Government Procurement Law of the People’s Republic of China

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Chapter I — General Provisions

Article 1 — This Law is enacted in accordance with the Constitution for the purposes of regulating government procurement activities, improving the efficiency of government procurement funds, safeguarding the interests of the State and the public, protecting the lawful rights and interests of parties to government procurement, and promoting integrity in government.

Article 2 — This Law shall apply to government procurement activities conducted within the territory of the People's Republic of China. The term "government procurement" as used in this Law refers to the procurement of goods, works, and services within the legally prescribed centralized procurement catalog or above the procurement threshold by State organs, public institutions, and organizations at various levels using government funds.

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

Article 4 — Where government procurement projects are subject to tendering and bidding, the Tendering and Bidding Law shall apply.

Article 5 — Any organization or individual shall not use any means to hinder or restrict the free access of suppliers to the government procurement market in their own region or industry, or exclude suppliers from other regions or industries from participating in government procurement activities in their own region or industry.

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

Article 7 — Government procurement shall combine centralized procurement with decentralized procurement. The scope of the centralized procurement catalog shall be determined and published by the people's governments at or above the provincial level or their authorized institutions. For government procurement items that fall under the centralized procurement catalog, centralized procurement shall be implemented.

Article 8 — The procurement threshold for government procurement items that are not included in the centralized procurement catalog as specified in this Law and the procurement threshold for government procurement of goods, works, and services other than those specified in the centralized procurement catalog shall be prescribed by the State Council and published by the people's governments at or above the provincial level.

Article 9 — Government procurement shall help achieve the goals of the State's economic and social development policies, including environmental protection, support for underdeveloped areas and ethnic minority areas, and promotion of the development of small and medium-sized enterprises.

Article 10 — Government procurement shall procure domestic goods, works, and services, except under the following circumstances: where the goods, works, or services to be procured are not available within the territory of China or cannot be obtained on reasonable commercial terms; where the procurement is for use outside the territory of China; or other circumstances provided for by laws or administrative regulations.

Article 11 — Government procurement information shall be published in a timely manner on the government procurement information publication media designated by the government procurement supervision and administration department, except for procurement involving trade secrets.

Article 12 — Personnel with a conflict of interest in government procurement activities shall withdraw in accordance with law. Suppliers shall have the right to apply for the withdrawal of procurement personnel or related experts who have a conflict of interest with the supplier. The withdrawal of the person in charge of the procuring entity from government procurement activities shall be decided by the government at the same level; the withdrawal of the person directly responsible for procurement or procurement agency personnel

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shall be decided by the person in charge of the procuring entity.

Article 13 — The financial departments of the people's governments at or above the county level shall be the government procurement supervision and administration departments, performing the duty of supervision and administration of government procurement activities in accordance with law. Other relevant government departments shall perform the duty of supervision and administration of government procurement activities within the scope of their respective functions and duties in accordance with law.

Chapter II — Parties to Government Procurement

Article 14 — The term "parties to government procurement" as used in this Law means the subjects of rights and obligations in government procurement activities, including procuring entities, suppliers, and procurement agencies.

Article 15 — The term "procuring entities" as used in this Law refers to State organs, public institutions, and organizations that conduct government procurement in accordance with law.

Article 16 — Centralized procurement institutions shall be non-profit legal persons established by the people's governments at or above the level of a city divided into districts or autonomous prefectures, to handle procurement on behalf of procuring entities for government procurement items included in the centralized procurement catalog. Social intermediary agencies may be entrusted as procurement agencies to handle government procurement matters within the scope of their qualification accreditation, provided that they have obtained the qualification for government procurement agency business. Procuring entities shall have the right to select procurement agencies on their own, and no unit or individual shall designate procurement agencies for procuring entities in any way.

Article 17 — Centralized procurement institutions conducting government procurement activities shall comply with the procurement price lower than the market average price, higher procurement efficiency, better procurement quality, and better service requirements.

Article 18 — For government procurement items that fall under the centralized procurement catalog, centralized procurement must be entrusted to a procurement agency. For government procurement items that are not included in the centralized procurement catalog, procurement may be conducted by the procuring entity on its own, or a procurement agency may be entrusted to conduct procurement on behalf of the procuring entity within the scope of its entrustment.

Article 19 — A procuring entity may entrust a centralized procurement institution that has been established with the approval of the relevant department of the State Council or the people's government at or above the provincial level to conduct procurement on its behalf. A procuring entity shall sign an entrustment agency agreement with the procurement agency to determine the matters of entrustment and agency, specifying the rights and obligations of both parties.

