purchase of goods and services. Similarly, the government could expand this environmental protection tax law to include goods when used to cause negative environmental impacts. This would increase the attention of businesses to eco products more directly.

3.5. Energy conservation regulation and policies

In 2003 a first Decree on Energy Efficiency and Conservation (Decree No.102/2003/ND-CP) was issued. In addition, in July 2004 the Ministry of Industry issued a circular providing guidance for the implementation of energy conservation in the industry sector (Circular No. 01/2004/TT/BCN on Energy Efficiency and Conservation). Now this decree has been replaced by the Law on Economical and Efficient Use of Energy which was passed by the 12th National Assembly in June 2010 and enforced since 01 January 2011.

In 2005 the MOIT released the **National Strategic Program on Energy Savings and Effective Use** (Vietnam Energy Efficiency Program—VNEEP) for the period 2006-2015, which was approved and enforced on 14 April 2006 by the Prime Minister's Decision (Decision No.79/2006/QD-TTG). The VNEEP calls for coordinated efforts for improving energy efficiency, reducing energy losses, and implementing extensive measures for conservation of energy. In addition, in November 2006 MOIT issued a **Guideline for Energy Efficiency Standard and Labelling** in order to assist on the implementation of energy efficiency standards and labelling in appliances (Circular No.08/2006/TT/BCN). Other related regulations are the Electricity Law approved and enforced in July 2005, comprising sections that specify electricity efficiency in the generation, transmission, distribution and use processes. This was followed by the **"Electricity Saving Program for the period 2006-2010"** approved by the Prime Minister in April 2006. Furthermore, the **Building Code** which aims to reduce energy

losses and improve living conditions in buildings was issued in November 2005 (Energy Efficient Commercial Building Code No.40/2005/QD-BXD).

In June 2010, **Law on Economical and Efficient Use of Energy**(Law No. 50/2010/QH12) was issued by the National Assembly and took effect on 01 January 2011. The Law provides general guidelines on energy performance standards and energy labelling, as well as measures to promote energy saving and efficiency through incentives and science/technology development.

In March 2011, the Government issued the **Decree No. 21/2011/ND-CP** dated March 29, 2011 detailing and taking measures for implementation of the **Law on Economical and Efficient Use of Energy**. This Decree provides statistical work on energy use; major energy users; economical and efficient use of energy in state budget-funded agencies and units; energy labelling of energy consuming devices and equipment; measures to promote economical and efficient use of energy; and examination and inspection of economical and efficient use of energy.

In September 2011, the Prime Minister's Decision No. 51/2011/QD-TTg dated September 12, 2011 promulgating the list of devices and equipment subject to energy labelling and application of the minimum energy efficiency, and the implementation roadmap. Most recently, in January 2013, the Prime Minister has promulgated the Decision No.03/2013/QD-TTg to amend and supplement a number of articles of the Decision No. 51/2011/QD-TTg.

3.6. Other Regulations

3.6.1. Labour Code

Labour Code (Law No.10/2012/QH13) was adopted in 2012 to regulate all labour standards; rights, obligations and responsibilities of employees, employers, employees' representative organizations and employers' representative organizations in industrial relations and other relations directly related to industrial relations; and state management of labour.

Article 5 stresses the importance of the freedom of work as the main proof of respect for rights arising out and assigned to procurement procedures. According to Article 5, an employee has the following rights:

- *To work, freely choose a job or occupation, to participate in vocational training and to improve occupational skills and suffer no discrimination;*
- *To receive a wage commensurate with his/her occupational knowledge and skills on the basis of an agreement reached with the employer; to receive labour protection and*

work in assured conditions of labour safety and labour hygiene; to take leaves according to the prescribed regime, paid annual leaves and enjoy collective welfare benefits.

Clause 1, Article 138 specifies the duties of employers for ensuring that the working environment meets the required standards, **improving the healthcare and working conditions** of workers, and establishing practices to **minimize or eliminate safety- and health-related hazards**:

- To ensure the workplace meets the requirements of space, ventilation, dust, steam, toxic gas, radiation, electromagnetic field, heat, humidity, noise, vibration and other harmful elements specified in the relevant technical regulations and those factors must be tested and measured periodically.

*- To ensure the conditions on **labour safety and hygiene** for machinery, equipment, workshop to reach the national technical regulations on labour safety and hygiene or standards on labour safety and hygiene at the workplace that has been published and applied.*

*- **Testing and assessing the dangerous and harmful factors**, harmful at workplace of the facility to set out the exclusion measures to minimize hazards, harmfulness and improve the working conditions and health care for the employees;*

- Periodically testing and maintaining the machinery, equipment, workshops and warehouses;

- There must be an instruction table on labour safety and hygiene for the machinery, equipment and workplace and it should be put at a legible and visible place;

- Gathering opinions of the representative organization of collective labour at the grassroots level when making a plan and implementing the activities to guarantee the labour safety and hygiene.

