Government Procurement Law of the People’s Republic of China

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purpose of regulating government procurement activities, improving the efficiency of the use of government procurement funds, safeguarding the interests of the State and the public, protecting the lawful rights and interests of the parties to government procurement, and promoting the building of a clean government.

Article 2 — This Law shall apply to government procurement activities conducted within the territory of the People’s Republic of China. For the purposes of this Law, “government procurement” means the

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procurement of goods, construction works, and services within the centralized procurement catalog formulated in accordance with the law, or above the procurement threshold value, by State organs, public institutions, and organizations at various levels using fiscal funds.

Article 3 — Government procurement shall follow the principles of openness and transparency, fair competition, impartiality, and good faith.

Article 4 — Where government procurement involves construction works, the relevant provisions of the Tendering and Bidding Law shall apply.

Article 5 — Any entity or individual shall not, by illegal means, obstruct or restrict suppliers from entering the government procurement market of its own administrative region or industry.

Article 6 — Government procurement shall be conducted strictly in accordance with the approved budget.

Article 7 — Government procurement shall adopt a combination of centralized procurement and decentralized procurement. Items in the centralized procurement catalog shall be procured through centralized procurement.

Article 8 — Government procurement restrictive threshold values shall be published.

Article 9 — Government procurement shall contribute to the realization of the State's economic and social development policy objectives, including environmental protection, providing support to enterprises in underdeveloped areas and ethnic minority areas, and promoting the development of small and medium-sized enterprises.

Article 10 — Government procurement shall procure domestic goods, construction works, and services. Exceptions shall apply under the following circumstances: (1) where the required goods, construction works, or services are not available within the territory of China, or cannot be obtained on reasonable commercial terms even though available; (2) where the procurement is for use outside the territory of China; (3) other circumstances provided for by laws and administrative regulations.

Article 11 — Government procurement information shall be published in a timely manner on the government procurement information publication media designated by the public finance department under the State Council.

Article 12 — In government procurement activities, procurement personnel and relevant personnel who have an interest in the supplier shall recuse themselves. Where a supplier believes that a procurement personnel or a relevant personnel has an interest in another supplier, it may apply for recusal.

Chapter II — Parties to Government Procurement

Article 13 — The parties to government procurement refer to the various subjects that enjoy rights and assume obligations in government procurement activities, including procuring entities, suppliers, and procurement agencies.

Article 14 — For the purposes of this Law, a "procuring entity" means a State organ, public institution, or organization that conducts government procurement in accordance with the law.

Article 15 — A "supplier" means a legal person, other organization, or natural person that provides goods, construction works, or services to the procuring entity.

Article 16 — Centralized procurement institutions are non-profit institutional legal persons established by the people's governments at or above the level of a city divided into districts or an autonomous prefecture to conduct procurement on behalf of procuring entities.

Article 17 — A centralized procurement institution shall meet the following conditions in conducting procurement business: (1) having the capacity to independently assume civil liability; (2) having the

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necessary facilities and premises for conducting procurement business; (3) having internal management systems suitable for conducting government procurement business; (4) having a sufficient number of procurement professional and technical personnel; (5) other conditions prescribed by the public finance department under the State Council.

Article 18 — Items in the centralized procurement catalog must be entrusted to a centralized procurement institution for procurement. Items not in the centralized procurement catalog may be procured by the procuring entity itself, or may be entrusted to a centralized procurement institution or a social procurement agency for procurement.

Article 19 — Procuring entities may entrust social procurement agencies that have been examined and approved by the relevant departments under the State Council or the relevant departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government with the qualifications to conduct government procurement agency business to conduct procurement within the scope of entrustment.

Article 20 — Where a procuring entity entrusts a procurement agency to conduct procurement in accordance with the law, a written entrustment agreement shall be signed between the procuring entity and the procurement agency, and the procurement agency shall conduct procurement within the scope of entrustment.