Article 20 — A procuring entity may, based on the specific characteristics of the procurement project, require the supplier to meet specific conditions in addition to the conditions specified in Article 22 of this Law, provided that the conditions are reasonably related to the procurement project and do not impose unreasonable restrictions on the supplier through the setting of the conditions.

Article 21 — The term "supplier" as used in this Law refers to a legal person, other organization, or natural person that provides goods, works, or services to a procuring entity.

Article 22 — A supplier participating in government procurement activities shall meet the following conditions: having the capacity to bear civil liability independently; having a good business reputation and sound financial and accounting systems; having the equipment and professional technical capability necessary for performing the contract; having a good record of paying taxes and social security funds in accordance with law; having no record of major violations in its business operations within the three years

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prior to participating in government procurement activities; and other conditions prescribed by laws or administrative regulations. A procuring entity may, based on the specific characteristics of the procurement project, require the supplier to meet specific conditions, provided that such conditions shall not discriminate against suppliers through unreasonable conditions.

Article 23 — A procuring entity may require suppliers participating in government procurement to provide relevant qualification certificates and performance information, and shall examine the qualifications of suppliers in accordance with the supplier conditions prescribed in this Law and the specific conditions required for the procurement project.

Article 24 — Two or more natural persons, legal persons, or other organizations may form a consortium to participate in government procurement as a single supplier. Where a consortium participates in government procurement, all parties to the consortium shall meet the conditions specified in Article 22 of this Law and shall submit a joint bidding agreement to the procuring entity, specifying the work and obligations to be undertaken by each party to the consortium. All parties to the consortium shall jointly sign a procurement contract with the procuring entity and shall bear joint and several liability to the procuring entity for the matters agreed upon in the consortium agreement.

Article 25 — Parties to government procurement shall not collude with each other to harm the interests of the State, the public, or the lawful rights and interests of other parties to government procurement, or exclude other suppliers from competition by any means. A supplier shall not seek to win a bid or facilitate a transaction by offering bribes to the procuring entity, the procurement agency, or their staff members, or by other improper means. A procurement agency shall not accept bribes or other improper benefits from suppliers in the course of handling procurement matters on behalf of a procuring entity.

Chapter III — Methods of Government Procurement

Article 26 — Government procurement shall adopt the following methods: open tendering; invitation tendering; competitive negotiation; single-source procurement; price inquiry; and other methods recognized by the government procurement supervision and administration department of the State Council. Open tendering shall be the primary method of government procurement.

Article 27 — Where a procuring entity intends to adopt a procurement method other than open tendering for the procurement of goods or services, it shall obtain approval from the government procurement supervision and administration department of the people's government at or above the level of a city divided into districts or autonomous prefectures before the procurement activities commence.

Article 28 — A procuring entity shall not break up the goods or services that should be procured through open tendering into separate parts or circumvent open tendering by any other means.

Article 29 — Invitation tendering may be adopted under any of the following circumstances: where the goods or services are special in nature and can only be procured from a limited range of suppliers; and where the cost of open tendering represents an excessively large proportion of the total value of the procurement project.

Article 30 — Competitive negotiation may be adopted under any of the following circumstances: where no supplier submits a bid after open tendering, or there are no qualified bidders, or the re-tendering fails to be established; where the technology is complex or the nature of the procurement is special, and detailed specifications or specific requirements cannot be determined; where the time required for tendering cannot meet the urgent needs of the user; and where the total price cannot be calculated in advance.

Article 31 — Single-source procurement may be adopted under any of the following circumstances: where the goods or services can only be procured from a single supplier; where the procurement cannot be made from other suppliers due to unforeseen emergencies; and where consistency of the procured items or

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supporting services must be ensured and additional procurement from the original supplier is necessary, provided that the total value of the additional procurement does not exceed ten percent of the original contract amount.

Article 32 — Price inquiry may be adopted for the procurement of goods with uniform specifications and standards, sufficient supply sources, and small price fluctuations.

Chapter IV — Government Procurement Procedures

Article 33 — The department responsible for budget preparation shall, when preparing the annual budget for government procurement, include the items and funds for government procurement in the departmental budget and submit the same to the financial department at the same level for summary and examination and approval. Government procurement shall be conducted strictly in accordance with the approved budgets.

Article 34 — For goods or services procured by invitation tendering, the procuring entity shall randomly select three or more suppliers from among the qualified suppliers and send them invitations to bid.