3.6.2. Law on Occupational Safety and Hygiene

The **Law on Occupational Safety and Hygiene (OSH) (Law 84/2015/QH13)**, which was passed in June 2015 and took effect in July 2016, seeks to ensure occupational safety and hygiene, and introduces policies for victims of labour accidents and occupational diseases. It also provides state management, and rights and obligations of organizations and individuals in occupational safety and hygiene. **Article 6 clarifies the right of workers on OSH as follows**:

*- **Work in fair, safe and OSH conditions**; to request the employer to guarantee OSH working conditions during the working process and at the workplace;*

*- Be provided with **adequate information on hazardous factors and toxic factors** at the workplace and preventive measures; be trained in OSH;*

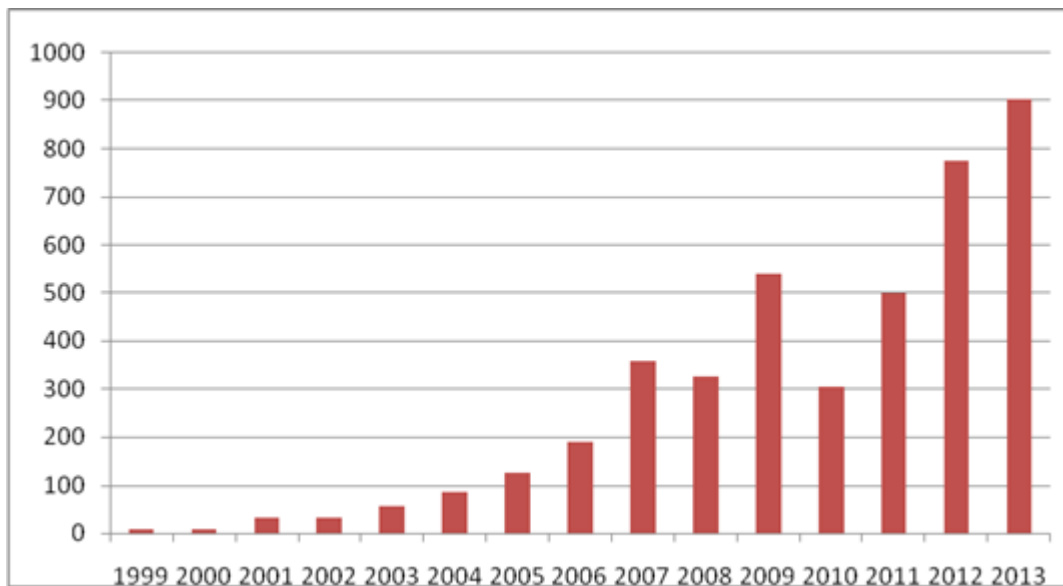
- Benefit from **labour protection** regime, health care, examination for detection of occupational diseases; have occupational accident and disease insurance premium paid by the employer; get full compensation in case they suffer from occupational accidents and/or occupational diseases; have costs of medical assessment for injuries and/or illnesses caused by occupational accidents and diseases paid; actively seek medical assessment for determination of the degree of work ability decrease and have the assessment costs paid in case the medical assessment results show that they are eligible for an increased allowance for occupational accidents and/or diseases;

- Ask the employer to arrange appropriate employment after the treatment of occupational accidents and/or diseases.

3.7. Green standards and Certifications in Vietnam affecting the development and application of the Sustainable Public Procurement policy

3.7.1. Environmental Management System ISO 14001

In Vietnam, **ISO 14001** has been implemented more slowly than in its regional neighbours such as Singapore, Thailand and Malaysia. The standard was first released in 1996 and adopted two years later **as a national standard**. Since then ISO 14001:1998 has been revised as ISO 14001:2005 (equivalent International Standard ISO 14001:2004). To promote the application of ISO 14001 in Vietnam, the **Directorate for Standards, Metrology and Quality** under the **Ministry of Science and Technology** is the focal point of the state management system on standards and quality. It has implemented many activities such as productivity launches, raising awareness of quality, and development for certification systems and experts. The Directorate has also posted information online at <http://www.tcvn.gov.vn> with the aim of supporting enterprises to develop **information on environmental management systems and ISO 14000 standards**.



Sources: Data retrieved from http://www.iso.org/iso/iso-survey_2013.zip

Currently in Vietnam, ISO 14001 certification has been granted for many different types of business production and services, such as food processing, rubber and plastic products, electrical and optical equipment, metal processing. According to a survey⁹ by the International Organization for Standardization on ISO 14001, the first certificates were issued to an organization in Vietnam in 1998. From 1999 to 2004, the number of certificates issued increased very little, but in December 2005, this number increased from 85 to 127 certificates, and at the end of December 2013 increased to **903 certificates**.

Overall, in recent years, legal documentation has been more thoroughly developed and has made a significant contribution to improving the environment and **raising awareness of environmental protection** in general, and ISO 14001 particular. The Decree 19/2015/ND-CP stipulates that the **services, business and production facilities** which have come into operation and produce large amounts of waste and are **prone to serious impact** on the environment **must implement the certification for environmental management systems** (Article 25).

Article 25. Subjects obliged to implement certification of environmental management system

1. The services, business and production facilities which have come into operation with large amount of waste and prone to serious impact on environment named in the list

⁹http://www.iso.org/iso/iso-survey_2013.zip

specified in Annex II of this Decree¹⁰ must implement the certification of environmental management system.

2. The facilities having the valid certificate of conformity with national standard TCVN ISO 14001 issued by a certification organization which has registered its operational fields under regulations of law shall not have to implement the certification of environmental management system.

