

Law on Tenders and Bids of the PRC

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Chapter I — General Provisions

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

Article 2 — This Law shall apply to tenders and bids conducted within the territory of the People's Republic of China.

Article 3 — Tenders shall be invited for the following construction projects within the territory of the People's Republic of China, including the survey, design, construction, and supervision of such projects, as well as the procurement of major equipment and materials related to such projects:

- (1) Projects involving infrastructure and public utilities that have a bearing on the public interest or public safety;
- (2) Projects funded wholly or partially by state-owned funds, or financed by the state;
- (3) Projects involving the use of loans or aid funds from international organizations or foreign governments.

The specific scope and threshold amounts for the projects referred to in the preceding paragraph shall be prescribed by the State Council in conjunction with the relevant authorities under the State Council and submitted to the State Council for approval.

Where laws or administrative regulations of the State Council provide otherwise for the scope of other projects for which tenders must be invited, such provisions shall prevail.

Article 4 — No entity or individual shall fragment any project for which tenders must be invited in accordance with the law into smaller parts, or circumvent tenders by any other means.

Article 5 — Tenders and bids shall be conducted in accordance with the principles of openness, fairness, impartiality, and good faith.

Article 6 — Tenders and bids for projects for which tenders must be invited in accordance with the law shall not be subject to restrictions by regions or authorities. No entity or individual may unlawfully restrict or exclude legal persons or other organizations from outside the region or system from bidding, or interfere in tenders and bids by any means.

Article 7 — Tenders and bids and the parties involved shall accept supervision in accordance with the law. The relevant administrative supervision authorities shall supervise tenders and bids in accordance with the law and investigate and deal with illegal acts in tenders and bids.

The division of responsibilities for the supervision of tenders and bids and the specific measures shall be prescribed by the State Council.

Chapter II — Tenders

Article 8 — A tenderer is a legal person or other organization that proposes a project for which tenders must be invited and invites tenders in accordance with the provisions of this Law.

Article 9 — Where a tender must be invited for a project in accordance with the relevant provisions of the state and the project requires the approval of the relevant authority in accordance with the relevant provisions of the state, the project shall first obtain such approval.

A tenderer shall have the corresponding funds for the project for which a tender is invited, or the source of such funds shall have been confirmed, and this shall be truthfully stated in the tender documents.

Article 10 — Tenders are divided into open tenders and invitation tenders.

An open tender means that the tenderer invites unspecified legal persons or other organizations to bid by means of a tender announcement.

An invitation tender means that the tenderer invites specified legal persons or other organizations to bid by means of invitation to bid.

Article 11 — For key projects for which the state or a province, autonomous region, or municipality directly under the central government determines that the use of open tender is not suitable, invitation tender may be used upon approval by the development planning authority of the State Council or the people's government of the province, autonomous region, or municipality directly under the central government.

Article 12 — A tenderer shall have the right to choose a tendering agency on its own and entrust it with the handling of tender matters. No entity or individual may designate a tendering agency for a tenderer in any

manner.

Where a tenderer has the ability to prepare tender documents and organize bid evaluation, it may handle the tender matters on its own. No entity or individual may compel the tenderer to entrust a tendering agency with the handling of tender matters.

Where a tenderer that handles tender matters on its own for a project for which tenders must be invited in accordance with the law has handled the tender matters, it shall file a report with the relevant administrative supervision authority.

Article 13 — A tendering agency is a social intermediary organization established in accordance with the law, engaged in tendering agency business, and providing relevant services.

A tendering agency shall meet the following conditions:

- (1) Having a place of business and corresponding funds for engaging in tendering agency business;
- (2) Having the corresponding professional strength for preparing tender documents and organizing bid evaluation; and
- (3) Having a pool of experts in technology, economics, and other fields who meet the conditions prescribed in Article 37, paragraph 3 of this Law and who can serve as members of the bid evaluation committee.

Article 14 — The qualification accreditation of tendering agencies shall be prescribed by the State Council or the relevant authorities under the State Council.

