# Bidding and Tendering Law of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

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## Contents


Table of Contents . . . . . 1

Chapter I — General Provisions . . . . . 1

Chapter II — Bidding . . . . . 2

Chapter III — Tendering . . . . . 4

Chapter IV — Opening, Evaluation and Selection of Winning Bid . . . . . 5

Chapter V — Legal Liability . . . . . 6

Chapter VI — Supplementary Provisions . . . . . 9


### Table of Contents


- Chapter I — General Provisions
- Chapter II — Bidding
- Chapter III — Tendering
- Chapter IV — Opening, Evaluation and Selection of Winning Bid
- Chapter V — Legal Liability
- Chapter VI — Supplementary Provisions


## Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of regulating bidding and tendering activities, protecting national interests, the public interest and the lawful rights and interests of parties involved in bidding and tendering activities, improving economic efficiency, and ensuring the quality of projects.

Article 2 — This Law shall apply to bidding and tendering activities within the territory of the People’s Republic of China.

Article 3 — The following construction projects within the territory of the People’s Republic of China, including the survey, design, construction and supervision of the projects as well as the procurement of key equipment and materials related to the construction of the projects, shall be subject to bidding: (1) large-scale infrastructure projects and public utility projects relating to the public interest or public safety; (2) projects wholly or partly funded by state-owned funds or financed with state funds; and (3) projects using loans or aid funds from international organizations or foreign governments. The specific scope and threshold standards for the projects specified in the preceding paragraph shall be formulated by the State Council development and reform department in conjunction with the relevant departments of the State Council and submitted to the State Council for approval. Where laws or the State Council provide for the scope of other projects subject to bidding, such provisions shall prevail.




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Article 4 — No entity or individual shall break up a project subject to bidding in accordance with the law into parts or use any other means to circumvent bidding.

Article 5 — Bidding and tendering activities shall follow the principles of openness, fairness, impartiality, honesty and trustworthiness.

Article 6 — Where a project subject to bidding in accordance with the law must be subject to bidding, its bidding and tendering activities shall not be restricted by regions or departments. No entity or individual shall illegally restrict or exclude legal persons or other organizations from outside the region or system from participating in bidding, or illegally interfere in bidding and tendering activities in any other means.

Article 7 — Bidding and tendering activities and their parties shall be subject to supervision in accordance with the law. The relevant administrative supervision departments shall exercise supervision over bidding and tendering activities and investigate and deal with illegal acts in bidding and tendering activities in accordance with the law. The division of duties for the supervision of bidding and tendering activities and the specific measures for supervision shall be prescribed by the State Council.

## Chapter II — Bidding

Article 8 — A bidder is a legal person or other organization that proposes a project for bidding and conducts bidding in accordance with this Law.

Article 9 — Where a bidding project is required by the relevant state provisions to undergo examination and approval procedures, it shall first obtain approval. The bidder shall have the corresponding funds for the bidding project or the sources of funds have been secured, and shall truthfully specify this in the bidding documents.

Article 10 — Bidding is classified into open bidding and invitation bidding. Open bidding means that the bidder invites unspecified legal persons or other organizations to submit bids by means of a public announcement. Invitation bidding means that the bidder invites specific legal persons or other organizations to submit bids by means of an invitation letter.

Article 11 — Where a project subject to bidding in accordance with the law, as prescribed by the State Council development and reform department in conjunction with the relevant departments of the State Council and reported to the State Council for approval, is not suitable for open bidding, invitation bidding may be conducted. Where an invitation bidding method is adopted for a key national construction project or a local key construction project that is not suitable for open bidding, it shall be subject to approval by the State Council development and reform department or the people’s government of the province, autonomous region or municipality directly under the Central Government.

Article 12 — A bidder shall have the right to choose, on its own, a bidding agency and entrust it with the handling of bidding matters. No entity or individual shall designate a bidding agency for the bidder on behalf of the bidder. Where a bidder has the ability to prepare bidding documents and organize bid evaluation, it may conduct bidding on its own. No entity or individual shall compel the bidder to entrust a bidding agency with the handling of bidding matters. Where a bidder conducts bidding on its own for a project subject to bidding in accordance with the law, it shall file the matter with the relevant administrative supervision department.