Article 21 — A supplier participating in government procurement activities shall meet the following conditions: (1) having the capacity to independently assume civil liability; (2) having a good business reputation and sound financial and accounting systems; (3) having the equipment and professional and technical capabilities necessary for performing the contract; (4) having a good record of paying taxes and social insurance premiums in accordance with the law; (5) having no record of major violations of laws or regulations in its business activities within three years prior to participating in government procurement activities; (6) other conditions provided for by laws and administrative regulations.

Article 22 — A procuring entity may, according to the special requirements of the procurement items, stipulate the specific conditions of the suppliers, but shall not impose discriminatory conditions on the suppliers by unreasonable conditions.

Article 23 — Procuring entities shall not commit any of the following acts: (1) requiring suppliers or their products to meet unreasonable technical specifications or performance requirements; (2) requiring suppliers to have registered capital, total assets, operating revenue, or profits exceeding the actual needs of the procurement items; (3) designating specific brands or suppliers by any means; (4) other discriminatory or unfair treatment of suppliers.

Chapter III — Government Procurement Methods

Article 24 — Government procurement shall adopt the following methods: (1) open tendering; (2) invited tendering; (3) competitive negotiation; (4) single-source procurement; (5) inquiry procurement; (6) other methods recognized by the public finance department under the State Council. Open tendering shall be the principal method of government procurement.

Article 25 — Open tendering means procurement in which the procuring entity invites unspecified suppliers to submit bids through a public announcement in accordance with the law. Invited tendering means procurement in which the procuring entity invites three or more specific suppliers to submit bids in accordance with the law.

Article 26 — Where a procuring entity intends to adopt a method other than open tendering for procuring goods or services, it shall obtain the approval of the public finance department of the people's government at or above the level of a city divided into districts or an autonomous prefecture before the procurement

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activities commence.

Article 27 — Invited tendering may be adopted under any of the following circumstances: (1) where the goods or services are special in nature and can only be procured from a limited range of suppliers; (2) where the cost of adopting open tendering accounts for too large a proportion of the total value of the procurement items.

Article 28 — Competitive negotiation may be adopted under any of the following circumstances: (1) where no suppliers submit bids after tendering, or no qualified bids are submitted, or the second tendering fails; (2) where the technology is complex or of special nature and detailed specifications cannot be determined; (3) where the time required for tendering cannot meet the urgent needs of the user; (4) where the total price cannot be calculated in advance.

Article 29 — Single-source procurement may be adopted under any of the following circumstances: (1) where the goods or services can only be procured from a single supplier; (2) where unforeseen emergencies make it impossible to procure from other suppliers; (3) where the continued procurement from the original supplier for the purpose of ensuring consistency or compatibility of supporting services is necessary, and the total amount of the additional procurement does not exceed 10% of the original contract amount.

Article 30 — Inquiry procurement may be adopted for goods with uniform specifications, sufficient supply, and small price fluctuations, where the contract value is small.

Article 31 — If competitive negotiation is adopted, the procuring entity shall establish a negotiation team and formulate negotiation documents. The negotiation team shall conduct negotiations with invited suppliers separately on an equal basis. After the negotiation, the negotiation team shall require all suppliers that have participated in the negotiation to submit their final quotation within the prescribed time, and the procuring entity shall determine the successful supplier from among the candidates proposed by the negotiation team.

Article 32 — If single-source procurement is adopted, the procuring entity shall, on the basis of ensuring that the quality of the procurement items and the transaction price are reasonable, reach a procurement agreement with the supplier through consultation.

Chapter IV — Government Procurement Procedures

Article 33 — Government procurement budgets shall be prepared by the procuring entities and shall be submitted for approval in accordance with the prescribed procedures. No government procurement may be conducted without a budget or in excess of the budget.

Article 34 — Where open tendering or invited tendering is adopted, the procuring entity shall prepare tendering documents. The tendering documents shall include the specific requirements and standards of the procurement items, the qualifications of suppliers, the time and place for submitting bid documents, the bid bond, and the evaluation criteria.