Article 15 — A tendering agency shall handle tender matters within the scope of authorization of the tenderer and shall comply with the provisions of this Law concerning tenderers.

Article 16 — Where a tenderer adopts the open tender method, it shall publish a tender announcement. The tender announcement for a project for which tenders must be invited in accordance with the law shall be published through newspapers, periodicals, information networks, or other media designated by the state.

The tender announcement shall specify the name and address of the tenderer, the nature of the project for which the tender is invited, the quantity, place and time of implementation, and the means of obtaining the tender documents.

Article 17 — Where a tenderer adopts the invitation tender method, it shall send invitations to bid to three or more specified legal persons or other organizations that have the ability to undertake the project for which the tender is invited and have a good credit standing.

The invitations to bid shall specify the matters set forth in Article 16, paragraph 2 of this Law.

Article 18 — A tenderer may, based on the requirements of the project for which the tender is invited, require potential bidders to provide relevant qualification documents and performance information in the tender announcement or invitation to bid, and conduct qualification examination of potential bidders. Where the state provides otherwise for the qualifications of bidders, such provisions shall prevail.

A tenderer shall not restrict or exclude potential bidders by unreasonable conditions, nor shall it practice discriminatory treatment against potential bidders.

Article 19 — A tenderer shall prepare tender documents based on the characteristics and requirements of the project for which the tender is invited. The tender documents shall include the substantive requirements and conditions such as the technical requirements of the project for which the tender is invited, the criteria for qualification examination of bidders, the requirements for bid pricing, and the criteria for bid evaluation, as well as the main terms and conditions of the contract to be concluded.

Where the state provides otherwise for the technology and standards of the project for which the tender is invited, the tenderer shall state the corresponding requirements in the tender documents in accordance with

the provisions.

Where a project for which a tender must be invited requires the division of bid lots or determination of the construction period, the tenderer shall reasonably divide the bid lots and determine the construction period, and shall state this in the tender documents.

Article 20 — The tender documents shall not require or indicate specific producers or suppliers, nor contain other content that favors or is directed toward potential bidders.

Article 21 — A tenderer may, based on the specific circumstances of the project for which the tender is invited, organize potential bidders to visit the project site.

Article 22 — A tenderer shall not disclose to others the names and numbers of potential bidders that have obtained the tender documents, or other information relating to tenders and bids that may affect fair competition.

Where a tenderer has a base bid price, the base bid price shall be kept confidential.

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

Article 24 — A tenderer shall determine a reasonable period of time for bidders to prepare their bid documents. However, for projects for which tenders must be invited in accordance with the law, the period from the date of first issuance of the tender documents to the deadline for submission of bid documents by bidders shall be not less than 20 days.

Chapter III — Bids

Article 25 — A bidder is a legal person or other organization that responds to a tender and participates in the bidding competition.

Individuals may participate in the bidding for scientific research projects for which tenders are invited in accordance with the law, in addition to the provisions of the preceding paragraph.

Article 26 — A bidder shall have the ability to undertake the project for which the tender is invited. Where the state provides otherwise for the qualifications of bidders or the tender documents provide otherwise for 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 tender documents. The bid documents shall respond to the substantive requirements and conditions set forth in the tender documents.

Where a project for which a tender is invited is a construction project, the bid documents shall include the curriculum vitae and performance of the project manager and the main technical personnel to be assigned, and the main mechanical equipment to be used for completing the project for which the tender is invited.

Article 28 — A bidder shall deliver its bid documents to the place of submission of bids before the deadline for submission of bid documents specified in the tender documents. Upon receiving the bid documents, the tenderer shall sign for them and keep them properly, and shall not open them. Where there are fewer than three bidders, the tenderer shall invite tenders anew in accordance with this Law.

Bid documents delivered after the deadline for submission of bid documents specified in the tender documents shall be rejected by the tenderer and shall be returned.

Article 29 — Before the deadline for submission of bid documents specified in the tender documents, a bidder may supplement, modify, or withdraw its bid documents already delivered, and shall notify the

tenderer in writing. The supplemented or modified content shall be an integral part of the bid documents.

