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Bidding regulations for liquidation of corporate assets in Vietnam

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Abstract

Bidding is known as a form of asset purchase that appeared very early in human history. Around the end of the nineteenth century, when the world moved to a market economy, the exclusive supply of a certain type of goods and services ceased. Instead, it required suppliers to always compete for the right to supply goods and services in the market. Thereby, bidding also appeared and existed as a civilized mode of competition in that economy. This has also appeared as a legal story calling for great attention. The study will indicate Vietnamese regulations for the liquidation of corporate assets aside from theory analysis.

Keywords: Assets, bidding, economic efficiency, liquidation

1. Introduction

According to the Dictionary of Law, "Bidding is a special transaction mode. A person who wishes to develop a project (procuring entity) announces in advance the requirements and conditions of construction. The bidder announces the price that he/she wants to receive. Through the comparison, the procuring entity chooses the bidder with the most benefits for him/her according to the conditions he/she offers. Only domestic bidders participated in the bidding, called domestic bidding. The bidding with the participation of domestic and foreign bidders is called international bidding"^[1].

According to Clause 8, Article 4 of the 2023 Law on Bidding: "Bidding means the process by which a qualified bidder will be selected to sign and execute a consulting service contract, non-consulting service contract, contract for the supply of goods or construction contract or by which a qualified investor will be selected to sign and execute a project contract in a manner that ensures competitiveness, fairness, transparency, economic efficiency, and accountability."

Through the above definitions, it can be seen that the essence of bidding is buying and selling activities, although the original definition is somewhat limited to only buying and selling activities in construction works. In bidding, we see the competitiveness of bidders or sellers. In the past, when the Vietnamese economy was in subsidy mode, sellers only produced and sold what they had without paying attention to the needs of buyers. Therefore, the buyers do not have the right to choose the right goods for themselves. It was only when Vietnam's economy shifted to a socialist-oriented market economy that competitiveness appeared; the concept of bidding was gradually formed and accepted as an inevitable thing.

Thus, bidding is the process of carrying out a special purchase and sale activity where the buyer requests one or more sellers to provide the offer documents for service, project, or (some) goods to be purchased and based on documents evidencing the capacity, experience, ability to provide, characteristics of goods and services, etc. so that the buyer can choose the best seller. Therefore, bidding is a method that is both scientific and legal, objectively bringing high efficiency and creating healthy and legal competition in the market^[2].

1.2 The concept of bidding for liquidation of corporate assets

In order to learn about the concept of bidding for liquidation of corporate assets, it is necessary to first learn about the concept of liquidation of assets. According to the

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¹Ministry of Justice (2013), Dictionary of Law, Encyclopedia Publishing House and Judicial Publishing House, p.240.

² Pham Thi Thuy Trang. (2015). Proposals to improve the bidding for work construction in Vietnam, Journal of Water Resources & Environmental Engineering. (Iss. 65, June 2019).

1.3 Vietnamese dictionary: “Liquidation is to sell or remove what is no longer used.”^[3] Liquidation is the sale or destruction of unused assets.

Assets that are used for a long time always have a certain wear and tear. When the expiry date is reached, the asset is damaged and cannot be repaired, or the repair is more expensive than buying a new one, the liquidation of assets can be used to recover capital. Assets are under the management of the enterprise when there is no need to continue using them but want to transfer them to other individuals and organizations. When the enterprise dissolves or goes bankrupt, it must liquidate the fixed assets.

Liquidated fixed assets are assets that have fully recovered their investment capital, have the expired fixed asset depreciation period, are damaged/obsolete/outdated, are sold and replaced due to the business's wish for some reason, or are processed to recover capital^[4].

In trade, bidding for goods and services is an intertwined set of complex economic and legal relations^[5]. Therefore, when researching bidding for goods and services, it is necessary to approach both economic and legal aspects.

In economic terms, bidding is an objective economic relationship. It was born due to the inevitable needs of the market economy, where the production and exchange of goods always happen in a state of greater supply than demand. When a certain entity needs to buy goods or use services, many people can meet that need. In this case, the buyer must organize a procurement to select among those who are capable of providing goods or services that satisfy their conditions at the most reasonable price. Therefore, bidding for goods and services, in terms of economic nature, is a method of selecting bidders to provide goods and services suitable to the needs of entities in society. In this respect, the nature of bidding for goods and services is similar to other types of bidding^[6].

In legal terms, bidding for goods and services is a legal act of a special group of entities in society - traders and has the legal nature of a commercial activity because it also has the basic signs of commercial activity as follows: Bidders have the status of traders when participating in bidding activities; bidding activities are carried out for profit purposes or the implementation of socio-economic policies; the objects of goods and services bidding are types of commercial goods that are allowed to circulate, and commercial services are allowed to comply with the provisions of law; the rights and obligations of the parties in the bidding relationship are established through certain legal forms prescribed by law.

³ Institute of Linguistics (2010), Vietnamese Dictionary, Encyclopedia Publishing House and Judicial Publishing House, p.687.

⁴ Bui Thi Diep. (2022). *Instructions on asset liquidation procedures and fixed asset destruction method of the company*, accessed on April 1, 2022, <https://luatminhkhue.vn/huong-dan-thu-tuc-ban-thanh-ly-tai-san-va-cach-thuc-tieu-huy-tai-san-co-dinh-cua-cong-ty-.aspx>.

⁵Hanoi Law University. (2015). *Textbook of Commercial Law*. People's Public Security Publishing House. Hanoi 2015. P. 210.

⁶ Dao Anh Thuy, Nguyen Viet Hung, Nguyen Thi Ai Lien.(2018).*Textbook of Procurement*, Hanoi. National Economics University. P. 116.