Article 35 — The period for the preparation of bid documents by suppliers shall not be less than 20 days from the date of issuance of the tendering documents to the deadline for submission of bid documents.

Article 36 — Under any of the following circumstances, the bid shall be rejected: (1) where the number of suppliers submitting bid documents that meet the professional requirements or that respond substantively to the tendering documents is less than three; (2) where violations of laws or regulations occur affecting the fairness of procurement; (3) where the suppliers' quotations exceed the procurement budget and the procuring entity cannot pay; (4) where the procurement task is cancelled due to a major change in circumstances.

Article 37 — Where a bid has been rejected, the procuring entity shall notify all suppliers of the reasons for rejection.

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Article 38 — Where the procuring entity or the procurement agency engages experts to participate in the evaluation of tenders, an evaluation committee shall be formed in accordance with the law.

Article 39 — The evaluation committee shall perform its duties independently and responsibly in accordance with the evaluation criteria stipulated in the tendering documents. No entity or individual may illegally interfere with or influence the evaluation process and results.

Article 40 — After the successful supplier is determined, the procuring entity shall issue a notice of award to the successful supplier, and shall notify all unsuccessful suppliers of the award result.

Article 41 — The procuring entity shall properly keep the procurement documents for a period of not less than 15 years from the date of completion of the procurement. Procurement documents include procurement activity records, procurement budgets, tendering documents, bid documents, evaluation standards, evaluation reports, award notices, contracts, acceptance certificates, complaints and handling decisions, and other relevant documents and materials.

Article 42 — The procuring entity or procurement agency shall, within a prescribed time limit, publish the procurement results on the government procurement information publication media designated by the public finance department under the State Council.

Chapter V — Government Procurement Contracts

Article 43 — The procuring entity and the successful supplier shall, within 30 days from the date of issuance of the notice of award, sign a government procurement contract in accordance with the procurement documents. The notice of award shall have legal effect on both the procuring entity and the successful supplier.

Article 44 — Where, after the issuance of the notice of award, the procuring entity changes the award result or the successful supplier abandons the successful procurement project, it shall bear legal liability in accordance with the law.

Article 45 — Within seven working days from the date of signing the government procurement contract, the procuring entity shall submit a copy of the contract to the public finance department at the same level and the relevant departments for filing.

Article 46 — Where the successful supplier, with the consent of the procuring entity, subcontracts part of the non-principal and non-critical work of the successful project, it shall do so in accordance with the law. The subcontractor shall have the corresponding qualifications and shall not subcontract the work again. The successful supplier shall bear liability to the procuring entity for the subcontracted project.

Article 47 — Where a government procurement contract involves the payment of funds, the payment shall be made through the State Treasury or other payment methods prescribed by the State. The payment of government procurement funds shall comply with the provisions of the State on budget management and Treasury management.

Article 48 — Where, during the performance of a government procurement contract, the procuring entity needs to add goods, construction works, or services identical to the subject matter of the contract, the procuring entity may, without changing other terms of the contract, enter into a supplementary contract with the supplier. However, the value of the supplementary procurement under all supplementary contracts shall not exceed 10% of the original contract value.

Article 49 — The parties to a government procurement contract shall not alter, suspend, or terminate the contract without authorization. Where a government procurement contract continues to be performed and will harm the interests of the State or the public, both parties shall alter, suspend, or terminate the contract. The party at fault shall bear the liability for compensation. Where neither party is at fault, the procuring entity shall provide appropriate compensation.

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Article 50 — The procuring entity shall organize a check and acceptance of the procurement items upon the expiration of the contract performance period by the supplier. For large or complex government procurement projects, experts in quality inspection shall be invited to participate in the acceptance.

Chapter VI — Inquiry and Complaints

Article 51 — Where a supplier has any query about the government procurement activities, it may raise an inquiry with the procuring entity. The procuring entity shall reply within three working days.

Article 52 — Where a supplier believes that the procurement documents, procurement process, or award result has infringed upon its own rights and interests, it may raise a written complaint with the procuring entity within seven working days from the date it knows or should have known of the infringement.