Article 13 — A bidding agency is a social intermediary organization established in accordance with the law and engaged in bidding agency business and providing relevant services. A bidding agency shall meet the following conditions: (1) having a place and corresponding funds for engaging in bidding agency business; (2) having a sufficient pool of professional and technical personnel capable of preparing bidding documents and organizing bid evaluation; and (3) having a pool of experts in technology and economics who meet the conditions prescribed in Article 37, paragraph 3 of this Law and who can serve as members of the bid



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evaluation committee.

Article 14 — The qualification of a bidding agency engaged in the bidding agency business for construction projects shall be determined by the construction administrative department of the State Council or the people's government of the province, autonomous region or municipality directly under the Central Government. The specific measures shall be formulated by the construction administrative department of the State Council in conjunction with the relevant departments of the State Council. For other bidding agencies, their qualification shall be determined by the competent departments prescribed by the State Council. There shall be no subordinate relationship or other interest relationship between a bidding agency and an administrative organ or other state organ.

Article 15 — A bidding agency shall handle bidding matters within the scope of the bidder's entrustment and shall abide by this Law and the relevant provisions of the state regarding bidders. The bidder and the bidding agency shall enter into a written entrustment contract, within which the bidding agency shall handle the bidding matters within the scope and limits of authority for agency as agreed upon.

Article 16 — Where a bidder adopts the open bidding method, it shall publish a bidding announcement. The bidding announcement for a project subject to bidding in accordance with the law shall be published through newspapers, periodicals, information networks or other media designated by the state. The bidding announcement shall specify the name and address of the bidder, the nature, quantity, place and time of implementation of the bidding project, and the method for obtaining the bidding documents.

Article 17 — Where a bidder adopts the invitation bidding method, it shall send invitation letters to three or more specific legal persons or other organizations that are capable of undertaking the bidding project and have good reputation. The invitation letter shall specify the matters prescribed in Article 16, paragraph 2 of this Law.

Article 18 — A bidder may, based on the specific requirements of the bidding project, require potential bidders to provide relevant qualification certificates and performance information in the bidding announcement or invitation letter, and conduct qualification examination of potential bidders. Where the state has provisions on the qualifications of bidders, such provisions shall prevail. A bidder shall not restrict or exclude potential bidders by imposing unreasonable conditions, or treat potential bidders with discrimination.

Article 19 — A bidder shall prepare bidding documents based on the characteristics and requirements of the bidding project. The bidding documents shall include all substantive requirements and conditions, such as the technical requirements of the bidding project, the criteria for qualification examination of bidders, the requirements for bid prices, and the bid evaluation criteria, as well as the main terms of the proposed contract. Where the state has provisions on the technology and standards of the bidding project, the bidder shall set forth the corresponding requirements in the bidding documents in accordance with the provisions. Where a bidding project requires division into bids and determination of construction periods, the bidder shall reasonably divide the bids and determine the construction periods, and specify this in the bidding documents.

Article 20 — The bidding documents shall not require or indicate specific producers or suppliers, or contain other content that tends to favor or exclude potential bidders.

Article 21 — A bidder may, based on the specific circumstances of the bidding project, organize potential bidders to visit the project site.

Article 22 — A bidder shall not disclose to others the names and numbers of potential bidders who have obtained the bidding documents, and other information relating to bidding and tendering activities that may affect fair competition. Where a bidder has a pre-tender estimate, the pre-tender estimate shall be kept confidential.



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Article 23 — Where a bidder makes necessary clarifications or modifications to the issued bidding documents, it shall notify all recipients of the bidding documents in writing at least 15 days before the deadline for submission of bid documents specified in the bidding documents. The clarification or modification shall be an integral part of the bidding documents.

Article 24 — A bidder shall determine a reasonable period for bidders to prepare their bid documents. Provided, however, that for projects subject to bidding in accordance with the law, the period from the date of issuance of the bidding documents to the deadline for submission of bid documents shall be not less than 20 days.

## Chapter III — Tendering

Article 25 — A bidder is a legal person or other organization that responds to a bidding invitation and participates in the bidding competition. Where a scientific research project subject to bidding in accordance with the law allows individuals to participate in bidding, the provisions of this Law on bidders shall apply to individuals bidding.

Article 26 — A bidder shall have the capacity to undertake the bidding project. Where the state has provisions on the qualifications of bidders or where the bidding documents have provisions on the qualifications of bidders, the bidder shall have the prescribed qualifications.