According to Clause 1, Article 214 of the 2005 Commercial Law, “Bidding for goods or services means a commercial activity whereby a party purchases goods or services through bidding (referred to as procuring entity) in order to select, among traders participating in the bidding (referred to as bidders), a trader that satisfies the requirements set forth by the procuring entity and is selected to enter into and perform a contract (referred to as bid winner).”

Currently, in Vietnam, there is no specific document or definition document on bidding for liquidation of corporate assets. However, based on the characteristics of this type of service, it can be seen that bidding for liquidation of assets is a type of non-advisory bidding with a commercial nature. Therefore, based on the provisions of Article 214, it is possible to propose the concept of bidding for the liquidation of corporate assets as follows: “Bidding for liquidation of corporate assets is a commercial activity, whereby one party is an enterprise that needs to provide asset liquidation services through bidding invitation to select the bidder that best meets the requirements set out to sign the contract.”

The establishment, existence, and development of bidding activities for goods and services are the practical basis for the establishment, existence, and development of the law on bidding for liquidation of enterprise assets in particular. In addition, if bidding activities for the liquidation of corporate assets want to come to life and be carried out within a certain framework and order, they must be recognized by the State and concretized by law.

Hence, the law on bidding for liquidation of enterprise assets is defined as follows: The law on bidding for liquidation of enterprise assets is the overall legal regulations promulgated or acknowledged by the State, regulating social relations arising between entities in the process of organizing the implementation and management of bidding activities for liquidation of corporate assets.

These legal regulations are stipulated in legal documents on bidding for commercial goods and services, procedures for liquidation of corporate assets, etc. The provisions of the Bidding Law or the Commercial Law are subject to the laws of each country. In Vietnam, because bidding for liquidation of corporate assets is a part of bidding for commercial goods and services, the governing law is similar to the law on bidding for goods and services and is prescribed in the 2005 Commercial Law, including the concept of bidding; principles in bidding; entities participating in bidding; objects of bidding; forms of bidding; bidding methods; bidding procedures; regulations on state management and handling of violations of the law in bidding for goods and services^[7].

2. Characteristics of bidding for liquidation of corporate assets

Thus, bidding for the liquidation of corporate assets as part of bidding for commercial services with private capital (also known as private bidding) is a form of procurement by enterprises, describing bidding packages using private capital to invite. Bidding for the liquidation of corporate assets is basically easier to implement than bidding for the liquidation of State assets in terms of operation methods, regulations, and processes of application of law. This type of bidding has the following characteristics:

⁷ Section 3, Chapter VI of the 2005 Commercial Law.

Firstly, the parties in the bidding relationship for the liquidation of corporate assets are the service users and providers.

The procuring entity is an enterprise (trader) wishing to use the asset liquidation service, and the bidder is an organization or individual capable of providing services for the bidding package. If the bidding is successful, the parties sign the contract. Then, the bidder will become the service provider, and the procuring entity will become the service user in providing commercial services. In this relationship, although no traders are specializing in providing bidding services for goods and services (as for most other commercial acts), there is also the participation of some intermediaries in the stages of the bidding organization process (such as consulting companies for preparing bidding dossiers, expert groups for the evaluation of bids, asset auction centers, etc.)^[8].

Secondly, bidding for liquidation of enterprise assets is a pre-contractual service stage^[9].

Bidding does not take place as an independent activity; instead, it only appears when people need to use services. Bidding for asset liquidation is a commercial activity that is only held when a party needs to use the service to select the best service provider as required^[10]. The bidding results will be the basis for the parties to negotiate a commercial service contract, in which the content of the contract includes the details of the bid. In particular, the bidder, who is a trader satisfying the conditions, aims to profit, while the procuring entity aims to establish a service contract with the best conditions for them. In essence, bidding for the liquidation of corporate assets is only a stage towards a contract to provide services for the liquidation of enterprises' damaged assets between the parties in commercial activities rather than an independent commercial activity. The ultimate purpose of bidding for the liquidation of corporate assets is to help the procuring entity find the entity capable of providing liquidation services with the best quality and price. After the bidding process is completed, the bid winner will negotiate with the bid organizer to sign a service contract.

Thirdly, bidding for services of liquidation of corporate assets is carried out in the legal form of bidding documents and bids^[11].

Bidding documents are documents prepared by the procuring entity that fully show the technical, financial, commercial, etc., requirements of the services to be used, and other conditions of the bidding package. Based on the bid, the procuring entity shall consider and select the winner to sign the contract. These dossiers are the legal grounds for establishing, changing, and terminating the rights and obligations between the parties in the bidding relationship of

liquidating corporate assets^[12].

Fourthly, bidding for asset liquidation is a service provision activity that always involves a procuring entity and many bidders. This feature is due to the nature of bidding as a method to help buyers choose sellers. Hence, in each bidding package, it is necessary to create as much competition as possible between those who are capable of providing services, through which service buyers can choose the best service provider^[13].

3. Cases where enterprises need to liquidate assets

3.1. When the enterprise no longer needs to continue using assets and wishes to transfer to other individuals or organizations to recover capital

When the assets have fully recovered their investment capital, have the expired fixed asset depreciation period, are damaged/obsolete/outdated, are sold and replaced due to the business's wish for some reason, or are processed to recover capital, the liquidation order of fixed assets is as follows.

According to applicable regulations, the liquidation order of corporate assets is guided at Point 3.2, Clause 3, Article 35 of Circular No. 200, dated December 22, 2014^[14] and Point 1.9, Clause 1, Article 31 of Circular No. 133, dated August 26, 2016^[15], by the Ministry of Finance on guidelines for accounting policies for enterprises including the following steps.