Article 35 — For goods and services procured through open tendering and invitation tendering, the time limit for the submission of bid documents shall be not less than twenty days from the date of publication of the tender documents.

Article 36 — In the process of tendering and procurement, the tender shall be deemed to have failed under any of the following circumstances: the number of suppliers that meet professional requirements or make substantive responses to the tender documents is less than three; there are violations of laws and regulations or unfair competition that affect the fairness of the procurement; all suppliers' bid prices exceed the procurement budget and the procuring entity cannot pay; or the procurement project is cancelled due to a major change.

Article 37 — After a tender has failed, the procurement announcement shall be made again or the tender documents shall be re-issued, except for the cancellation of the procurement project. If the tender fails again, the method of competitive negotiation, price inquiry, or single-source procurement may be adopted for the procurement upon approval.

Article 38 — Competitive negotiation procurement shall follow the following procedures: establish a negotiation team; formulate negotiation documents; determine the list of suppliers to be invited to participate in the negotiation; conduct the negotiation; and determine the winning supplier.

Article 39 — Single-source procurement shall follow the principles prescribed in this Law and ensure the quality of procurement on the basis of appropriate procurement prices.

Article 40 — Price inquiry procurement shall follow the following procedures: establish a price inquiry team; determine the list of suppliers to be inquired; conduct the inquiry; and determine the winning supplier.

Article 41 — The procuring entity or the procurement agency entrusted by it shall organize the acceptance inspection of the performance of the contract by the supplier. For large or complex government procurement projects, quality inspection institutions recognized by the State shall be invited to participate in the acceptance inspection. The members of the acceptance inspection party shall sign their names on the acceptance inspection report and shall bear corresponding legal liability.

Article 42 — The procuring entity and the procurement agency shall keep proper custody of the procurement documents for each procurement activity, and the retention period shall be not less than fifteen years from the date of the end of the procurement activity. Procurement documents include procurement activity records, procurement budgets, tender documents, bid documents, bid evaluation standards, evaluation reports, final procurement decisions, contract texts, acceptance inspection certificates, question and complaint handling decisions, and other relevant documents and materials.

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Chapter V — Government Procurement Contracts

Article 43 — A government procurement contract shall be governed by the Contract Law. The parties to a government procurement contract shall perform their obligations in accordance with the principle of equality and voluntariness. A procuring entity may entrust a procurement agency to sign a government procurement contract with a supplier on its behalf, but the procuring entity shall bear the rights and obligations under the contract.

Article 44 — Government procurement contracts shall be in written form.

Article 45 — The government procurement supervision and administration department of the State Council shall, in conjunction with the relevant departments of the State Council, prescribe the essential provisions of a government procurement contract.

Article 46 — A government procurement contract shall be concluded in writing between the procuring entity and the winning supplier within thirty days from the date of the notification of award. The procuring entity shall, within seven working days from the date of the conclusion of the procurement contract, submit a copy of the contract to the government procurement supervision and administration department and the relevant department at the same level for filing.

Article 47 — The procuring entity or the procurement agency entrusted by it shall organize the acceptance inspection of the contract performance by the supplier, and shall issue an acceptance inspection certificate or a corresponding certificate. The parties to government procurement shall not alter, suspend, or terminate the contract without authorization.

Article 48 — With the consent of the procuring entity, the winning supplier may subcontract the non-core and non-critical parts of the performance of the contract in accordance with law. The subcontracting supplier shall meet the corresponding qualifications and shall not subcontract the work again. The winning supplier shall be responsible to the procuring entity for the subcontracting project, and the subcontracting supplier shall bear joint and several liability for the subcontracting project.

Article 49 — Where the procuring entity needs to procure additional goods, works, or services of the same nature as the original government procurement contract during the performance of the contract, it may sign a supplementary contract with the supplier without changing the other terms of the contract, provided that the total value of the supplementary procurement contract shall not exceed ten percent of the original contract amount.

Article 50 — The parties to a government procurement contract shall not alter, suspend, or terminate the contract without authorization. Where the continued performance of the government procurement contract would harm the interests of the State and the public, the parties shall alter, suspend, or terminate the contract. The party at fault shall bear the liability for compensation; where both parties are at fault, they shall bear corresponding liability.

Chapter VI — Questions and Complaints

Article 51 — A supplier shall have the right to question the procuring entity regarding the procurement activities. The procuring entity shall provide a response within seven working days. The procuring entity shall notify the supplier of the result of the question in writing and make an announcement to other relevant suppliers.