Article 53 — The procuring entity shall, within 30 working days from the date of receipt of the supplier's written complaint, make a decision on the complaint and notify the complaining supplier and all suppliers related to the complaint in writing.

Article 54 — Where the complaining supplier disagrees with the procuring entity's decision, or the procuring entity fails to handle the complaint within the prescribed time limit, the supplier may lodge a complaint with the public finance department at the same level within 15 working days from the date of receipt of the decision or expiration of the time limit.

Article 55 — The public finance department shall, within 30 working days from the date of receipt of the complaint, make a decision on the complaint and notify the complaining supplier and all parties related to the complaint in writing.

Article 56 — During the period of handling the complaint, the public finance department may, depending on the specific circumstances, notify the procuring entity in writing to suspend the procurement activities for a period, which shall not exceed 30 days.

Article 57 — During the period of handling the complaint, where the public finance department considers it necessary, it may conduct an investigation and collect evidence, and the relevant entities and personnel shall cooperate.

Article 58 — Where a supplier refuses to accept the decision of the public finance department on the complaint, or the public finance department fails to handle the complaint within the prescribed time limit, the supplier may apply for administrative reconsideration in accordance with the law or bring an administrative lawsuit before the people's court.

Chapter VII — Supervision and Inspection

Article 59 — The public finance department shall be the department in charge of supervision and administration of government procurement and shall perform the duty of supervision and administration of government procurement activities in accordance with the law. Other relevant government departments shall perform their duties related to the supervision and administration of government procurement activities in accordance with the law.

Article 60 — The public finance department shall strengthen the supervision and inspection of the centralized procurement institutions. Centralized procurement institutions shall submit procurement activity reports to the public finance department.

Article 61 — The public finance department shall assess the qualifications, personnel qualifications, internal management systems, and procurement execution of centralized procurement institutions.

Article 62 — Audit authorities shall exercise audit supervision over government procurement. Where the audit results require handling, the relevant authorities shall handle the matter in accordance with the law.

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Article 63 — Supervision authorities shall strengthen supervision over government procurement activities and the personnel involved in government procurement.

Article 64 — Any entity or individual shall have the right to report and accuse illegal acts in government procurement activities. The relevant departments shall handle such reports and accusations in a timely manner in accordance with the law.

Article 65 — The public finance department shall, in accordance with the law, check the government procurement activities of the procuring entities. The procuring entities shall truthfully report the situation and provide relevant materials.

Article 66 — The public finance department shall, in accordance with the law, inspect the qualifications of procurement agencies. Procurement agencies shall truthfully provide relevant materials.

Article 67 — The public finance department shall establish a government procurement evaluation expert database. The selection and appointment of evaluation experts shall be conducted randomly from the expert database.

Article 68 — The public finance department shall make public the results of supervision and inspection of government procurement, and shall publish information on complaint handling decisions.

Article 69 — The public finance department may, during the process of performing its duties of supervision and inspection, investigate and collect evidence from the parties to the government procurement activities and the personnel concerned, and no entity or individual may refuse to cooperate.

Article 70 — Functionaries of the public finance departments and other relevant government departments shall perform their duties in accordance with the law and shall not abuse their powers, neglect their duties, or engage in malpractices for personal gain.

Chapter VIII — Legal Liability

Article 71 — Where a procuring entity or a procurement agency commits any of the following acts, it shall be ordered to make corrections within a specified time limit, and a warning shall be issued. A fine may also be imposed, and the directly responsible person in charge and other directly responsible personnel shall be subject to administrative sanctions: (1) evading government procurement by breaking up the whole into parts or by other means; (2) adopting procurement methods without authorization; (3) entrusting procurement to a procurement agency without qualifications; (4) imposing discriminatory or unreasonable conditions on suppliers; (5) disclosing the base price of the tender during the tendering process; (6) other acts in violation of this Law.