3. The Prime Minister shall review and decide on the modification of List of services, business and production facilities which must implement the certification of environmental management system as recommended by the Ministry of Natural Resources and Environment.

3.7.2. Green Label program

Vietnam Green Label Program (VGLP) has been implemented nationwide since March 2009, contributing to raising the awareness of enterprises and the community and progress towards the adoption of more sustainable production and consumption patterns. Using the “Vietnam Green Label” gives businesses the opportunity to enhance their brand name and reputation among consumers.

To enhance the sustainable use of natural resources and to increase environmental protection, on March 5, 2009, the Minister of Natural Resources and Environment issued the **Decision 253/QĐ-BTNMT** approving the **eco-label program**, to encourage the production of environmentally-friendly consumer products through State assessment and certification. This decision was a fore-runner to policies and laws about eco-labels within the system of environmental law. It is one of a range of tools to strengthen environmental protection and to encourage consumers to access and use environmentally-friendly products.

Currently, Vietnam Environment Administration (VEA) has developed an assessment and certification system –the "Vietnam Green Label" - for **environmentally-friendly products and services** and criteria for green label applied to product groups. Vietnam Green Labels currently apply to **14 product groups** (detailed in table 1).

Table 1. List of criteria for Vietnam Green Label

TT	Product Groups	Criteria Code
1	Biodegradable plastic packaging	NXVN 03:2010
2	Paper packaging used to package food	NXVN 04:2014

¹⁰See Annex II of this report for the list of services, business and production facilities

3	Fluorescent lamp products	NXVN 02:2014
4	Powder Laundry Detergents	NXVN 01:2014
5	Hand Dishwashing Liquid	NXVN 10:2014
6	Solid Soap	NXVN 09:2014
7	Hair care products	NXVN 08:2014
8	Toner cartridges	NXVN 13:2014
9	Batteries	NXVN 06:2014
10	Architectural coating products	NXVN 11:2014
11	Printers	NXVN 14:2014
12	Laptops	NXVN 12:2014
13	Printer Paper	NXVN 07:2014
14	Ceramic Building Materials	NXVN 05:2014

To date, the VEA has granted certificates of the Vietnam green label to a total of 53 products from 04 companies. This is actually the initial result of the widespread application of Vietnam green label for the environmentally-friendly products and services in the country (See details in table 2).

Table 2. Granted green labels to products in Vietnam, by type of production and company

No	Type of product	Company	Certified Code	Validity
1	Tide Laundry Detergent	Procter & Gamble. Co	Decision 52/QĐ-TCMT-2011	18/01/2011 - 01/18/2014
2	- Compact fluorescent light bulbs(33 products) - Straight tube fluorescent bulbs (10 products) - Double wing bulbs (03 products)	DienQuang Lamp Joint Stock Company	Decision 1228/QĐ-TCMT-2014	10/10/2014 - 10/10/2017
3	Coating used for construction: - Majestic Pearl Silk - Jotashield	Jotun Paint Vietnam Co, Ltd	Decision 83/QĐ-TCMT-2014	20/2/2014- 20/2/2017
	Coating used for construction: Majestic True Beauty Sheen (02 products)		Decision 599/QĐ-TCMT-2014	20/6/2014- 20/6/2017
4	Printer: - Fuji Xerox DocuPrint P355d - Fuji Xerox DocuPrint P355db	Fuji Xerox Asia Pacific Pte Ltd. Office	Decision 512/QĐ-TCMT-2014	29/5/2014- 29/5/2017

The Vietnam Green Label program operates to continuously improve and maintain a quality living environment through awareness of the impact of, and reduction of, energy consumption, materials and waste generated by production processes, business and consumer products, and consumer services.

The program has achieved some **success**, but has also encountered **difficulties** in its implementation as described below:

- Despite the mechanisms and policies on eco-labels, there is a **lack of detailed guidelines** for the implementation of existing regulations on ecolabelling. The use of **eco-labels** is also encouraged but **not mandatory**. Vietnam however remains committed to its **National Environmental Protection Strategy**¹¹, with the aim to have **100% of export products** and **50% of domestically consumed products** regulated by **environmental labels under standard ISO 14021 by 2020**. This roadmap is an important target for businesses and manufacturers to implement cleaner production and safer products.

- There has also been **difficulty in adequately communicating awareness** of the program to government agencies, businesses and consumers. It has therefore been a **challenge to change the consumption habits** of the target demographics through the use of eco-labelled products. Another significant barrier to implementation of eco-labels in Vietnam is the **limited number of suppliers** of environmentally friendly products and the poor quality of products which poses a challenge in developing the Vietnam Green Label. This is a reflection of the relatively **weak capacity** of Vietnamese businesses to produce environmentally-friendly high quality products compared to global competitors. Environmental spending in production is quite low, and in order to qualify for a label, businesses must spend a **significant amount** to improve product quality, which often causes a serious financial strain and **creates an obstacle to joining the program**.