- **Request for liquidation of assets:** Based on the asset inventory results and the monitoring process of use, the asset management department will request to liquidate the assets to the competent person (company/branch director).
- **Decision on liquidation of assets:** The competent person will issue a decision on liquidation of fixed assets.
- **Establishment of the Asset Liquidation Council:** The composition of the Asset Liquidation Council usually includes (but is not required to) the head of the entity (Director); President of the Council; Chief Accountant, asset accountant; Head (or deputy head) of the department in charge of asset management; Employees with knowledge of the characteristics and technical features of the liquidated assets.
- **Conduct asset valuation:** To assess the remaining quality of the asset, the liquidation council may rely on factors such as warranty monitoring book, damages encountered during use and the number of maintenance and repair of the asset, the level of fuel consumption, and the necessity of the asset.

Based on the residual quality assessment, the Liquidation Council shall determine the residual value

⁸ Le Thi Huong. (2017). *Law on procurement of goods and services in Vietnam* (Thesis, Hanoi Law University, Hanoi).

⁹ Dao Anh Thuy, Nguyen Viet Hung, Nguyen Thi Ai Lien.(2018).*Textbook of Procurement*, Hanoi. National Economics University. P. 67.

¹⁰Hanoi Law University. (2015). *Textbook of Commercial Law*. People's Public Security Publishing House. Hanoi 2015. P. 205.

¹¹ Dinh Thuy Dung.(2021).*Characteristics and order of procurement procedures for goods and services*. Accessed on July 26, 2022, from <https://luatduonggia.vn/trinh-tu-thu-tuc-dau-thau-hang-hoa-dich-vu/>.

¹² Dao Anh Thuy, Nguyen Viet Hung, Nguyen Thi Ai Lien.(2018).*Textbook of Procurement*, Hanoi. National Economics University. P. 51.

¹³ Dinh Thuy Dung.(2021).*Characteristics and order of procurement procedures for goods and services*. Accessed on July 26, 2022, from <https://luatduonggia.vn/trinh-tu-thu-tuc-dau-thau-hang-hoa-dich-vu/>.

¹⁴ Circular No. 200 dated December 22, 2013, by the Ministry of Finance on guidelines for accounting policies for enterprises.

¹⁵ Circular No. 133 dated August 26, 2016, by the Ministry of Finance on guidelines for accounting policies for small and medium-sized enterprises.

of the asset. Then, the Council shall choose the form of liquidation for each type of asset.

In case the determination of asset value is too complicated, and the Liquidation Council does not have enough ability or time to do it, an asset valuation organization can be hired to perform the asset valuation. Valuation results must be in writing.

- **Making decisions on choosing the form of asset disposal:** the form of disposal may be an auction of assets, Appointment of buyers, Announcement of public sale, and self-searching for buyers.
- Sign property purchase and sale contracts, issue invoices, and carry out other registration procedures, if any For example, When selling a factory, it is necessary to carry out the procedures for transferring the Certificate of Land Use Rights; when selling a car, it is necessary to carry out the procedures for transferring its title, etc.
- **Summarize and handle the results of asset liquidation:** Asset liquidation dossiers include minutes of liquidation of fixed assets, minutes of asset valuation, collection of documents related to asset handling results (contracts, sales invoices), implementation of relevant accounting entries (Record a decrease in asset value, record an increase in cash and bank accounts, etc.)^[16].

3.2. When the enterprise dissolves

According to the provisions of the 2020 Law on Enterprises, cases of dissolution of enterprises include.

- “The operating period specified in the company’s charter expires without an extension decision.
- The enterprise is dissolved under a resolution or decision of the owner (for sole proprietorships), the Board of Partners (for partnerships), the Board of Members, and the owner (for limited liability companies), or the GMS (for joint stock companies).
- The enterprise fails to maintain the adequate number of members prescribed in this Law for 06 consecutive months without converting into another type of business.
- The Certificate of Enterprise Registration is revoked unless otherwise prescribed by the Law on Tax administration”^[17].

The Company shall only be dissolved when it guarantees the full payment of debts and obligations of the other assets, and it is not in the process of settling disputes in any court or arbitration bodies. The relevant manager and the enterprise have their Business Registration Certificate revoked and are jointly responsible for the debts of the enterprise^[18].

One of the tasks that enterprises shall perform when dissolving an enterprise is to liquidate the assets of the enterprise and prepare a report on asset liquidation submitted with the dissolution dossier to the business registration agency.

If the liquidated assets are of large and complex value, based on the Charter of the company, the Director of the

enterprise needs to determine the decentralization of asset handling and then consult the owner of the enterprise on the liquidation of the assets. In particular, for enterprises with State capital, it is necessary to consult the owner through representatives at the enterprise. Suppose it is an enterprise with 100% State capital. In that case, the opinion on the liquidation of assets must be that of the agency assigned to manage State capital, such as the Ministry of Finance and Provincial People’s Committee in written form.

3.2.1 The process of asset liquidation is carried out in the following order:

Establishing an asset liquidation council. After that, the asset liquidation council will evaluate the quality and residual value of assets after the enterprise uses them, deciding on the liquidation of assets in the form of an asset sale or auction and making minutes of asset liquidation after the liquidation^[19].

3.2.2 Step 1: Establish the Asset Liquidation Council

The owner of the enterprise/the Members’ Council of the limited liability company/the Board of Directors of the joint-stock company shall issue a decision on the liquidation of the assets of the company, including the members of the company and in case of necessity, a professional technical staff related to the assets to be liquidated.

The Asset Liquidation Council is responsible for making statistics on the quantity and classification of assets, collecting technical papers and records related to assets, inspecting and evaluating the remaining quality of assets, thereby determining the value of assets, and organizing and carrying out the liquidation of assets.