Article 30 — Where a bidder plans to subcontract part of the non-principal and non-key work of the successful bid project, it shall specify this in the bid documents.

Article 31 — Two or more legal persons or other organizations may form a consortium and bid as a single bidder.

All parties to a consortium shall each have the corresponding capacity to undertake the project for which the tender is invited. Where the state provides otherwise for the qualifications of bidders or the tender documents provide otherwise for the qualifications of bidders, all parties to the consortium shall each have the corresponding qualifications. A consortium composed of entities in the same profession shall be classified according to the qualification level of the party with the lowest qualification level.

All parties to a consortium shall enter into a consortium agreement, specifying the work and responsibilities to be undertaken by each party, and shall submit the consortium agreement together with the bid documents to the tenderer. If the consortium is awarded the bid, all parties to the consortium shall jointly enter into a contract with the tenderer and shall bear joint and several liability to the tenderer for the successful bid project.

A tenderer shall not compel bidders to form a consortium to bid together, nor shall it restrict competition among bidders.

Article 32 — No bidder may collude with another bidder on the bid price, nor may it exclude other bidders from fair competition or prejudice the lawful rights and interests of the tenderer or other bidders.

No bidder may collude with the tenderer in bidding, nor may it prejudice the interests of the state, the public interest, or the lawful rights and interests of others.

Bidders shall be prohibited from seeking to be awarded the bid by offering bribes to the tenderer or members of the bid evaluation committee.

Article 33 — No bidder may bid for a project at a price below cost, nor may it bid in the name of another person or resort to fraud in any other manner to deceive the tenderer into awarding the bid.

Chapter IV — Bid Opening, Evaluation and Award

Article 34 — Bid opening shall take place publicly at the time specified in the tender documents and at the place designated in advance in the tender documents.

Article 35 — Bid opening shall be presided over by the tenderer, and all bidders shall be invited to participate.

Article 36 — At bid opening, the bidders or their chosen representatives shall check the sealing of the bid documents, and such sealing may also be checked by a notary public entrusted by the tenderer. After confirmation that the sealing is correct, the staff shall open the bid documents in public and read out the names of the bidders, the bid prices, and other main contents of the bid documents.

All bid documents received by the tenderer before the deadline for submission of bid documents specified in the tender documents shall be opened in public and read out at the time of bid opening.

The tenderer shall record the bid opening process, and such record shall be filed for future reference.

Article 37 — The bid evaluation shall be the responsibility of a bid evaluation committee established by the tenderer in accordance with the law.

For projects for which tenders must be invited in accordance with the law, the bid evaluation committee shall be composed of representatives of the tenderer and experts in technology, economics, and other relevant fields. The number of members shall be an odd number of five or more, of which experts in technology,

economics, and other fields shall be not less than two-thirds of the total number of members.

The experts referred to in the preceding paragraph shall have been engaged in work in the relevant field for at least eight years and shall have senior professional titles or equivalent professional level. The experts shall be selected from the list of experts established by the relevant authorities of the State Council or the relevant authorities of the people's governments of provinces, autonomous regions, and municipalities directly under the central government. For projects for which bids may be evaluated by tenderers on their own, the selection of bid evaluation committee members may be carried out by means of random selection from the list of experts. No person who has an interest in a bidder shall enter the bid evaluation committee for the relevant project. After the members of the bid evaluation committee are determined, the list of such members shall be kept confidential until the result of the bid award is determined.

Article 38 — A tenderer shall adopt necessary measures to ensure that bid evaluation is conducted in a strictly confidential manner.

No entity or individual may unlawfully interfere with or influence the bid evaluation process and results.

Article 39 — Where necessary, the bid evaluation committee may require a bidder to clarify or explain any ambiguous or unclear content in its bid documents, but the clarification or explanation 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 and compare the bid documents in accordance with the bid evaluation criteria and methods specified in the tender documents. Where a base bid price is set, it shall be used as a reference. After the bid evaluation committee completes its evaluation, it shall submit a written bid evaluation report to the tenderer and recommend one to three qualified candidates for the successful bidder.

