Government Procurement Law of the PRC

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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 national interests and the public interest, protecting the lawful rights and interests of parties to government procurement, and promoting the building of a clean government.

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

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goods, construction works and services by state organs, public institutions and social organizations at all levels within the procurement catalogue formulated in accordance with the law and above the procurement thresholds, using fiscal funds. The procurement catalogue for centralized government procurement and the procurement thresholds shall be formulated in accordance with the authority prescribed in this Law. For the purposes of this Law, “goods” means articles of various forms and types, including raw materials, fuel, equipment and products. For the purposes of this Law, “construction works” means the construction of buildings and structures, including new construction, reconstruction, expansion, renovation and demolition. For the purposes of this Law, “services” means service objects other than goods and construction works, including professional services, technical services, information services, research and development, transportation, maintenance, training and labor services.

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

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

Article 5 — No entity or individual shall, by any means, exclude or restrict suppliers from freely entering the government procurement markets of the region or industry.

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

Article 7 — Government procurement shall adopt the method of combining centralized procurement and decentralized procurement. Goods, construction works and services listed in the centralized procurement catalogue shall be subject to centralized procurement. The scope of centralized procurement shall be prescribed by the people’s governments at or above the provincial level through the centralized procurement catalogues published by them. For government procurement items that are part of the centralized procurement catalogue, centralized procurement shall be entrusted to a centralized procurement institution; for government procurement items that are not part of the centralized procurement catalogue, the procurement may be conducted by the procuring entity itself, or procuring entities may entrust a procurement agency to conduct procurement on their behalf within the authorized scope.

Article 8 — The procurement thresholds for government procurement shall be those for procurement items that fall within the scope of the central budget and are prescribed by the State Council and published; those for procurement items that fall within the scope of local budgets shall be prescribed by the people’s governments of the provinces, autonomous regions and municipalities directly under the Central Government or their authorized bodies and published.

Article 9 — Government procurement shall contribute to the realization of the state’s economic and social development policy goals, including protecting the environment, supporting underdeveloped areas and ethnic minority areas, and promoting the development of small and medium-sized enterprises.

Article 10 — Government procurement shall procure goods, construction works and services of domestic origin, except under any of the following circumstances: (1) the goods, construction works or services to be procured are not available within the territory of the People’s Republic of China or, although available, cannot be obtained on reasonable commercial terms; (2) the goods, construction works or services to be procured are to be used outside the territory of the People’s Republic of China; or (3) other circumstances provided by laws or administrative regulations. For the purposes of the preceding paragraph, “goods, construction works and services of domestic origin” shall be determined in accordance with the relevant provisions of the State Council.

Chapter II — Parties to Government Procurement

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Article 11 — The parties to government procurement refer to the entities that enjoy rights and assume obligations in government procurement activities, including procuring entities, suppliers and procurement agencies.

Article 12 — For the purposes of this Law, “procuring entity” means a state organ, public institution or social organization that conducts government procurement in accordance with the law. A procuring entity may entrust a centralized procurement institution or other procurement agency to handle government procurement matters on its behalf within the authorized scope. Procuring entities shall not illegally entrust procurement matters to procurement agencies, and the entrustment fees shall be covered by the budget of the procuring entity.

Article 13 — For the purposes of this Law, “procurement agency” means a centralized procurement institution and a non-centralized procurement agency. For the purposes of this Law, “centralized procurement institution” means a non-profit public institution established by the people’s governments at or above the level of a city divided into districts to handle centralized procurement on behalf of procuring entities. Where a procuring entity that is part of the centralized procurement catalogue entrusts a non-centralized procurement agency to conduct procurement on its behalf, the prior approval of the people’s government at or above the level of the city divided into districts shall be obtained.

Article 14 — For the purposes of this Law, “supplier” means a legal person, other organization or natural person that provides goods, construction works or services to a procuring entity. A supplier participating in government procurement activities shall meet the following conditions: (1) having the capacity to bear civil liability independently; (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 contributions in accordance with the law; (5) having no record of major illegal acts in its business activities within three years before participating in government procurement activities; and (6) other conditions prescribed by laws and administrative regulations. The procuring entity may, based on the special requirements of the procurement project, require suppliers to meet specific conditions, but shall not impose unreasonable conditions that discriminate against or treat suppliers differently. A procuring entity may require a supplier participating in government procurement to provide relevant qualification certificates and performance information, and shall conduct qualification examination of the supplier in accordance with the supplier conditions specified in this Law and the specific conditions prescribed by the procuring entity for the procurement project.

Article 15 — A procuring entity may require a supplier participating in government procurement to provide a bid bond or a performance bond in accordance with the actual circumstances of the procurement project. The procuring entity shall not require a supplier to provide an excessive bid bond or performance bond.