Article 52 — Where a supplier considers the procurement documents, procurement process, or the result of winning the bid or concluding the transaction to be prejudicial to its rights and interests, the supplier may raise a question in writing to the procuring entity within seven working days from the date on which it knows or should have known that its rights and interests have been prejudiced.

Article 53 — The procuring entity shall provide a written response to the supplier's question within seven working days from the date of receipt of the written question and shall notify the supplier of the result of the question in writing.

Article 54 — Where the procuring entity entrusts a procurement agency to conduct the procurement, the supplier may raise a question with the procurement agency. The procurement agency shall, in accordance with the provisions of Articles 51 and 53 of this Law, provide a response on matters within the scope of the procuring entity's entrustment authorization.

Article 55 — A supplier that is dissatisfied with the response of the procuring entity or the procurement agency, or where the procuring entity or the procurement agency fails to provide a response within the prescribed time limit, may file a complaint with the government procurement supervision and administration department at the same level within fifteen working days from the date of expiration of the response period.

Article 56 — The government procurement supervision and administration department shall make a decision on handling the complaint within thirty working days from the date of receipt of the complaint and shall notify the complainant and the relevant parties of the handling decision in writing.

Article 57 — The government procurement supervision and administration department may, during the period of handling the complaint and depending on the specific circumstances, notify the procuring entity in writing to suspend the procurement activities, provided that the suspension period shall not exceed thirty days.

Article 58 — A complainant who is dissatisfied with the handling decision of the government procurement supervision and administration department, or where the government procurement supervision and administration department fails to handle the complaint within the time limit, may apply for administrative reconsideration or institute an administrative litigation in accordance with law.

Chapter VII — Supervision and Inspection

Article 59 — The government procurement supervision and administration department shall strengthen supervision and inspection of government procurement activities and the centralized procurement institutions. The main contents of supervision and inspection are: the implementation of laws and administrative regulations and rules relating to government procurement; the scope, methods, and procedures of procurement; the professional quality and professional skills of government procurement personnel; and other circumstances relevant to government procurement.

Article 60 — The government procurement supervision and administration department shall not set up centralized procurement institutions or participate in the project evaluation of government procurement projects. A procurement agency shall not be subject to any administrative subordination relationship or other relationship of interest with an administrative organ.

Article 61 — Centralized procurement institutions shall establish and improve internal supervision and management systems. The policy decisions and implementation procedures for procurement activities shall be clear, and they shall supervise and restrict each other. Managers and handling personnel of centralized procurement institutions that handle procurement of the same project shall not be the same person.

Article 62 — The persons in charge and financial personnel of centralized procurement institutions shall receive professional training and pass the examination before taking up their posts.

Article 63 — The conditions for government procurement projects, procurement budgets, tender documents, and bid documents of a procurement project shall be kept confidential. Where the total price of a procurement project cannot be calculated in advance, the bid evaluation price of the project shall be kept confidential.

Article 64 — The procuring entity must entrust a centralized procurement institution to conduct procurement for government procurement items included in the centralized procurement catalog in accordance with the procurement catalog and procurement quota standards prescribed in this Law.

Article 65 — The government procurement supervision and administration department and the relevant government departments shall examine the procuring entity, the procurement agency, and the supplier in accordance with their respective responsibilities. The audited entities shall truthfully report the situation and provide relevant materials.

Article 66 — The government procurement supervision and administration department shall inspect the compliance of centralized procurement institutions with the assessment requirements. Where any irregularity is discovered, it shall be ordered to make rectification within a time limit and the persons in charge shall be notified.

Article 67 — The audit institution shall, in accordance with the provisions of the Audit Law and the relevant administrative regulations, exercise audit supervision over government procurement. Where the government procurement supervision and administration department or the parties to government procurement have any act that should be subject to audit supervision by the audit institution, the audit institution shall exercise audit supervision over the same.

Article 68 — The supervisory authority shall strengthen supervision over the staff of the government procurement supervision and administration department, the procuring entity, the procurement agency, and the experts involved in government procurement activities.

Article 69 — Any entity or individual shall have the right to report and accuse any violation of this Law by government procurement activities to the relevant department. The relevant department shall handle the report in a timely manner.