Article 72 — Where a procuring entity or a procurement agency, in collusion with a supplier or a procurement agency, harms the interests of the State or the public or the lawful rights and interests of others, criminal liability shall be pursued in accordance with the law. Where a crime is not constituted, a fine shall be imposed. The illegal income shall be confiscated if any.

Article 73 — Where a procuring entity fails to publish government procurement information in accordance with the law, it shall be ordered to make corrections. The directly responsible person in charge and other directly responsible personnel shall be subject to administrative sanctions.

Article 74 — Where a procuring entity fails to sign a procurement contract within the prescribed time limit after the issuance of the notice of award, or fails to perform the procurement contract after signing it, it shall be ordered to make corrections. The directly responsible person in charge and other directly responsible personnel shall be subject to administrative sanctions.

Article 75 — Where a procuring entity refuses to cooperate with the investigation or provides false materials during the supervision and inspection, it shall be ordered to make corrections. A fine may be imposed.

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Article 76 — Where a supplier commits any of the following acts, the award or transaction shall be invalid. A fine shall be imposed, and the supplier shall be included in the list of bad faith records: (1) providing false materials to seek the award or transaction; (2) colluding with the procuring entity, other suppliers, or the procurement agency by improper means; (3) offering bribes to the procuring entity or the procurement agency or providing other improper benefits; (4) inquiring about or obtaining the base price of the tender or other suppliers' quotations through improper means; (5) refusing supervision and inspection by the relevant departments or providing false information.

Article 77 — Where a procurement agency, in violation of the provisions of this Law, discloses information relating to the procurement that should be kept confidential, or colludes with the procuring entity or a supplier to harm the interests of the State or the public or the lawful rights and interests of others, a fine shall be imposed. The illegal income shall be confiscated. If the circumstances are serious, its qualifications to conduct government procurement agency business shall be revoked.

Article 78 — Where an evaluation expert commits any of the following acts, he or she shall be given a warning and a fine shall be imposed; if the circumstances are serious, his or her qualifications as a government procurement evaluation expert shall be revoked: (1) failing to perform the evaluation duties objectively and impartially in accordance with the procurement documents; (2) having an interest in the supplier without recusing himself or herself; (3) disclosing the evaluation of bid documents, the recommendation of candidate suppliers, or other information related to the evaluation.

Article 79 — Where a violation of the provisions of this Law causes damage to others, civil liability shall be borne in accordance with the law.

Article 80 — Functionaries of the public finance departments and other relevant government departments who abuse their powers, neglect their duties, or engage in malpractices for personal gain shall be subject to administrative sanctions. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 81 — Where a supplier raises a false or malicious complaint, the public finance department shall reject it and issue a warning. If a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 82 — Where government procurement activities violate the provisions of this Law and cause serious consequences, the person in charge of the relevant unit and other directly responsible personnel shall be subject to administrative sanctions. If a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 83 — Where activities such as tendering and bidding for government procurement construction works violate the law, the relevant provisions of the Tendering and Bidding Law shall apply.

Chapter IX — Supplementary Provisions

Article 84 — For procurement using international organizations' or foreign governments' loans, where the loan agreement has different provisions on the procurement procedures, such provisions may apply, provided that the interests of the State and the public shall not be harmed.

Article 85 — The People's Republic of China shall carry out international exchanges and cooperation on government procurement in accordance with the law. Where the State concludes or accedes to international treaties or agreements, such treaties or agreements shall apply, unless the People's Republic of China has declared reservations to the relevant provisions.

Article 86 — The public finance department under the State Council shall formulate specific measures for the qualification certification of procurement agencies and the management of evaluation experts.

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Article 87 — The central government procurement catalog and the procurement threshold value shall be determined and published by the public finance department under the State Council. The local government procurement catalog and the procurement threshold value shall be determined and published by the public finance departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government or their authorized institutions.

Article 88 — This Law shall take effect as of January 1, 2003. The amendment to this Law shall take effect as of the date of promulgation.

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