3.2.3 Step 2: Check and evaluate the quality and residual value of the asset

To assess the remaining quality of the asset, the liquidation council may rely on factors such as warranty monitoring book, damages encountered during use and the number of maintenance and repair of the asset, the level of fuel consumption, and the necessity of the asset. Based on the residual quality assessment, the Liquidation Council shall determine the residual value of the asset. Then, the Council shall choose the form of liquidation for each type of asset.

In case the asset valuation is too complicated, and the Liquidation Council does not have enough ability or time to do so, the asset valuation organization may be hired to carry out the asset valuation.

The form of liquidation may be one of the following three forms, based on the type of enterprise, the source of equity, and the source of capital to create assets.

- Specified sale or public sale notice.
- Asset auction.

3.2.4 Step 3: Sell the property

Depending on the type of property as well as the form of property sale, it is necessary to comply with the provisions of the corresponding law: corporate law, civil law, commercial law, and property auction law. The property liquidation council may set up a property sale group or hire a professional auction organization in case of a property auction.

¹⁶ Point 1.9, Clause 1, Article 31 of Circular No. 133 dated August 26, 2016, by the Ministry of Finance on guidelines for accounting policies for enterprises.

¹⁷ Clause 1, Article 207 of the 2020 Law on Enterprises.

¹⁸ Clause 2, Article 207 of the 2020 Law on Enterprises.

¹⁹ Point 1.9, Clause 1, Article 31 of Circular No. 133 dated August 26, 2016, by the Ministry of Finance on guidelines for accounting policies for enterprises.

3.2.5 Note: The purchase and sale of corporate assets need to be made into a sales contract and invoiced ^[20].

After completing the sale of assets, the proceeds from the liquidation of assets will be used to pay the remaining debts and financial obligations of the dissolved enterprise (if any). The remaining, after the obligations and the payment of the debt are fulfilled, will be divided among the members of the company in proportion to the contributed capital.

In general, the order of liquidation of corporate assets in case of dissolution of the enterprise is similar to the case where the enterprise does not need to continue to use and transfer to other individuals or organizations to recover capital. However, the proceeds from the liquidation of assets are used to pay the debts of the enterprise, similar to the case of corporate bankruptcy.

3.3. When the enterprise goes bankrupt

According to Clause 2, Article 4 of the 2014 Bankruptcy Law, “Bankruptcy is the legal status of an insolvent entity that is declared bankrupt by the People’s Court.”

Thus, bankruptcy is a situation in which an enterprise, due to business losses, leads to the complete insolvency of due debts, and the court, in accordance with legal procedures, decides to force the enterprise to liquidate its assets to repay its creditors.

In corporate bankruptcy, liquidating the assets of insolvent enterprises is a special procedure. It not only protects the interests of creditors but also ensures the interests of insolvent enterprises and employees, ensuring social order and safety and promoting the development of the economy. The rapid resolution of bankruptcy cases contributes to meeting the needs of the socialist-oriented market economy. The 2014 Bankruptcy Law stipulates that, within 05 working days from the date of issuance of the bankruptcy declaration decision, the civil judgment enforcement agency shall take the initiative in issuing the enforcement decision and assigning the enforcer to execute the bankruptcy declaration decision.

After receiving the assignment decision of the Head of the civil judgment enforcement agency, the executor shall perform the following tasks.

- Opening an account at a bank in the name of a civil judgment enforcement agency competent to execute a bankruptcy declaration decision to send recovered funds of enterprises or bankrupt cooperatives;
- Supervising the Trustees and enterprises managing and liquidating assets to liquidate assets.
- To perform coercion to recover or hand over the property to the purchaser in the bankruptcy case in accordance with the law on enforcement of civil judgments.
- After receiving the results of asset liquidation from the Trustee or the Enterprise that manages and liquidates assets, the Executor implements the asset division plan

²⁰ Article 3, Clause 7 of Circular 26/2015/TT-BTC dated February 27, 2015, by the Ministry of Finance on guidelines for the value-added tax and tax administration in Decree No. 12/2015/ND-CP dated February 12, 2015, by the Government on the elaboration of the law on amendments to tax laws and amendments to some articles of decrees on taxations and Amendments of Circular No. 39/2014/TT-BTC dated March 31, 2014, by the Ministry of Finance on invoices for goods and service provision

according to the decision to declare the enterprise or cooperative bankrupt ^[21].

From the above provisions, it can be seen that when the enterprise goes bankrupt, the liquidation of assets is carried out by the trustee or the enterprise that manages and liquidates the assets after the court declares the enterprise bankrupt. Next, the civil judgment enforcement agency shall issue a judgment execution decision, and the executor shall request in writing the Trustee or the Enterprise that manages and liquidates the assets to liquidate the assets. Trustees or Asset management enterprises must organize asset valuation within ten working days from the date of issuing a decision to declare bankruptcy, sign an asset auction service contract within ten days from the date of valuation, and auction real estate within 45 days from the date of signing the asset auction service contract.

4. Overview of bidding for liquidation of corporate assets online

4.1 The concept of bidding for liquidation of enterprise assets online

In recent years, along with the rapid development of the country, Vietnam’s telecommunications infrastructure has also made a breakthrough. It makes our country one of the countries with the fastest-growing telecommunications infrastructure in the region. The quality of telecommunications services is also constantly improving, bringing users the same quality as the region. This is a great premise for individuals and businesses to have broad access to information sources, especially abundant capital from public investment, public spending, preferential loans, and other sources of socialized capital. In parallel with that development, online bidding also has a rapid and outstanding development. It creates great advantages for bidders to participate, opening the digital era of connection between investors and bidders as well as between bidders themselves.