Chapter VIII — Legal Liability

Article 70 — Where a procuring entity or a procurement agency falls under any of the following circumstances, it shall be ordered to make rectification within a time limit, a warning shall be issued, and a fine may be imposed. Administrative sanctions shall be imposed on the directly responsible person in charge and other directly responsible persons, and the matter shall be reported: using improper means, such as setting unreasonable conditions, to hinder or restrict suppliers from freely entering the government procurement market of their own region or industry; failing to publish government procurement information in accordance with law; evading open tendering procurement by improper means; determining suppliers through improper means; failing to implement policies and measures prescribed by law for government procurement, such as promoting the development of small and medium-sized enterprises; and other circumstances prescribed by laws and administrative regulations.

Article 71 — Where a procuring entity or a procurement agency and its staff members fall under any of the following circumstances, criminal liability shall be pursued in accordance with law where a crime is constituted; where a crime is not constituted, a fine shall be imposed, and the illegal gains, if any, shall be confiscated. Administrative sanctions shall be imposed on the directly responsible person in charge and other directly responsible persons: colluding with a supplier or a procurement agency to seek improper benefits; accepting bribes or obtaining other improper benefits in the course of procurement; failing to conduct procurement in accordance with the procurement documents determined in accordance with law, and forging or altering procurement documents; concealing or destroying procurement documents that should be kept in accordance with law; and other circumstances of abuse of authority, dereliction of duty, or malpractice for personal gain that cause harm to the interests of the State or the public.

Article 72 — Where a supplier falls under any of the following circumstances, the winning bid or the transaction shall be deemed invalid, a fine of not less than five thousandths but not more than ten

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thousandths of the procurement amount shall be imposed, and the supplier shall be included in the list of bad faith records. Within one to three years, the supplier shall be prohibited from participating in government procurement activities. The illegal gains, if any, shall be confiscated. Where the circumstances are serious, the 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 law: providing false materials to seek to win a bid or conclude a transaction; colluding with the procuring entity, other suppliers, or the procurement agency by improper means; offering bribes to the procuring entity or the procurement agency or providing other improper benefits; refusing to accept supervision and inspection by the relevant department or providing false information during the course of supervision and inspection by the relevant department; and other circumstances prescribed by laws and administrative regulations.

Article 73 — Where a supplier colludes with a procuring entity, other suppliers, or a procurement agency by improper means, and damage is caused to another person, the supplier shall bear civil liability in accordance with the relevant laws and administrative regulations.

Article 74 — Where the personnel of the government procurement supervision and administration department abuse their authority, neglect their duties, or engage in malpractices for personal gain when performing their supervision and inspection duties, they shall be subject to administrative sanctions in accordance with law; where a crime is constituted, criminal liability shall be pursued in accordance with law.

Article 75 — Where a procuring entity fails to procure goods, works, or services included in the centralized procurement catalog by entrusting a centralized procurement institution in accordance with law, the government procurement supervision and administration department shall order it to make rectification; where the procuring entity refuses to make rectification, the financial department shall stop disbursing procurement funds to the procuring entity according to the budget or stop the approval of the procurement project. Administrative sanctions shall be imposed on the directly responsible person in charge and other directly responsible persons in accordance with law.

Article 76 — Where a procuring entity or a procurement agency fails to keep proper custody of procurement documents in accordance with this Law, or forges, alters, conceals, or destroys procurement documents, the government procurement supervision and administration department shall impose a fine of not less than RMB twenty thousand but not more than RMB one hundred thousand, and impose administrative sanctions on the directly responsible person in charge and other directly responsible persons in accordance with law; where a crime is constituted, criminal liability shall be pursued in accordance with law.

Chapter IX — Supplementary Provisions

Article 77 — Where the procurement of goods, works, or services for military supplies, national defense facilities, weapons, equipment, or other materials involving State secrets and national security is subject to separate provisions, such provisions shall prevail.

Article 78 — Government procurement conducted with international organizations or foreign government loans, where the loan agreement provides otherwise for the specific procurement conditions, the provisions of the agreement may apply, provided that the interests of the State and the public shall not be harmed.

Article 79 — Where emergency procurement is required for serious natural disasters or other force majeure events, the provisions of this Law on procurement methods and procedures may not apply.

Article 80 — The specific measures and threshold amounts for government procurement as provided in this Law shall be prescribed by the State Council.

Article 81 — The government procurement of the Hong Kong Special Administrative Region and the Macao Special Administrative Region shall be governed by the relevant provisions of the Basic Laws of those regions.

Article 82 — This Law shall take effect as of January 1, 2003.

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