Article 27 — A bidder shall prepare its bid documents in accordance with the requirements of the bidding documents. The bid documents shall respond to the substantive requirements and conditions set forth in the bidding documents. Where a bidding project is a construction project, the content of the bid documents shall include the resume and performance of the project leader and main technical personnel to be dispatched, and the mechanical equipment to be used for completing the bidding project.

Article 28 — A bidder shall deliver its bid documents to the bidding site before the deadline for submission of bid documents specified in the bidding documents. Upon receiving the bid documents, the bidder shall sign for receipt and keep the documents, and shall not open them. Where there are fewer than three bidders submitting bid documents, the bidder shall re-call for bids in accordance with this Law. Where bid documents delivered after the deadline for submission of bid documents specified in the bidding documents are submitted, the bidder shall refuse to accept them.

Article 29 — Before the deadline for submission of bid documents specified in the bidding documents, a bidder may supplement, modify or withdraw its submitted bid documents and notify the bidder in writing. The supplement or modification shall be an integral part of the bid documents.

Article 30 — Where a bidder intends to subcontract part of the winning project to others in accordance with the actual circumstances specified in the bidding documents, it shall specify the subcontracted matters in the bid documents.

Article 31 — Two or more legal persons or other organizations may form a consortium and submit a bid as one bidder. All parties to the consortium shall have the corresponding capacity to undertake the bidding project. Where the state has provisions on the qualifications of bidders or where the bidding documents have provisions on the qualifications of bidders, all parties to the consortium shall have the prescribed qualifications. Where a consortium of legal persons or other organizations of the same specialty forms a consortium, the qualification level of the consortium shall be determined according to the lower qualification level. All parties to the consortium shall enter into a joint bidding agreement, clearly specifying the work to be undertaken and the responsibilities to be borne by each party, and submit the joint bidding agreement together with the bid documents to the bidder. Where the consortium wins the bid, all parties to the consortium shall jointly enter into a contract with the bidder and be jointly and severally liable to the bidder for the winning project. A bidder shall not compel bidders to form a consortium for joint bidding, and shall not restrict competition among bidders.



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Article 32 — A bidder shall not collude with another bidder in price bidding, and shall not exclude other bidders from fair competition or harm the lawful interests of the bidder or other bidders. A bidder shall not collude with the bidder in bidding, harming the national interest, the public interest or the lawful interests of others. Bidders shall be prohibited from seeking to win the bid by offering bribes to the bidder or members of the bid evaluation committee.

Article 33 — A bidder shall not submit a bid at a price below cost, nor shall it submit a bid in the name of another person or use any other means to fraudulently obtain the winning bid.

## Chapter IV — Opening, Evaluation and Selection of Winning Bid

Article 34 — Bids shall be opened at the same time as the deadline for submission of bid documents specified in the bidding documents, and at the place predetermined in the bidding documents.

Article 35 — The bid opening shall be presided over by the bidder, with all bidders invited to participate.

Article 36 — Upon bid opening, the bidders or their elected representatives shall check the sealing of the bid documents, and may also have a notary public commissioned by the bidder to check and notarize the sealing. After verification, the person opening the bids shall open the bid documents in public, read out the names of the bidders, the bid prices and other main contents of the bid documents. All bid documents received before the deadline for submission of bid documents specified in the bidding documents shall be opened in public and read out at the bid opening. The bid opening process shall be recorded and archived for future reference.

Article 37 — The bid evaluation shall be the responsibility of a bid evaluation committee established by the bidder in accordance with the law. For a project subject to bidding in accordance with the law, the bid evaluation committee shall be composed of representatives of the bidder and experts in the relevant technical and economic fields. The number of members shall be an odd number of five or more, among which the number of experts in the relevant technical and economic fields shall be not less than two-thirds of the total number of members of the committee. The experts specified in the preceding paragraph shall have at least eight years of experience in the relevant field and hold a senior professional title or have equivalent professional level, and shall be selected by the bidder from the relevant expert rosters provided by the relevant departments of the State Council or the relevant departments of the people’s governments of provinces, autonomous regions and municipalities directly under the Central Government, or from the relevant expert rosters of the bidding agencies. For general bidding projects, the bidder may randomly select the experts, while for special bidding projects, the experts may be directly designated by the bidder. No person who has an interest in a bidder shall enter the bid evaluation committee for the relevant project. The list of members of the bid evaluation committee shall be kept confidential before the determination of the winning bid result.