- The Vietnam Green Label program has **not yet signed any Mutual Recognition Agreement (MRA)** with other ecolabelling schemes. However, Vietnam has a variety of

¹¹Viet Nam's National Environment Protection Strategy to 2010 and orientation towards 2020 is available in Vietnamese at: <http://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Quyet-dinh-256-2003-QD-TTg-Chien-luoc-bao-ve-moi-truong-quoc-gia-den-nam-2010-dinh-huong-den-nam-2020-51662.aspx>. This strategy outlines a vision of 100% of export products and 50% of domestically consumed products in terms of quantity regulated by environmental labels under standard ISO 14021 by 2020. To achieve this objective, it is required that, on one hand, the national and sectoral sets of environmental standards be improved to meet the required levels of development and environmental protection at specific stages, in order to ensure harmony between economic development and environmental protection. On the other hand, incentives should, in combination with enforcement, be provided to encourage production and business units to invest in technological innovation and adoption of environmentally friendly and/or low waste production technologies. Encourage the consumption of energy in an economical manner and the use of clean energy and less pollution fuel substitutes.

strategies in place to expand the scheme regionally. It plans to utilise its membership in the **Global Ecolabelling Network (GEN)** and accreditation under the Global Ecolabelling Network's Internationally Coordinated Ecolabelling System (GENICES) to **develop mutual recognition agreements** that allow VGLP products to be accepted for import into other GEN countries, and to collaborate with GEN members in the region to develop new criteria for products in the region. If so, the Vietnam products and services which have Vietnam green label, if exported to other countries, would be able to enjoy the preferences offered by these countries to eco-labelled products. With this in mind, GEN has received a draft full membership application from Vietnam Green Label program, (not yet formally signed and submitted, as it yet had to be approved by the Minister of MONRE). After a signed application form is received, the applicant is further expected to complete GENICES over the next year, as a component of their full membership application evaluation.

In order to comprehensively and systematically promote eco-labelled products, the government shall determine a basic policy for the **promotion of procurement of eco-labelled products** and dissemination of information regarding these products to the whole society.

3.7.3. Energy Efficiency Label Program

On 16 November, 2006, the **Ministry of Industry** (now the Ministry of Industry and Trade-MOIT) issued **Circular No. 08/2006/TT-BCN** to guide the regulation and procedures for **energy efficiency labelling**. The function of this Circular is to direct the procedures of registration, evaluation, certification and labelling of energy efficient products, selected annually. This program is an important element of Viet Nam's national target program on energy saving and efficiency, and has been approved by the Prime Minister. In this pilot program, businesses and manufacturers may ask that their products be included on the list of eco-labelled products by requesting an evaluation of technical standards and an assessment certificate from the MOIT. The Circular stipulates two types of labelling, i.e. energy certification label and comparative energy label.

- the **Certification label** certifies that the device or equipment has the **highest energy yield** compared with other devices or equipment of the same type.

- the **Comparative label** provides information on the **energy consumption rate**, the type of energy, the energy yield and other information to enable consumers to compare with similar products in the market for recognition and selection of energy-efficient devices and equipment.

After three years of pilots **nine companies** are now participating in the energy efficiency labelling scheme for products: fluorescent lamp (T8), electromagnetic ballast, Street Lighting headlights. In 2009, there were over 05 million fluorescent lamps (T8) and 02 million ballasts labelled with the saving Energy label. Recently, an additional three businesses became involved in labelling with 99 energy-saving electric fans.

On 7 May 2011, the MOIT announced **Decision No 2433/QD-BCT** on the Energy Label Program for four products: **washing machines, air conditioners, refrigerators and cookers**. These products are included in a list of priority products to be labelled to achieve national standards TCVN 7829:2007, TCVN 7830:2007, and TCVN 8252:2009. Private household laundry products must meet a minimum level of performance stipulated in TCVN 8526:2010.

On 9 September 2011, the Prime Minister issued Decision No 51/2011/QD-TTg, which specifies certain categories of vehicles and equipment to be labelled, imposes minimum energy efficiency levels on these and presents a roadmap for implementation. This important documentation on eco-labelling provides information on energy consumption, energy efficiency, and helps consumers evaluate products that save energy. There are four groups of vehicles and equipment subjected to minimum energy efficiency levels and labelling: Household appliances, office and commercial equipment, industrial equipment and means of transportation. For appliances and industrial equipment, eco-labels are currently encouraged, leading up to a **mandatory implementation** on 1 January 2012. Office and commercial equipment is currently subject to voluntary labelling, particularly for commercial refrigerated cabinets, which will face mandatory labelling from 1 January 2014. Mandatory labelling for transportation will take effect from 1 January 2015.

Table 3. Roadmap for Energy Labelling

Categories	Products	2012	2013	2014	2015
Household appliances	Tubular fluorescent lamps, compact fluorescent lamps, electromagnetic ballasts, electronic ballasts for fluorescent lamps, air conditioners, refrigerators, washing machines, electric cookers, electric fans and television,				
Office and commercial equipment	Commercial refrigeration cabinets				
Industrial	Distribution transformers and				

equipment	electric motors				
Transportation	Passenger cars (less than 7 seats)				

Voluntary
Compulsory

On 12 December 2011, the Prime Minister issued the Decision 68/2011/QĐ-TTg on the List of Energy Efficient Facilities and Equipment to be provided to offices and organizations using state budget. Under this decision, State agencies, when buying electrical equipment such as electronic ballast, electrical fans, air conditioners, refrigerators and televisions, have to choose products with a degree of energy efficiency equal to level five (highest possible energy efficiency, corresponding to a five-star label). This also aims at promoting national energy efficiency labelling programs.