Currently, e-procurement (online procurement) has different definitions. Specifically, according to the Asian Development Bank: “E-procurement is the use of information and communications technology by government agencies, the bidding community, regulatory and oversight agencies, other supporting service providers, and civil society to assist in conducting the procurement of goods, works, and services, and in the management of contracts. It thereby ensures the achievement of good governance and value for money in public procurement as well as contributing to the socio-economic development of the country” ^[22].

According to Nguyen Viet Hung, former Director of the Department of Procurement Management, e-procurement is understood as follows: “The steps of the e-procurement process also take place as those of traditional procurement. However, some steps are electronic, reducing subjective human intervention. As for bidders, they only need to have internet access, and of course, they must have a minimum understanding of information technology to submit bids. In general, information technology infrastructure for bidders is

²¹ Article 120 of the 2014 Bankruptcy Law.

²² Asian Development Bank.(2018). Book: E-Procurement - Guidelines for E-Procurement. P. 1.

easy” [23].

4.1.1 The 2023 Bidding Law defines: “Online bidding means the bidding process in which all bidding activities are carried out on the Vietnam National E-Procurement System [24].”

Thus, based on the above definitions, it is possible to give the concept: “Bidding for liquidation of enterprise assets online is the process of selecting bidders to sign and perform contracts to provide services for liquidation of enterprise assets through the use of the Internet system.” Currently, all information and databases related to the process of selecting bidders and signing and implementing contracts for bidding for state capital online are managed and publicized on the national e-procurement system. This is a single portal nationwide that performs two functions: unified management of information on procurement and e-procurement.

4.1.2 The national e-procurement system is understood as: “The national e-procurement system is an information technology system developed and managed by the state management agency in charge of bidding activities for unified management of information on procurement and e-procurement.” [25] The national e-procurement system is developed, managed, and operated by the Department of Procurement Management, Ministry of Planning and Investment at <http://muasamcong.mpi.gov.vn> for the purpose of unifying the management of bidding information and the implementation of e-procurement [26].

Particularly for bidding packages using private capital, such as bidding packages for liquidation of corporate assets, bidding is not required through the national e-procurement system. However, to publicize the bidding package to many bidders and increase its competitiveness or find reputable bidders, private-sector investors also post bidding information on the national e-procurement system. The application of e-procurement must synchronously develop the following aspects: Developing legal and institutional frameworks, developing technical infrastructure systems, change management, capacity-building training, propaganda and promotion, and paying special attention to the full participation of related parties [27].

4.2. Role and characteristics of bidding for liquidation of corporate assets online

In e-procurement activities, bidders may access the national bidding website to register information and search for bidders all the time. Due to the expansion of space, time, and objects, its characteristics are different from traditional

procurement. As a bidding package that can be implemented through the Internet, the online corporate asset liquidation bidding package also has the following basic characteristics: Firstly, in the online liquidation of corporate assets, all transactions are conducted entirely through the Internet; the development of e-procurement is associated with and interacts with the development of information technology. This is the fundamental difference between traditional procurement for the liquidation of corporate assets and e-procurement. The procuring entity applies information technology to organize online bidder selection. Each step of bidder selection (posting the invitation for bids, issuing bidding documents, evaluating bids, announcing bidder selection results, etc.) is done through the Internet. Therefore, the more information technology infrastructure is upgraded, the faster the e-procurement will develop. However, on the contrary, the development of e-procurement also promotes and suggests many fields of information technology, such as building specialized hardware and software for applications and payment services and promoting production in the field, such as computers, telecommunications equipment, network equipment, etc.

Secondly, the e-procurement for liquidation of corporate assets must have at least 03 participants. For traditional procurement, the number of participants in the transaction should ensure that at least 02 subjects are a buyer (procuring entity) and a seller (bidder). However, in e-procurement, it is indispensable to involve third parties, such as network service providers and certification agencies, which create an environment for the procuring entity and bidder to meet and perform transactions. The network service provider and the management agency are responsible for transmitting and storing information between the parties and also confirming the reliability of the information in the e-procurement. In addition, intermediaries such as consultants, expert groups, investors, capital owners, sponsors, funding entities, etc., may participate.

Thirdly, procurement for the liquidation of corporate assets has no space and time gap. This is reflected in the fact that all organizations and individuals around the globe do not have to move to any location but can still participate in bidding through the Internet. Transactions can be conducted 24/7 in 365 consecutive days, wherever telecommunications networks are, and electronic means of connecting to these networks are available.

Fourthly, the trading market of e-procurement is a unified information system. This information system has a specific website address, which is publicly available to the whole society. Organizations and individuals only need to access this address to access all information in procurement (bidder selection plan, bid invitation notice, bidder selection results, etc.). All data in the bidding is verified, confidential, and strictly managed under the State’s regulations.

With characteristics of an online transaction with unlimited space and time, procurement for liquidation of corporate assets online brings the following specific effects.

Firstly, e-procurement for the liquidation of corporate assets creates unlimited competitive opportunities for bidders, especially newly established bidders who are not popular in the market. One of the difficulties of new bidders participating in bidding is the access to bidding package information. In traditional bidding, enterprises must seek bidding opportunities by reading newspapers, bidding

²³ Nguyen Viet Hung (2006), *Bidding Newspaper: Important tools to promote transparency in procurement*, APEC Seminar on Transparency in Procurement and E-Procurement, Hanoi.

²⁴ Clause 9, Article 4 of the 2023 Law on Bidding.

²⁵ Clause 18, Article 4 of the 2023 Law on Bidding.

²⁶ The Joint Ministry of Planning and Investment – Ministry of Finance (2015) guiding on the Vietnam National E-Procurement System.