Article 38 — A bidder shall take necessary measures to ensure that the bid evaluation is conducted in strict confidentiality. No entity or individual shall illegally interfere with or influence the bid evaluation process and results.

Article 39 — The bid evaluation committee may require a bidder to make necessary clarifications or explanations of any ambiguous content in its bid documents. Provided, however, that the clarifications or explanations shall not exceed the scope of the bid documents or change the substantive content of the bid documents.

Article 40 — The bid evaluation committee shall evaluate the bid documents in accordance with the bid evaluation criteria and methods specified in the bidding documents, and compare them. Where the bidding documents specify a pre-tender estimate, the pre-tender estimate shall be referred to. Upon completion of the evaluation, the bid evaluation committee shall submit a written bid evaluation report to the bidder and recommend one to three candidates for winning the bid. The bidder shall determine the winning bidder



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based on the written bid evaluation report and the candidates for winning the bid recommended by the bid evaluation committee. The bidder may also authorize the bid evaluation committee to directly determine the winning bidder. Where the State Council has special provisions on the determination of the winning bidder for specific bidding projects, such provisions shall prevail.

Article 41 — The bid of a winning bidder shall meet one of the following conditions to the greatest extent: (1) being able to satisfy the comprehensive evaluation criteria set forth in the bidding documents; or (2) being able to satisfy the substantive requirements of the bidding documents and having the lowest bid price after evaluation, except where the bid price is below cost. The bid evaluation committee shall, after evaluation, consider all bids to be unqualified, and may reject all bids. Where all bids for a project subject to bidding in accordance with the law are rejected, the bidder shall re-call for bids in accordance with this Law.

Article 42 — Before the determination of the winning bidder, the bidder shall not negotiate with any bidder on the bid price, the bidding scheme or other substantive matters.

Article 43 — Members of the bid evaluation committee shall perform their duties objectively and impartially, abide by professional ethics, and assume personal responsibility for the evaluation opinions they provide. Members of the bid evaluation committee shall not make private contact with bidders, and shall not accept property or other benefits from bidders. Members of the bid evaluation committee, the bidder and the staff members involved in bid evaluation shall not disclose the evaluation and comparison of bid documents, the recommendation of candidates for winning the bid, and other information related to bid evaluation.

Article 44 — After the winning bidder is determined, the bidder shall issue a bid-winning notification letter to the winning bidder and, at the same time, notify the unsuccessful bidders of the result. The bid-winning notification letter shall be legally binding on the bidder and the winning bidder. Where the bidder repudiates the bid-winning result after the bid-winning notification letter is issued, or the winning bidder renounces the winning project after the bid-winning notification letter is issued, the party concerned shall bear legal liability in accordance with the law.

Article 45 — The bidder and the winning bidder shall, within 30 days from the date of issuance of the bid-winning notification letter, enter into a written contract in accordance with the bidding documents and the bid documents of the winning bidder. The bidder and the winning bidder shall not enter into any other agreement deviating from the substantive content of the contract. Where the bidding documents require the winning bidder to provide a performance bond, the winning bidder shall provide such bond.

Article 46 — Where a project subject to bidding in accordance with the law, the bidder shall, within 15 days from the date of determination of the winning bidder, submit a written report on the bidding and tendering activities to the relevant administrative supervision department.

Article 47 — A winning bidder shall perform its obligations and complete the winning project in accordance with the contract. A winning bidder shall not transfer the winning project to others, nor shall it break up the winning project and transfer parts of the project to others. A winning bidder may, in accordance with the contract or with the consent of the bidder, subcontract some non-major and non-key work of the winning project to others for completion. The subcontractor shall have the corresponding qualifications and shall not subcontract the subcontracted work again. The winning bidder shall be responsible to the bidder for the subcontracted project, and the subcontractor shall bear joint and several liability for the subcontracted project.