The tenderer shall, based on the written bid evaluation report submitted by the bid evaluation committee and the recommended candidates for the successful bidder, determine the successful bidder. The tenderer may also authorize the bid evaluation committee to directly determine the successful bidder.

Where the state provides otherwise for the determination of the successful bidder for specific projects for which tenders must be invited, such provisions shall prevail.

Article 41 — The bid of a successful bidder shall meet one of the following conditions to the maximum extent:

- (1) It can satisfy the comprehensive evaluation criteria specified in the tender documents to the maximum extent; or
- (2) It can satisfy the substantive requirements of the tender documents and the bid price evaluated is the lowest, except where the bid price is below cost.

Article 42 — Where the bid evaluation committee, upon evaluation, considers that all bids do not meet the requirements of the tender documents, it may reject all bids.

Where all bids for a project for which tenders must be invited in accordance with the law are rejected, the tenderer shall invite tenders anew in accordance with this Law.

Article 43 — Before the successful bidder is determined, the tenderer shall not negotiate with a bidder on substantive matters such as the bid price and the bid scheme.

Article 44 — Members of the bid evaluation committee shall objectively and impartially perform their duties, abide by professional ethics, and bear personal responsibility for the evaluation opinions they submit.

No member of the bid evaluation committee shall make contact with any bidder privately, nor shall he or she accept property or other benefits from a bidder.

No member of the bid evaluation committee, nor any staff member involved in bid evaluation, shall disclose information relating to the evaluation and comparison of bid documents, the recommendation of candidates for the successful bidder, or other information relating to bid evaluation.

Article 45 — After the successful bidder is determined, the tenderer shall issue a bid award notice to the successful bidder and shall simultaneously notify all unsuccessful bidders of the bid award result.

The bid award notice shall have legal effect on both the tenderer and the successful bidder. After the bid award notice is issued, if the tenderer changes the bid award result or the successful bidder abandons the successful bid project, each shall bear legal liability in accordance with the law.

Article 46 — The tenderer and the successful bidder shall, within 30 days from the date of issuance of the bid award notice, enter into a written contract in accordance with the tender documents and the bid documents of the successful bidder. The tenderer and the successful bidder shall not enter into any other agreement that deviates from the substantive content of the contract.

Where the tender documents require the successful bidder to provide a performance bond, the successful bidder shall provide such bond.

Article 47 — For a project for which tenders must be invited in accordance with the law, the tenderer shall, within 15 days from the date of determination of the successful bidder, submit a written report on the tenders and bids to the relevant administrative supervision authority.

Article 48 — The successful bidder shall perform its obligations under the contract in accordance with the contract and complete the successful bid project. The successful bidder shall not transfer the successful bid project to another person, nor shall it fragment the successful bid project and transfer the fragmented parts to another person.

The successful bidder may, in accordance with the contract or with the consent of the tenderer, subcontract part of the non-principal and non-key work of the successful bid project to another person for completion. The subcontractor shall have the corresponding qualifications and shall not subcontract the work again.

The successful bidder shall be responsible to the tenderer for the subcontracted project, and the subcontractor shall bear joint and several liability with the successful bidder for the subcontracted project.

Chapter V — Legal Liability

Article 49 — Where a tenderer, in violation of the provisions of this Law, fails to invite tenders for a project for which tenders must be invited, or fragments the project into smaller parts or circumvents tenders by any other means, it shall be ordered to make corrections within a prescribed 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. Where the project is one for which construction has been fully or partially completed, the construction may be suspended and relevant personnel shall be given sanctions in accordance with the law.