²⁷ Prime Minister (2016), Decision No. 1402/QĐ-TTg on approving the master plan and roadmap for applying e-procurement in the period 2016 -2025, issued on July 13, 2016.

newsletters, or enterprise websites. For online asset liquidation bidding, bidders who only need to register their dossiers on the national procurement system can access thousands of bidding opportunities from large and small projects across the country. The national procurement system operates similarly to an e-commerce platform to connect businesses with bidders quickly and conveniently, eliminating time and geographical gaps.

Secondly, procurement for the liquidation of corporate assets online helps to enhance competitiveness, fairness, publicity, and transparency. Like all other bidding packages conducted over the Internet, the bidding package for liquidation of enterprise assets, when implemented online, includes all information in bidding, such as bidder selection plan, pre-qualification notice, bidding invitations, bidding documents, bid opening minutes, and bidder selection results that are publicly posted and easily accessible on the System. Any bidder registered to participate in the National e-procurement system can actively receive bidding information as soon as the procuring entity posts the invitation for bids. Therefore, there is no limit to the number of participating bidders, avoiding the situation where bidders have to wait or complain when buying bidding documents.

Thirdly, e-procurement simplifies procedures and saves resources on time, labor, and money. Compared to traditional bidding, e-procurement for liquidation of corporate assets is more procedurally simple (such as purchasing bidding documents, submitting bids, meeting to open bids, etc.). As long as the bidder is a member of the system and has a computer connected to the internet, he/she can participate in bidding anywhere. Currently, the National E-Procurement System is not only set up on the web version but also applied electronically on IOS, Android, and Windows platforms. There are detailed instructions to prepare bidding documents, bids, and online forms capable of linking information together, so all processes (including buying documents, submitting documents, monitoring results, etc.) are done completely online with a couple of clicks. In terms of cost, e-procurement is effective for both parties - the bidder and the procuring entity. In particular, the procuring entity will get better prices, minimize transaction costs, and reduce personnel costs.

Meanwhile, bidders may reduce the procurement costs such as travel, printing, transportation, accommodation, buying and submitting documents, etc. In addition, they also reduce the cost of personnel for transactions due to online consulting services, thereby improving the cash flow of the business. In addition, due to all information and the bidding process being carried out on the internet, it will be easier and more economical for the management - storage - preservation - lookup - reporting in the procurement work. The fairness, publicity, and transparency of the e-procurement will help minimize complaints and problems of bidders and avoid spending a lot of effort and money to solve and establish inspection units, but the efficiency is still negligible, even causing discontent with true bidders^[28].

Fourthly, along with the development of e-procurement, e-procurement for liquidation of corporate assets is an

²⁸ Nguyen Nhu Trong (2009). *Improving the efficiency of bidding activities in Vietnam through the application of e-procurement*, (Master's thesis in Information Technology, Graduate Academy of Social Sciences, Hanoi).

inevitable trend. It accompanies development and has become a common trend in countries around the world. Developed countries such as the United States, Japan, and European countries have put e-procurement into application very early^[29]. Several advanced countries deployed e-procurement nearly 30 years ago before the internet and the web became the main communication channels for information exchange and dissemination. In particular, the e-procurement policy has helped Canada save more than \$6 million per year^[30]. Since the late 1990s, the Korean government has spent millions of dollars to improve the KONEPS system to get a comprehensive, integrated system like today. It makes Korea one of the Asian countries that have applied e-procurement successfully. For Bangladesh - a country with similar economic development conditions to Vietnam, in 2006, its Government approved guidelines on e-procurement. In 2011, the e-procurement system was put into use, and progress was achieved^[31].

For developing countries, the electronic solution of the procurement process makes it more commercialized. Thereby, it promotes production and competition, combats monopoly mechanisms, and minimizes barriers to market entry, making the whole economy in general and the economy of each region in particular develop.

5. Experience in developing e-procurement packages for liquidation of corporate assets

5.1. E-procurement in Ukraine (ProZorro)

The ProZorro E-procurement System (the name means "Fairness") was launched in 2014 from the idea of a group of volunteers, including representatives from government agencies, social organizations, and businesses^[32]. Previously, although most of Ukraine's state budget was spent through bidding, this process lacked competition. It resulted in bid prices that were often higher than those on the market, causing large losses to the state budget. At that time, the legal corridor of bidding was controversial and criticized as a lack of competition and supervision of related parties in the public procurement process (for example, regulations allowing state-owned companies to bypass competitive procurement procedures in the procurement of goods and services)^[33].

²⁹Vietnam Investment Review. (2018). *E-Procurement has become inevitable*. Accessed on August 25, 2022. <https://baodautu.vn/emagazine-dau-thau-qua-mang-xu-the-da-thanh-tat-yeu-m87355.html>.

³⁰ Open Government Partnership OGP (2018), *The Skeptical's Guide*, https://www.opengovpartnership.org/wp-content/uploads/2018/09/SKEPTICSGUIDE_20180710.pdf, page 34.

³¹Vietnam Investment Review. (2018). *E-Procurement has become inevitable*. Accessed on August 25, 2022. <https://baodautu.vn/emagazine-dau-thau-qua-mang-xu-the-da-thanh-tat-yeu-m87355.html>.

³² Bao Anh (2018). *VNEPS expects to be as successful as ProZorro*. Vietnam Securities Economic Magazine. Accessed on July 8, 2022, from <https://kinhtechungkhoan.vn/he-thong-mang-dau-thau-quoc-gia-vneps-ki-vong-thanh-cong-nhu-prozorro-17070.html>.

³³ The Hung. (2019). *How does Vietnam have a transparent e-procurement system like Ukraine?* Viettimes EMagazine. Accessed on September 10, 2022. <https://viettimes.vn/lam->

The ProZorro system comes with the ambition to be an initiative to help change the situation of corruption in public procurement in Ukraine. In February 2015, the ProZorro e-procurement system pilot plan was officially launched. By March of the same year, the National Reform Committee of Ukraine recommended that all government units use ProZorro.