## Chapter V — Legal Liability

Article 48 — Where a bidder circumvents bidding by breaking up a project subject to bidding in accordance with the law into parts or by any other means, or forces a bidder to entrust a bidding agency with the handling of bidding matters, or restricts or excludes bidders through unreasonable conditions, or restricts or excludes legal persons or other organizations from outside the region or system from bidding, the bidder



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shall be ordered to make rectification within a time limit, and may be fined not less than 0.5 percent but not more than 1 percent of the contract amount of the project. The person directly in charge and other directly responsible persons of a unit using state-owned funds shall be subject to disciplinary action in accordance with the law. Where a project subject to bidding in accordance with the law is under any of the circumstances specified in the preceding paragraph, the bid-winning result shall be invalid and a new bidding shall be conducted.

Article 49 — Where a bidding agency divulges information and materials relating to bidding and tendering activities that should be kept confidential, or colludes with the bidder or bidders to harm national interests, the public interest or the lawful rights and interests of others, a fine of not less than 50,000 yuan but not more than 250,000 yuan shall be imposed, and its unit liability shall be pursued. The person directly in charge and other directly responsible persons shall be fined not less than 5 percent but not more than 10 percent of the amount of the unit fine. The illegal gains, if any, shall be confiscated. Where the circumstances are serious, its qualification as a bidding agency shall be suspended or revoked. Where a crime is constituted, criminal liability shall be pursued in accordance with the law. Where losses are caused to others, the agency shall be liable for compensation in accordance with the law. Where the illegal acts specified in the preceding two paragraphs affect the bid-winning result, the bid-winning result shall be invalid.

Article 50 — Where a bidder divulges the pre-tender estimate or information and materials relating to bidding and tendering activities that should be kept confidential, it shall be given a warning and may be fined not less than 10,000 yuan but not more than 100,000 yuan. The person directly in charge and other directly responsible persons of the unit shall be subject to disciplinary action in accordance with the law. Where a crime is constituted, criminal liability shall be pursued in accordance with the law. Where the illegal acts specified in the preceding paragraph affect the bid-winning result, the bid-winning result shall be invalid.

Article 51 — Where bidders collude in bidding or collude with the bidder in bidding, or seek to win the bid by offering bribes to the bidder or members of the bid evaluation committee, the bid-winning result shall be invalid, and the bidders shall be fined not less than 0.5 percent but not more than 1 percent of the bid-winning project amount. The person directly in charge and other directly responsible persons of the unit shall be fined not less than 5 percent but not more than 10 percent of the amount of the unit fine. The illegal gains, if any, shall be confiscated. Where the circumstances are serious, the bidder shall be disqualified from bidding for projects subject to bidding in accordance with the law for a period of one to two years, and the matter shall be announced, or its business license shall be revoked by the administrative department for industry and commerce. Where a crime is constituted, criminal liability shall be pursued in accordance with the law. Where losses are caused to others, the bidder shall be liable for compensation in accordance with the law.

Article 52 — Where a bidder submits a bid in the name of another person or uses any other means to fraudulently obtain the winning bid, the bid-winning result shall be invalid, and the bidder shall be liable for compensation for any loss caused to the bidder. Where a crime is constituted, criminal liability shall be pursued in accordance with the law. Where a project subject to bidding in accordance with the law involves the illegal act specified in the preceding paragraph, the bidder concerned shall be fined not less than 0.5 percent but not more than 1 percent of the bid-winning project amount, and the person directly in charge and other directly responsible persons of the unit shall be fined not less than 5 percent but not more than 10 percent of the amount of the unit fine. The illegal gains, if any, shall be confiscated. Where the circumstances are serious, the bidder shall be disqualified from bidding for projects subject to bidding in accordance with the law for a period of one to three years, and the matter shall be announced, or its business license shall be revoked by the administrative department for industry and commerce.

Article 53 — Where a bidder negotiates with a bidder on the bid price, the bidding scheme or other substantive matters before the bid-winning result is determined in accordance with the law, the bidder shall be given a warning, and the person directly in charge and other directly responsible persons of the unit shall



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be subject to disciplinary action in accordance with the law. Where the illegal act specified in the preceding paragraph affects the bid-winning result, the bid-winning result shall be invalid.