Table 4. List of energy efficiency equipment that are purchased by state agencies

No	Name of equipment	Label
1	Compact fluorescent lamps	Energy certification label
2	Tubular fluorescent lamps	Energy certification label
3	Electromagnetic ballasts for fluorescent lamps	Comparative label
4	Electronic ballast for fluorescent lamps	Energy certification label
5	Electric fans	Comparative label
6	Air conditioners	Comparative label
7	Refrigerator	Comparative label
8	Distribution transformers	Energy certification label
9	Public lighting products	Energy certification label
10	Solar water heaters	Energy certification label
11	Television	Comparative label
12	Computer Monitor	Energy certification label
13	Printer	Energy certification label
14	Photocopy	Energy certification label

As a result, from 2012 to June 2014, there were 6,215 products which had been granted the energy label, among which the most labelled products are electric fans, air conditioners and refrigerators¹².

3.8. Opportunities for Sustainable Public Procurement of eco-labelled products and services

Vietnam has already implemented a number of activities related to sustainable production and consumption, such as **energy saving programs, eco-labelling programs** and **environmental management system (ISO 14000) certification**. The

¹²<http://laodong.com.vn/doi-song-thi-truong/6215-san-pham-duoc-dan-nhan-nang-luong-258934.bld>

Government has also allocated a significant budget for environmental protection. These activities will be a key element for implementing SPP with strong linkages with Eco labelling in Vietnam.

a. State Budget Spending Plan

SPP could be integrated right from the earliest stages of **budget planning**. According to the Law on the State Budget, all levels of government agencies are responsible for planning their budget spending for the next year.

When budget planning officials prepare spending plans for the following year, they could **include eco-labelling criteria** for more sustainable spending and this would be reflected in budget plans submitted to higher authorities.

b. Centralized purchasing method

Sustainable Public Procurement is also in line with the Prime Minister's direction and **orientation for centralized purchasing** (Decision 179/2007/QD-TTg). However, this Decision is not widely implemented yet, it is only **applied to pilots** for which the Ministry of Finance and other ministries, central agencies and localities registered. If it expands its effectiveness, it will make a bigger contribution to the improvement of the legal framework for procurement in Vietnam. With the introduction of centralized purchasing, the government authorities are provided with sufficiently wide range of organizational structures of implementation of public procurement, whose primary objective is to improve the quality of public procurement and thereby satisfy the requirements for quality and more affordable goods and services.

Centralized purchasing (the objectives of which are to reduce the procurement expenditure, to standardize equipment, and reduce corruption) will take effect **in 2016** and **SPP could be implemented by the authorized procurement body** within each ministry or provincial people's committees. This will help to **mobilize efforts** on capacity building and resources which need to be allocated to SPP and **facilitate** the implementation of SPP, as only the authorized procurement agencies will need extensive training on sustainable procurement, environmental criteria and standards. They will be in a position to make purchasing orders big enough to benefit from significant reductions in the price of goods or to receive better services at lower costs.

c. Decree No.63/2014/ND-CP

As stated in section 3.2.2, the Decree 63/2014/ND-CP sets out rules whereby contracting authorities may invite targeted contractors who meet certain qualifying

criteria to submit tenders. Contracting authorities may integrate environmental and energy-efficient standards into technical features and specifications when formulating bidding documents. By defining the technical features and specifications, public authorities have the possibility to include a wide range of environmental and energy-efficient performance standards, e.g. specifications for eco-labels.

d. Law on Environmental Protection

The **Law on Environmental Protection** (Law No. 55/2014/QH13) is a strong measure to enforce environmental protection, and is **fully compatible with SPP**. The law, together with its instructive documents like the Decree 19/2015/ND-CP (Article 47) regulates the following aspects:

- *The head of agencies and units using state budget must **give priority to the public procurement of products certified with Vietnam green label, and products resulting from the recycling and treatment of waste which have been certified by the Ministry of Natural Resources and Environment.***
- *The Ministry of Finance shall take charge and coordinate with the Ministry of Natural Resources and Environment to **develop the regulations on public procurement of environmentally-friendly products** as specified above.*
- *Organizations and individuals shall **prioritize the purchase of environmentally friendly products** as guided by the Ministry of Natural Resources and Environment.*

e. Project of Law on Green Purchasing

Recently the Institute of Strategy and Policy on Natural Resources and Environment (ISPONRE) under the MONRE **has been studying the development of a Law on Green Purchasing**. Though it is in the very early stages of development, it shows a committed step in the government's efforts to implement SPP. For the time being, the law has not been completed and SPP initiatives could help to foster this process as well as provide experimental data for the development of a law adapted to the particular conditions in Vietnam.

f. National Green Growth Strategy

National Green Growth Strategy provides a **broad umbrella for the implementation of SPP** with an emphasis on implementation solutions promoting sustainable consumption and green lifestyles:

-Promote eco-labelling and disseminate information on environmentally-friendly products to the entire society. Formulate a roadmap towards 2020 to initiate

green procurement for: *construction materials; foods; transportation; energy; computers and office equipment; textiles and garments; papers and printing; wood products; detergents; and medical equipment.*

-Public expenditure should lead the development and use of **green economy standards**. From 2015, all public works and projects should adhere to green economy standards in different sectors ensuring energy efficiency, resource efficiency and eco-design taking into account the effect of climate change; Prepare the conditions so that *from 2017 all motorized vehicles purchased by public budget will meet emission standards, and priority will be given to vehicles using clean fuels (electricity, liquefied petroleum gas - LPG), and hybrid vehicles.*

-Encourage sustainable consumption in the business sector. Apply economic and technical instruments to encourage enterprises to use natural resources economically, and limit waste of energy and natural resources; Develop the certification and eco-labelling system for green products. Form and expand markets for green products.