Article 16 — Two or more natural persons, legal persons or other organizations may form a consortium to participate in government procurement as one 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 bid agreement to the procuring entity, specifying the work to be undertaken and the obligations to be assumed by each party and the joint and several liability of all parties. Where the consortium wins the bid, all parties to the consortium shall jointly enter into a procurement contract with the procuring entity and be jointly and severally liable to the procuring entity for the matters agreed in the procurement contract.

Chapter III — Methods of Government Procurement

Article 17 — Government procurement shall adopt the following methods: (1) open bidding; (2) invitation bidding; (3) competitive negotiation; (4) single-source procurement; (5) inquiry for quotations; and (6) other methods recognized by the government procurement regulatory department of the State Council. Open bidding shall be the main method of government procurement.

Article 18 — Where a procuring entity procures goods or services, if the goods or services are listed in the centralized procurement catalogue or the procurement amount exceeds the procurement threshold for the relevant goods or services, open bidding shall be adopted. Where goods or services are special in nature and can only be supplied by a limited number of suppliers, or where the cost of adopting open bidding accounts for an excessively large proportion of the total value of the procurement project, invitation bidding may be adopted. Where open bidding is adopted for the procurement of goods or services, and the procurement amount reaches the threshold prescribed by the government procurement regulatory department of the State Council, the procuring entity shall entrust a centralized procurement institution or other procurement agency to conduct the procurement on its behalf.

Article 19 — Competitive negotiation may be adopted under any of the following circumstances: (1) after bidding, no supplier submits a bid or no supplier has a qualified bid, or a new bidding fails to be established; (2) the technology is complex or special in nature and detailed specifications or specific requirements cannot be determined; (3) the time required for bidding cannot meet the urgent needs of the user; or (4) the total price cannot be calculated in advance.

Article 20 — Single-source procurement may be adopted under any of the following circumstances: (1) the procurement can only be made from a single supplier; (2) unforeseen emergency circumstances prevent procurement from other suppliers; or (3) the need to ensure the consistency or compatibility of supporting services requires continued procurement from the original supplier, and the total amount of the additional procurement funds does not exceed 10 percent of the original contract procurement amount.

Article 21 — Inquiry for quotations may be adopted for the procurement of goods with uniform specifications and standards, sufficient supply of ready goods, and small price fluctuations where the procurement amount is below the prescribed threshold.

Chapter IV — Procedures of Government Procurement

Article 22 — Where open bidding is adopted, the procuring entity shall publish a bidding announcement through media designated by the government procurement regulatory department. The bidding announcement shall include the name and address of the procuring entity, the nature, quantity and place of implementation of the procurement project, the time and place for obtaining the bidding documents, and other matters. Where invitation bidding is adopted, the procuring entity shall randomly select three or more suppliers from the list of suppliers meeting the corresponding qualifications and send invitation letters to them.

Article 23 — The procuring entity shall determine the bidding documents based on the characteristics and requirements of the procurement project. The bidding documents shall include the technical requirements of the procurement project, the criteria and methods for evaluating bidders, the requirements for bid prices, the main terms of the proposed contract, the deadline, place and method for submitting bid documents, and the time, place and method for opening bids and evaluating bids. The bidding documents shall not require or indicate specific suppliers or contain other content that tends to favor or exclude potential bidders.

Article 24 — Where competitive negotiation is adopted, the procuring entity shall form a negotiation team. The negotiation team shall be composed of three or more odd-numbered members, including representatives of the procuring entity and experts in the relevant fields, with the number of experts being not less than two-thirds of the total number of members. The negotiation team shall determine the list of suppliers participating in the negotiation from the list of suppliers meeting the corresponding qualifications, and provide the negotiation documents to such suppliers. The negotiation documents shall specify the negotiation procedure, the content of the negotiation, the draft contract terms, and the criteria for evaluating the transaction.

Article 25 — Where competitive negotiation is adopted, the negotiation team shall negotiate with all suppliers separately. During the negotiation, no party to the negotiation shall disclose technical information, price information or other information relating to the negotiation with other suppliers. Where the negotiation documents have substantive changes, the negotiation team shall notify all suppliers participating in the negotiation in writing. After the negotiation, the negotiation team shall require all suppliers participating in the negotiation to submit final quotations within the specified time, and determine the transaction supplier from among the candidates proposed by the negotiation based on the procurement requirements, quality and service, and the lowest quotation principle.

Article 26 — Where single-source procurement is adopted, the procuring entity shall, under the principle of ensuring the quality of the procurement project and the reasonable price acceptable to both parties, negotiate with the supplier on the procurement matter. When adopting single-source procurement, the procuring entity shall organize a negotiation team composed of relevant professional and technical personnel and procurement personnel to negotiate with the supplier, prepare negotiation minutes and sign the minutes.