Thanks to the success of ProZorro, in December 2015, the Ukrainian Parliament passed a draft stipulating that all procuring entities must use e-procurement for all procurement activities in Ukraine from August 2016. Bidders, regardless of budget requirements, will be guaranteed the right to fair competition. This is the first and most important achievement after two years of implementing the initiative^[34]. The draft also focused on ensuring society and citizens' right to monitor procurement by providing them with full access to all information posted on ProZorro. Interested people can find out how the Government is using their tax money. The ProZorro e-procurement system does not hide any information; users can view all available data licensed as open data, and the software system itself is also built on open source^[35]. The information about bidders, procurement agencies, participants, complaints, contract summaries, and all documents posted by users on the web are public. The people can see all available data on the system.

In fact, from the launch of the program in 2014 until 2016, ProZorro helped the Ukrainian government save nearly \$300 million and saved about \$1 billion in 2017^[36]. Ukraine's budget for public procurement is estimated at \$11.4 billion per year and with cost savings equivalent to 10-12% of the total value of the national budget devoted to procurement, the potential economic benefits from this public procurement reform initiative could reach \$2.2 billion per year¹³. In 2018, the Agreement between Ukraine and the EU encouraged Ukraine to apply ProZorro thoroughly. Until today, Transparency International has committed to the clarity and publicity of the ProZorro system.

At the 4th Open Government Partnership Summit held in Paris on December 7, 2016, ProZorro was awarded the 2016 Open Government Global Awards, which honors social initiatives in using government data to generate practical benefits. Previously, ProZorro received the 2016 World Procurement Award and was honored by the Open Contracting Partnership as a good example of the electronic

model of public procurement^[37].

5.2. E-Procurement in Korea (KONEPS System)

Korea is known as a country with a very developed e-government, which is also the basis for the country to promote the public e-procurement system. It has become a model for many countries to learn from.

The first legal basis for public procurement in general and e-procurement in particular is the Government Procurement Act. Issued in 1994 and amended in 2004, it provides a legal framework for transparency and efficiency improvement of government procurement. Article 8 (amended) of this Law stipulates the application of forms of e-procurement to the performance of government procurement services. This is the legal basis for the implementation of the public e-procurement application, which is a stage in the implementation of e-government in Korea^[38].

With the introduction of the law, the Republic of Korea also issued the Enforcement Decree of the Act on Government Procurement in 1994 and amended it in 1998, 2002, and 2004 to concretize the provisions in the law. Korea also promulgated the Electronic Transactions Act and the Electronic Signature Act. The former aims to build a basis to promote e-transactions by clearly defining the legal relationship in e-transactions, ensuring the safety and reliability of e-transactions, thereby contributing to the development of the national economy. Meanwhile, the latter sets out regulations on e-signatures to ensure safety and high reliability, as well as promote the use of e-documents and e-transactions^[39].

In addition, with the development of information technology, the Act for Reinforcement of Using Internet and Information Security was introduced, specifying the time of sending and receiving electronic documents. Specifically, when an electronic document is entered into a computer under the management of a person who is neither the document editor nor his/her representative, it is considered that this document has been sent.

The Republic of Korea's public procurement is set up as a central-to-local system. At the central level, there is a Central Public Procurement Service (PPS) under the Ministry of Planning and Finance and 11 regional offices. PPS is responsible for the procurement of goods to Government agencies valued at over \$100K and construction works valued at over \$3M^[40]. For localities,

the-nao-de-viet-nam-co-he-thong-dau-thau-qua-mang-minh-bach-nhu-ukraina-post104662.html

³⁴ Quynh Vu.(2018). *ProZorro helps Ukraine become rich*. People's Deputies Online Newspaper Accessed on August 10, 2022, from <https://daibieunhandan.vn/nghi-vien-the-gioi-viet-nam-va-the-gioi/Giau-co-nho-ProZorro-i208965/>.

³⁵ The Hung. (2019). *How does Vietnam have a transparent e-procurement system like Ukraine?* Viettimes EMagazine. Accessed on September 10, 2022. <https://viettimes.vn/lam-the-nao-de-viet-nam-co-he-thong-dau-thau-qua-mang-minh-bach-nhu-ukraina-post104662.html>.

³⁶ Open Government Partnership - OGP (2018), *The Skeptical's Guide*, https://www.opengovpartnership.org/wp-content/uploads/2018/09/SKEPTICSGUIDE_20180710.pdf, page 37.

³⁷ Quynh Vu.(2018). *ProZorro helps Ukraine become rich*. People's Deputies Online Newspaper Accessed on August 10, 2022, from <https://daibieunhandan.vn/nghi-vien-the-gioi-viet-nam-va-the-gioi/Giau-co-nho-ProZorro-i208965/>.

³⁸ Thuy Hoa. (2010). *"Korean E-Government Model: Good Lesson for Vietnam"*. Ministry of Information and Communications Portal. Accessed on August 4, 2022. <https://mic.gov.vn/Pages/TinTuc/tinchitiet.aspx?tinucid=107246>.

³⁹ Se-jin Park, Sahng-yoon Kim, Beop-yeon Kim, Dongwook Kim, Hun-yeong Kwon, *"Korea's Legal Framework of E-gov. Responding to the New Age of Data"*, Advanced Science and Technology Letters, Vol.133 (Information Technology and Computer Science 2016).

⁴⁰ Quoc Dat.(2018). *"Korea: from the legal basis to the world model"*. Accessed on August 26, 2022, from https://nguoibaovequyenloi.com/user/ThongTin_ChiTiet.aspx?MaTT=317201844256661197&MaMT=26.

the procurement of goods and construction works is decentralized to local authorities through the online public procurement system, the Central Public Procurement Center, or the Regional Public Procurement Center Office when the locality needs it. All notices of invitation for bids were published on the Korean Online Procurement System - KONEPS (Ho In Kang, 2012) ^[41].