These efforts could take place within ministerial regulations, and **do not require changes of the existing legal system**, which will be helpful in reducing difficulties when introducing SPP. The MOF could issue regulations on “**green**” **public expenditure**, fostering and encouraging the procurement of eco-labelled, as well as recyclable goods, by prioritizing these in investment made by the State budget as well as in expenditure and recurrent spending.

3.9. Impediment and Challenges

Generally, in Vietnam, a practical implementation of SPP would mean the procurement of certified eco-products by government related agencies. The policy framework of SPP has been initially established, however, the obstacles hindering the implementation of sustainable public procurement and the challenges that should be overcome are as follows:

- The biggest challenge in public procurement framework suffers from a multiplicity of regulations, and is characterised by a wide array of legislations enacted through Decrees, Circulars, and amendments. The **fragmented legislative system** is complex, resulting in ineffective implementation of regulations. More fundamental problems emanate from **institutional issues**. The Ministry of Planning and Investment has the authority to “lead and coordinate with concerned agencies in conducting oversight and inspection in connection with procurement nationwide” but it lacks the

enforcement powers. Under the current system, there is **no government institution, independent from the procuring entities**, which is responsible for the enforcement of Law on procurement.

- Current public procurement issues in Vietnam have been clearly **regulated in legal instruments**, although this system still has **shortcomings and inadequacy**. Mainstreaming environmental factors in the process of procuring public assets and goods has been applied in many countries but is a new process in Vietnam. State agencies using their budget for procuring assets and goods may currently lack interest in environmental issues. This is partly because the legal instruments on procurement do not have specific requirements with regard to environmental aspects.

- Although there are some **specific policies and regulations** that promote sustainable public procurement in Vietnam, the specific requirements related to the integration of sustainable factors into the procurement process in these policies are **unclear** and incomprehensive. The **Law 55/2014/QH13 on Environmental Protection** and the subsequent Decree 19/2015/ND-CP required State agencies to **give priority** to the procurement of environmentally-friendly products that have been certified with ecolabels. In reality, this regulation is **too general** to implement because there is **no guidance or list of eco-labelled products** which could further help procurement staff to implement SPP. Furthermore, under the provisions of the Law 43/2013, the environmentally-friendly products certified with the eco-label are **not eligible for preferential treatment** in the general process of bidding.

- There is a **lack of policies and specific guidelines to encourage enterprises** to produce sustainable products and services and **to promote their certification**. Although several programs have been implemented at initial stages in Vietnam such as green labelling, energy labelling, ISO 14000 certification, cleaner production, etc., compared to some Asian countries, Vietnam is still far behind. For example, there are only 53 products which were granted a green label certificate in Vietnam, while Thailand has over 500 certified products and China has 10,000.

Once SPP is implemented in Vietnam, it could help to promote innovation, through the procurement of sustainable alternatives such as lighting, recycled paper and office furniture. By integrating environmental and social aspects into large volumes of public spending, SPP can make sustainable consumption and production practical for the entire domestic economy. It also creates opportunities for private sectors to improve how they perceive where green products and services are needed in the market. When the

domestic private sector sees that government is demanding green products, they will be encouraged to invest in and produce more energy-efficient, eco-friendly product.

IV. Proposed changes in the legal framework

4.1. State Budget Law

In accordance with regulations regarding public purchasing, there are currently many state agencies directly involved in the process of developing state budget estimations at central and local levels. If the Government issues **supplementary regulations** for the budget estimation **to incorporate aspects pertaining to environmental protection, eco labelling and social equality** in procurement, they will help to promote the public purchase of socially- and environmentally-friendly products. Therefore, budget planning for 'sustainable' spending could become an annual practice at all levels of government agencies, with relevant legislative support, guidance and cooperation from the MOF and MONRE. It will not require any changes to be made to the law because the **Law No.55/2014/QH13 on Environment Protection already supports sustainable consumption and production** (Article 44 and Article 141).

4.2. Amendment of the Decree 63/2014/ND-CP

As described in section 3.2.2., the Decree 63/2014/ND-CP sets out rules whereby contracting authorities may invite targeted contractors who meet certain qualifying criteria to submit tenders. **Add a new Article detailing item 3.b, Article 12:**

The Decree 63/2014/ND-CP could be amended as follows:

*"1. Characteristics provided in Article 12, item 3.b through which are defined the technical features and specifications **may also include environmental characteristics.***

*2. When the contracting authority lays down environmental characteristics in terms of technical requirements, it may use **detailed specifications**, or national "eco-labels", or any other eco-label, provided that the following conditions are cumulatively met:*

-Specifications are appropriate and allow to define the characteristics of the supplies or services which are the object of the public procurement contract;

- "Eco-labels" are adopted using a specific procedure that allows the involvement of all interested parties - such as government agencies, consumers, producers, distributors and environmental organizations;

- "Eco-labels" are accessible/available to all interested parties;

3. The contracting authority has the right to indicate, in the terms of reference, that the products and services bearing the "eco-label" are presumed to implicitly comply with the technical specifications laid down in the bidding documents."