Article 27 — Where inquiry for quotations is adopted, the procuring entity shall establish a price inquiry team. The price inquiry team shall be composed of three or more odd-numbered members, including representatives of the procuring entity and experts in the relevant fields, with the number of experts being not less than two-thirds of the total number of members. The price inquiry team shall determine the list of suppliers from which to seek quotations from the list of suppliers meeting the corresponding qualifications, and issue a price inquiry notice to such suppliers, requiring them to submit a single quotation that shall not be changed. After the price inquiry, the supplier meeting the procurement requirements and offering the lowest quotation shall be determined as the transaction supplier.

Article 28 — The government procurement regulatory department shall formulate the specific procedures for the review methods and review standards for government procurement.

Article 29 — The members of the bid evaluation committee, the negotiation team or the price inquiry team shall perform their duties objectively and impartially, abide by professional ethics, and assume personal responsibility for the review opinions they provide. Members shall not make private contact with suppliers, and shall not accept property or other benefits from suppliers.

Article 30 — Where any of the following circumstances exists, the procuring entity shall scrap the bid: (1) suppliers that meet professional requirements or make substantive responses to the bidding documents are less than three; (2) there are illegal or irregular acts that affect the fairness of the procurement; (3) the bid prices of all bidders exceed the procurement budget and the procuring entity cannot pay; (4) the procurement task is canceled due to major changes; or (5) other circumstances specified by laws or regulations.

Chapter V — Government Procurement Contracts

Article 31 — A government procurement contract shall be concluded in written form. The government procurement contract shall be subject to the Contract Law of the People’s Republic of China. The procuring entity and the supplier shall have equal rights and obligations under the contract. The procuring entity shall not, by virtue of its administrative power, conclude a contract with the supplier that deviates from the substantive content of the procurement documents.

Article 32 — The procuring entity and the winning or transaction supplier shall, within 30 days from the date of issuance of the bid-winning or transaction notice, enter into a government procurement contract in accordance with the matters specified in the procurement documents. The bid-winning or transaction notice shall be legally binding on the procuring entity and the winning or transaction supplier. Where the procuring entity repudiates the bid-winning or transaction result after the notice is issued, or the winning or transaction

supplier renounces the procurement project after the notice is issued, the party concerned shall bear legal liability in accordance with the law.

Article 33 — The procuring entity shall, within seven working days from the date of conclusion of the procurement contract, submit a copy of the contract to the government procurement regulatory department and the relevant departments for the record.

Article 34 — Where the procurement contract continues to be performed, which will harm the national interest or the public interest, the parties shall modify, suspend or terminate the contract. The party at fault shall be liable for compensation; where both parties are at fault, they shall bear the corresponding liability.

Article 35 — Where additional procurement of goods, construction works or services of the same nature as the original procurement contract is necessary with the consent of the procuring entity, and the total amount of the additional procurement funds does not exceed 10 percent of the original contract procurement amount, the procuring entity may enter into a supplementary contract with the supplier without changing the other terms of the original contract. The total amount of all supplementary contracts shall not exceed 10 percent of the original contract procurement amount.

Chapter VI — Questions and Complaints

Article 36 — A supplier that has questions about government procurement activities may raise questions with the procuring entity, and the procuring entity shall respond in a timely manner, provided that the response shall not disclose trade secrets.

Article 37 — Where a supplier considers that the procurement documents, procurement process, or the winning or transaction result has harmed its rights and interests, the supplier may, within seven working days from the date on which it knew or should have known that its rights and interests were harmed, raise questions with the procuring entity in writing. The procuring entity shall, within seven working days from the date of receipt of the supplier's written questions, make a written reply and notify the supplier raising the questions and other relevant suppliers, provided that the content of the reply shall not disclose trade secrets.

Article 38 — Where a supplier raising questions is dissatisfied with the reply of the procuring entity or the procuring entity fails to reply within the prescribed time limit, the supplier may file a complaint with the government procurement regulatory department at the same level within 15 working days from the date of expiration of the reply period.

Article 39 — The government procurement regulatory department shall, within 30 working days from the date of receipt of the complaint, make a decision on the complaint and notify the complainant and the parties involved in the complaint in writing.

Article 40 — The government procurement regulatory department may, when handling a complaint, suspend government procurement activities as the case may require, provided that the suspension shall not exceed 30 days.

Chapter VII — Supervision and Inspection

Article 41 — The government procurement regulatory department shall strengthen supervision and inspection of government procurement activities and centralized procurement institutions. The main contents of supervision and inspection are: (1) the implementation of government procurement laws, administrative regulations and rules; (2) the scope, method and procedures of procurement; (3) the professional quality and specialized skills of government procurement personnel; and (4) other matters prescribed by laws and administrative regulations.