E-procurement is conducted online in 4 steps, including submission and participation in bidding, selection of bidders, delivery of goods/services, and payment of contracts. When an agency has a procurement need, it must publicly disclose the information online. Similarly, the list of product suppliers is also publicly available. Bidders are not required to provide documents proving the capacity, finance, credit, etc., because PPS has been responsible for managing, exploiting, and appraising them from national electronic data sources. Bidders only declare necessary information such as business registration number, tax file number, certificate of competence number, etc., and then the e-procurement system will automatically connect to the specialized database of the state for verification (planning and investment agencies, tax agencies, etc.). The bidding evaluation will be conducted online through an automatic scoring system, and the results will also be automatically publicized online. Accordingly, it will be difficult to correct or intentionally falsify the bidding results for personal purposes.

With the above steps, the current electronic public procurement in Korea has helped to enhance the openness and transparency of the Government's procurement and contribute to the prevention of corruption. It is considered less risk of corruption than it was in the past. In 2018% of agencies used electronic public procurement. According to the statistics, of the 44,000 state agencies using electronic public procurement, 13% are central agencies, 18% are local agencies; of the 228,000 businesses providing, 39% are providing goods, 38% are construction, 21% are services, and 2% are foreign procurement ^[42].

These important achievements are due to the foundation of Korea's program to build and develop an e-government system. For years, Korea's e-government system has been at the forefront of the world. This important platform has made it possible for South Korea's public electronic procurement to survive and grow. Korea's online electronic public procurement won the United Nations Public Service Award in 2003, the Global Information Technology Excellence Award in 2006, the Asia E-Commerce Award in 2007, etc. Korea has been cooperating with and helping countries such as Costa Rica, Tunisia, and Mongolia in the development of the national public e-procurement system ^[43].

⁴¹ Nghiem Thi Thuy Hang.(2020). "Public procurement trends in some countries around the world". Financial Journal Iss. 2 – May 2020.

⁴² Quoc Dat.(2018).*Korea: from the legal basis to the world model*. Accessed on August 26, 2022, from https://nguoiibaovequyenloi.com/user/ThongTin_ChiTiet.aspx?MaTT=317201844256661197&MaMT=26.

⁴³ Quoc Dat.(2018).*Korea: from the legal basis to the world model*. Accessed on August 26, 2022, from https://nguoiibaovequyenloi.com/user/ThongTin_ChiTiet.aspx?MaTT=317201844256661197&MaMT=26.

5.3. Lessons for Vietnam on the development of laws on e-procurement: The process of formation and development of the legal system of e-procurement in Vietnam is quite new compared to other countries in the world. Therefore, it is necessary to study and apply international experience in legal construction and the procurement system effectively and appropriately. It is to build a complete national procurement system and legal system so that all bidding packages from public to private procurement can participate. In particular, the bidding package for liquidation of corporate assets can also be implemented through the national procurement system. Specifically.

- Each country should only have a single procurement system that concentrates all bidding packages, from state capital bidding to private capital bidding, to facilitate the management and search of bidding information. In addition, it is necessary to standardize the bidding process with electronic documents and digital signatures and follow a step-by-step approach, from publicizing bidding information to implementing the bidding process online. Specific legal regulations should be established associated with the changing practice of the e-procurement process.
- It is necessary to develop a system of legal regulations on e-procurement with a high level of consistency, publicity, transparency, fairness, and economic efficiency. It maximizes the simplification of administrative procedures and saves costs and time in national e-procurement activities. The complicated bidding procedures and complex systems (for example, the need to install many supporting software) are the reasons small and medium-sized bidders are reluctant to participate in the e-procurement system. The payment system needs to support all methods automatically and quickly, making it easy for bidders to join the system. The regulations must be clear, specific, and easy to understand to ensure that everyone can use and facilitate private capital bidding packages. In particular, bidding packages for liquidation of corporate assets may participate in the national procurement system to be able to post information and search for bidders.
- Clearly stipulate the responsibilities of each entity and individual in the implementation process; limit and gradually eliminate direct intervention of state management agencies in the stage of selecting bids and awarding contracts, settling petitions, complaints, and denunciations (if any). This regulatory system will be a normative standard for subjects to perform their functions and tasks, as well as handle violations.
- Strengthen regulations on coordination and association with tax agencies, banks, digital certification companies, guarantee units, etc., so that the system automatically integrates data from these agencies to verify bidder information. The evaluation of bids will be conducted online through an automated scoring system, and the results of the evaluation will also be automatically publicized online.

6. Conclusion

With the development needs of the economy and the outstanding development of modern science and technology, the demand for the liquidation of fixed assets is increasingly popular and necessary. In addition, as a country that is gradually integrating with the world economy, it is crucial

and necessary for Vietnam to understand the nature, principles, and regulations for commercial service activities in general and the package of liquidation of corporate assets for market demand. To ensure that the liquidation of fixed assets is carried out publicly, under legal procedures, and fair competition for all parties, the selection of the procurement method to find entities eligible to provide the above services is considered the most effective today.

Through general research on bidding, theoretical basis, and elementary contents of bidding packages for liquidation of corporate assets through both traditional and e-procurement, lessons learned from countries in building e-procurement systems, comparing the differences between bidding for liquidation of State assets and bidding for liquidation of enterprise assets, Thereby, as a basis for finding out some shortcomings, limitations and proposing to improve legal regulations on commercial service bidding activities in general and bidding packages for liquidation of corporate assets in particular.

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