Prior to making amendments, the changes must be approved by the concerned authorities. The Ministry of Planning and Investment shall prepare a draft amendment of the Decree, and the Ministry of Justice shall be responsible for assessing and verifying the draft decree before it is submitted to the Government for consideration and approval.

4.3. Development of a new Circular on Implementing Public Procurement of Eco-Labelled Products

In order to fulfil the requirements of the law on procurement and related environmental protection law and policies, **MONRE and MOF must jointly publish a new Circular on Implementing Public Procurement of Eco-Labelled Products (ELPs)** and the **List of Public Procurement of ELPs** to promote the Government Decree 19/2015/ND-CP. This circular would be a milestone in the development of Vietnam's Sustainable Public Procurement policy. According to this Circular, MOF and MONRE will co-determine the scope of **preferential procurement based on the ELPs** certified by the certification agencies accredited by the government. This "ELP List" will be developed taking into consideration the level of market maturity, the progress of public procurement reform, and the level of technological development of each product.

The Circular will require that government agencies at all levels give preferential consideration to ELPs in their public procurement, instead of procuring products hazardous to the environment and to human health. If the type of products to be purchased by the government is featured on the list, preference should be given to those listed products, provided that the performance, technology, service and other indexes are the same.

The MOF shall assume the lead responsibility for preparing the draft joint circular, and coordinate with the MONRE in elaborating and promulgating the joint circular on Implementing Public Procurement of Eco-Labelled Products.

V. Conclusions

Vietnam is at the crossroads of an industrial transformation that has the potential to reconcile economic development with the protection of natural capital it depends on. SPP provides an instrument to successfully pursue the path towards "ecological civilization" through encouraging the private sector to invest in more energy-efficient, eco-friendly products and fostering SCP. Public authorities are already pursuing SPP

practice in order to incentivize businesses to invest and innovate in eco products to meet the government's sustainable development goals.

The review of the legal framework shows that Vietnam has a **suitable legislation to support the implementation of SPP**. With its huge and ever-increasing procurement power, the Vietnam's government has the capability to protect the environment through its sustainable public procurement.

Though relatively late in adopting sustainable public procurement, Vietnam has specific **opportunities** for introducing and implementing SPP which are **aligned with the ongoing SCP and Green Growth Strategy** in the country, as well as the enforcement of the existing laws, regulations, policies, and action plans, especially those relating to environmental protection, energy savings, and sustainable development.

However, a number of **challenges and impediments** to the potential of SPP in Vietnam can be observed. To promote SPP implementation in Vietnam, **some changes in regulations on public procurement will be required**, particularly with regard to the Decree 63/2014/ND-CP under the Law on Procurement and the new Circular Implementing Government Procurement of Eco-labelled Products (see details in section IV).

Finally, it can be concluded that SPP is already taking place in Vietnam, although at a very early stage, and that this is one of the significant tools for the government to shift towards more sustainable consumption and production patterns, and to contribute to the achievement of sustainable development goals. In the long-term perspective, the government should consider **adopting a Law on Green Purchasing**, which could promote and accelerate green products that contribute to reducing the negative impact on the environment and encourages the public sector, including the government to promote the procurement of green products.

ANNEX 1. LEGAL DOCUMENTS RELATED TO PUBLIC PROCUREMENT

Laws issued by the National Assembly:

- Law No. 16/2003/QH11 on Construction
- Law No. 61/2005/QH11 on Procurement
- No. 38/2009/QH12, amending the Law on Procurement and the Construction Law
- Law No. 50/2010/QH12 on Economical and Efficient Use of Energy,
available at http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10481
- Law No. 43/2013/QH13 on Procurement,
available at <https://luatminhkhue.vn/LMK/attachments/8/42735/43-2013-QH13.doc>
- Law No. 55/2014/QH13 on Environmental Protection,
available at <http://hethongphapluatvietnam.com/law-no-55-2014-gh13-dated-june-23-2014-on-environmental-protection.html>
- Law No. 57/2010/QH12 on Environmental Protection Tax

Decrees issued by the Government:

- Decree 85/2009/ND-CP on the instructions for implementation of the Law on Procurement and the selection of contractors in accordance with Construction Law.
- Decree 63/2014/ND-CP detailing the implementation of several provisions of the law on bidding regarding the selection of contractors,
available at <http://hethongphapluatvietnam.com/decree-no-63-2014-nd-cp-dated-june-26-2014-detailing-the-implementation-of-several-provisions-of-law-on-bidding-regarding-the-selection-of-contractors.html>
- Decree 19/2015/ND-CP detailing the implementation of a number of articles of the law on environmental Protection,
available at <http://hethongphapluatvietnam.com/decree-no-19-2015-nd-cp-dated-14-february-2015-detailing-the-implementation-of-a-number-of-articles-of-the-law-on-environmental-protection.html>

Decisions issued by Prime Minister:

- Decision No. 49/2007/QĐ-TTG on the regulation of special cases permitted for direct appointment of contractors.
- Decision 179/2007/QĐ-TTg on promulgating the regulation on concentrated procurement of assets and goods with the State Budget
- Decision No.68/2011/QĐ-TTG the list of energy-saving devices that may be purchased by Government budget, available at <http://hethongphapluatvietnam.com/decision-no-68-2011-qd-ttg-of-december-12-2011-on-promulgation-of-the-list-of-energy-saving-devices-that-may-be-purchased-by-the-agencies-funded-by-government-budget.html>
- Decision No. 432/QĐ-TTg on approval of the Viet Nam Sustainable Development Strategy for the 2011-2020,
available at <http://hethongphapluatvietnam.com/decision-no-432-qd-ttg-of-april->

[12-2012-approval-of-sustainable-development-strategy-of-vietnam-period-2011-2020.html](#)

- Decision No. 1393/2012/QĐ-TTg on approval of the National Green Growth Strategy.
- Decision No. 1402/QĐ-TTg on approval of the overall plan and roadmap for application of e-bidding in the 2016-25 period.

Decisions issued by Minister of Ministry of Planning and Investment:

- Decisions No. 678/2008/QĐ-BKH on the regulation of Procurement Attendance Certificate
- Decisions No. 731/2008/QĐ-BKH on the issuance of Bidding Document Template for civil works
- Decisions No. 419/2008/QĐ-BKH on the issuance of Appraisal Report on Bidder Selection Report
- Decisions No. 1048/2008/QĐ-BKH on the issuance of Bidding Document Template for consulting services

Circulars issued by Minister of Ministry of Planning and Investment:

- Circulars No. 09/2010/TT-BKH on the regulation for preparing of Bidder Selection Report for procurement of goods and civil works.
- Circulars No. 10/2010/TT-BKH on the regulation for procurement training and capacity building.
- Circulars No. 11/2010/TT-BKH on detailed instructions for shopping.
- Circulars No. 08/2010/TT-BKH on the regulation for preparing of Appraisal Report on Bidder Selection Report.
- Circulars No. 06/2010/TT-BKH on the regulation for preparing of bidding document for consulting services.
- Circulars No. 05/2010/TT-BKH on the regulation for preparing of bidding document for procurement of goods.
- Circulars No. 04/2010/TT-BKH on the regulation for preparing of requirement for procurement of civil works under direct appointment method.
- Circulars No. 03/2010/TT-BKH on the regulation for preparing of pre-qualification document of civil works.
- Circulars No. 02/2010/TT-BKH on the regulation for preparing of bidding document for procurement of small scale civil works.
- Circulars No. 01/2010/TT-BKH on the regulation for preparing of bidding document for procurement of civil works.

Circulars issued by other Ministries:

- Circulars No. 63/2007/TT-BTC on the guidance on procurement of goods for the recurrent operation of government bodies.
- Circulars No. 68/2012/TT-BTC on the guidance on procurement of goods for the recurrent operation of government bodies.

ANNEX 2.LIST OF SERVICES, BUSINESS AND PRODUCTION FACILITIES

(Issued with Decree No. 19/2015/ND-CP dated 14 February 2015 of the Government)

No.	Type of services, business and production	Scale/capacity
1.	Production facilities containing radioactive material or radioactive waste	Exceeding the immunity limit under regulation of law on radiation safety and control
2.	Refineries, petrochemicals; base oil and gas extraction Refinery and Petrochemical Plant, oil and gas extraction facilities	All
3.	Facilities producing basic chemicals, painting, printing ink, rubber, pesticides, detergents, additives and chemical fertilizers	Capacity from 10,000 tons of products/year or more
4.	Facilities extracting rare earth and radioactive minerals; selection and enrichment of rare earth and radioactive minerals	Capacity from 50,000 tons of products/year or more
5.	Ship breaking facilities	All
6.	Seaport	Receipt of ships from 50,000 tons or more
7.	Battery production facilities	Capacity from 300,000 KWh/year or more or 600 tons
8.	Solid mineral extraction facilities (including waste stones and minerals)	Capacity from 500,000 m ³ of crude minerals/year or more
9.	Facilities processing and refining rare earth, color metal and radioactive minerals	Capacity from 200,000 tons of products /year or more
10.	Iron and steel refining facilities	Capacity from 200,000 tons of products/ year or more
11.	Industrial parks, export processing zones, high-tech parks, industrial parks, tourist and entertainment sites, urban areas	Area from 200 ha or more
12.	Recycling, processing, landfill, destruction areas of hazardous waste collected from the services, business and production facilities	All
13.	Recycling, processing, landfill, destruction areas of common solid waste	Capacity from 250 tons/day or more
14.	Facilities operating the concentrated industrial wastewater treating system	Capacity from 5,000 m ³ of wastewater/day or more
15.	Marine product processing facilities	Capacity from 5,000 tons of product/year or more
16.	Cement plants	Capacity from 1,200,000 tons of product/year or more
17.	Pulp mills	Capacity from 25,000 tons of product/year or more
18.	Wine and alcohol production factories	Capacity from 1,000,000 liters of product/year or more
19.	Beer and soft drink production factories	Capacity from 50,000,000 liters of product/year or more