Article 42 — Government procurement projects shall be subject to strict acceptance inspection in accordance with the procurement contract. The procuring entity or the procurement agency entrusted by it

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shall organize an acceptance inspection of the supplier's performance. 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 team shall sign the acceptance inspection certificate and assume corresponding legal liability.

Article 43 — The procuring entity and the procurement agency shall properly keep procurement documents for each procurement project, and shall not forge, alter, conceal or destroy such documents. The retention period for procurement documents shall be at least 15 years from the date of the end of the procurement. Procurement documents include procurement activity records, procurement budgets, bidding documents, bid documents, evaluation criteria, evaluation reports, procurement contracts, acceptance certificates, questions and replies, complaint handling decisions and other relevant documents and materials.

Article 44 — The audit authority shall conduct audit supervision over government procurement. Where the audit authority conducts an audit of government procurement, the relevant entities and individuals shall provide truthful information and shall not refuse or obstruct such audit. Where the audit authority discovers that the parties involved in government procurement have violated the provisions of this Law, it shall notify the relevant departments to handle the matter within their respective functions and duties.

Article 45 — The supervisory authority shall strengthen supervision over the personnel of state organs, public institutions and social organizations participating in government procurement activities, and investigate and deal with illegal acts in government procurement in accordance with the law.

Chapter VIII — Legal Liability

Article 46 — Where a procuring entity or procurement agency commits any of the following acts, a warning shall be given and a fine may be imposed concurrently; the directly responsible person in charge and other directly responsible persons shall be subject to administrative sanctions and may be fined; the illegal gains, if any, shall be confiscated: (1) evading government procurement by breaking up the procurement amount that should have been procured through open bidding or by any other means without authorization; (2) disclosing the pre-tender estimate without authorization; (3) colluding with a supplier or procurement agency in procurement; (4) seeking improper benefits in procurement by accepting bribes or obtaining other improper benefits; (5) falsifying procurement documents; (6) refusing to provide information and materials required for supervision and inspection by the relevant departments in accordance with the law; or (7) obstructing or rejecting supervision and inspection by the relevant departments in accordance with the law.

Article 47 — Where a procuring entity or procurement agency and its staff members commit any of the following acts and the case constitutes a crime, criminal liability shall be pursued in accordance with the law; where the case does not constitute a crime, a fine shall be imposed, the illegal gains, if any, shall be confiscated, and administrative sanctions shall be imposed on the directly responsible person in charge and other directly responsible persons: (1) colluding with a supplier or procurement agency in procurement; (2) seeking improper benefits in procurement by accepting bribes or obtaining other improper benefits; or (3) accepting a bribe from a supplier during the inspection of the performance of the procurement contract by the relevant department in accordance with the law.

Article 48 — Where a supplier commits any of the following acts, the winning bid or transaction result shall be invalid, and a fine of not less than 0.5 percent but not more than 1 percent of the procurement amount shall be imposed, and the supplier shall be disqualified from participating in government procurement activities for a period of one to three years, which shall be announced; 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 the law: (1) providing false materials to seek to win the bid or become the transaction party; (2) defaming or slandering other suppliers by improper means; (3) colluding with the procuring entity, other suppliers or procurement agency in procurement; (4) seeking to win the bid or become

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the transaction party by offering bribes to the procuring entity or procurement agency or providing other improper benefits; (5) engaging in bargaining and negotiation with the procuring entity without authorization during the procurement process; or (6) refusing the supervision and inspection by the relevant departments or providing false information. Where a supplier commits any of the illegal acts specified in items (1) through (5) of the preceding paragraph, the winning bid or transaction result shall be invalid.

Article 49 — Where a procurement agency commits any illegal act in the course of acting as an agent for government procurement, it shall be punished in accordance with the provisions of this Law. Where the circumstances are serious, its qualification to act as an agent for government procurement shall be revoked. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 50 — Where a staff member of the government procurement regulatory department commits illegal acts in the course of performing his or her duties such as engaging in malpractice for personal gain, abusing his or her power or neglecting his or her duties, he or she shall be subject to administrative sanctions in accordance with the law. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Chapter IX — Supplementary Provisions

Article 51 — The procurement of goods, construction works and services using international organizations' or foreign governments' loans or aid funds shall be governed by the provisions of this Law where the provider of the loans or funds has no different provisions on the specific conditions for procurement, provided that such provisions do not harm the national interest or the public interest.

Article 52 — Where military procurement regulations provide otherwise, such provisions shall prevail.

Article 53 — This Law shall not apply to the procurement of goods, construction works and services by state-owned enterprises and holding enterprises with controlling state-owned equity.

Article 54 — The specific steps and measures for implementing this Law shall be formulated by the State Council.

Article 55 — This Law shall come into force as of January 1, 2003. The amended text (2014 Amendment) shall come into force as of August 31, 2014.

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