Article 54 — Where a member of the bid evaluation committee receives property or other benefits from a bidder, or where a member of the bid evaluation committee or a staff member involved in bid evaluation discloses to others the evaluation and comparison of bid documents, the recommendation of candidates for winning the bid, and other information related to bid evaluation, the member or staff member shall be given a warning, and the property or other benefits received shall be confiscated, and a fine of not less than 3,000 yuan but not more than 50,000 yuan may be imposed. The member of the bid evaluation committee who commits the illegal act specified in the preceding paragraph shall be disqualified from serving on the bid evaluation committee and shall no longer be allowed to participate in the bid evaluation of any project subject to bidding in accordance with the law. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 55 — Where a bidder fails to determine the winning bidder in accordance with the bid evaluation criteria and methods set forth in the bidding documents or the candidates for winning the bid recommended by the bid evaluation committee, or where the bid evaluation committee is authorized to directly determine the winning bidder, and the bid-winning result is determined in violation of this Law, if the bid-winning result is determined in violation of this Law, the relevant administrative supervision department shall order rectification and may impose a fine of not less than 0.5 percent but not more than 1 percent of the bid-winning project amount. The person directly in charge and other directly responsible persons of the unit shall be subject to disciplinary action in accordance with the law.

Article 56 — Where a winning bidder transfers the winning project to others, or breaks up the winning project and transfers parts of the project to others, or subcontracts part of the winning project to others in violation of the provisions of this Law, the transfer or subcontract shall be invalid and a fine of not less than 0.5 percent but not more than 1 percent of the amount of the transferred or subcontracted project shall be imposed. The illegal gains, if any, shall be confiscated, and the bidder may be ordered to suspend business for rectification. Where the circumstances are serious, the business license shall be revoked by the administrative department for industry and commerce.

Article 57 — Where the bidder and the winning bidder fail to enter into a contract in accordance with the bidding documents and the bid documents of the winning bidder, or where the bidder and the winning bidder enter into an agreement deviating from the substantive content of the contract, the bidder and the winning bidder shall be ordered to make rectification and may be fined not less than 0.5 percent but not more than 1 percent of the bid-winning project amount.

Article 58 — Where a winning bidder fails to perform its obligations under the contract entered into with the bidder, and the circumstances are serious, the winning bidder shall be disqualified from bidding for projects subject to bidding in accordance with the law for a period of two to five years, and the matter shall be announced, or its business license shall be revoked by the administrative department for industry and commerce. Where the contract cannot be performed due to force majeure, the provisions of the preceding paragraph shall not apply.

Article 59 — Where the provisions of this Chapter have no penalty provision for illegal acts, the provisions of the relevant laws and administrative regulations shall apply.

Article 60 — Where any entity restricts or excludes legal persons or other organizations from outside the region or system from bidding in violation of the provisions of this Law, or designates a bidding agency for the bidder, or forces the bidder to entrust a bidding agency with handling bidding matters, or interferes in bidding and tendering activities in any other means, the entity shall be ordered to make rectification. The person directly in charge and other directly responsible persons of the entity shall be subject to a warning, demerit or serious demerit in accordance with the law. Where the circumstances are serious, disciplinary

action shall be taken in accordance with the law. Where an individual interferes in bidding and tendering activities by taking advantage of his or her position, the individual shall be subject to disciplinary action in accordance with the law. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 61 — Where the relevant administrative supervision department in charge of supervising bidding and tendering activities engages in malpractice for personal gain, abuses its power or neglects its duties, and fails to investigate and deal with illegal acts in bidding and tendering activities, the person directly in charge and other directly responsible persons shall be subject to disciplinary action in accordance with the law. Where the circumstances are serious and constitute a crime, criminal liability shall be pursued in accordance with the law.

Article 62 — Where a bid-winning result is invalid due to a violation of this Law, a winning bidder shall be re-determined from the remaining candidates for winning the bid in accordance with the conditions for winning the bid as prescribed in this Law, or a new bidding shall be conducted in accordance with this Law.

## Chapter VI — Supplementary Provisions

Article 63 — Where a bidder objects to the bidding and tendering activities and considers that the bidding and tendering activities do not comply with the relevant provisions of this Law, the bidder shall have the right to raise an objection with the bidder or file a complaint with the relevant administrative supervision department in accordance with the law.

Article 64 — The provisions of this Law shall not apply to procurement made with loans or aid funds from international organizations or foreign governments, where the provider of the loans or funds has different provisions on the specific conditions for procurement, provided that such provisions do not harm the national interest or the public interest.

Article 65 — Where military procurement involves bidding and tendering activities, separate provisions shall apply.

Article 66 — This Law shall come into force as of January 1, 2000. The amended text (2017 Amendment) shall come into force as of December 28, 2017.

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