Article 50 — Where a tendering agency, in violation of the provisions of this Law, divulges information relating to tenders and bids that should be kept confidential, or colludes with a tenderer or bidder to prejudice the interests of the state, the public interest, or the lawful rights and interests of others, it shall be fined not less than 50,000 yuan but not more than 250,000 yuan. The directly responsible person in charge and other directly responsible persons of the entity shall be fined not less than 5 percent but not more than 10 percent of the fine imposed on the entity. The illegal gains, if any, shall be confiscated. Where the circumstances are serious, its qualification for tendering agency shall be suspended or revoked. Where a crime is constituted, criminal liability shall be investigated in accordance with the law. Where losses are caused to another person, it shall bear liability for compensation in accordance with the law.

Article 51 — Where a tenderer restricts or excludes potential bidders by unreasonable conditions, practices discriminatory treatment against potential bidders, compels bidders to form a consortium to bid together, or

restricts competition among bidders, it shall be ordered to make corrections and may be fined not less than 10,000 yuan but not more than 50,000 yuan.

Article 52 — Where a tenderer for a project for which tenders must be invited in accordance with the law discloses to another person the names or numbers of potential bidders that have obtained the tender documents, or other information relating to tenders and bids that may affect fair competition, or divulges the base bid price, it shall be given a warning and may be fined not less than 10,000 yuan but not more than 100,000 yuan. The directly responsible person in charge and other directly responsible persons of the entity shall be given sanctions in accordance with the law. Where a crime is constituted, criminal liability shall be investigated in accordance with the law.

Where an act listed in the preceding paragraph affects the bid award result, the bid award shall be invalid.

Article 53 — Where a bidder colludes with another bidder or with the tenderer in bidding, or seeks to be awarded the bid by offering bribes to the tenderer or members of the bid evaluation committee, the bid award shall be invalid. The bidder shall be fined not less than 0.5 percent but not more than 1 percent of the successful bid project amount. The directly responsible person in charge and other directly responsible persons of the entity shall be fined not less than 5 percent but not more than 10 percent of the fine imposed on the entity. The illegal gains, if any, shall be confiscated. Where the circumstances are serious, its business license shall be revoked if it has obtained the bid award for a project for which tenders must be invited in accordance with the law within one to two years. In the case of bribery, its qualification to participate in bidding for other projects for which tenders must be invited in accordance with the law shall be cancelled within one to two years. An announcement shall be made in such case. Where a crime is constituted, criminal liability shall be investigated in accordance with the law. Where losses are caused to another person, it shall bear liability for compensation in accordance with the law.

Article 54 — Where a bidder bids in the name of another person or resorts to fraud in any other manner to deceive the tenderer into awarding the bid, the bid award shall be invalid. Where losses are caused to the tenderer, it shall bear liability for compensation in accordance with the law. Where a crime is constituted, criminal liability shall be investigated in accordance with the law.

Where a bidder for a project for which tenders must be invited in accordance with the law commits an act listed in the preceding paragraph and the act has not yet constituted a crime, it shall be fined not less than 0.5 percent but not more than 1 percent of the successful bid project amount. The directly responsible person in charge and other directly responsible persons of the entity shall be fined not less than 5 percent but not more than 10 percent of the fine imposed on the entity. The illegal gains, if any, shall be confiscated. Where the circumstances are serious, its qualification to participate in bidding for projects for which tenders must be invited in accordance with the law shall be cancelled within one to three years and an announcement shall be made. Its business license shall be revoked by the administrative authority for industry and commerce.

Article 55 — Where a tenderer for a project for which tenders must be invited in accordance with the law, in violation of the provisions of this Law, negotiates with a bidder on substantive matters such as the bid price and the bid scheme, it shall be given a warning, and the directly responsible person in charge and other directly responsible persons of the entity shall be given sanctions in accordance with the law.

Where an act listed in the preceding paragraph affects the bid award result, the bid award shall be invalid.

Article 56 — Where a member of a bid evaluation committee accepts property or other benefits from a bidder, or where a member of a bid evaluation committee or a staff member involved in bid evaluation discloses information relating to the evaluation and comparison of bid documents, the recommendation of candidates for the successful bidder, or other information relating to bid evaluation, he or she shall be given a warning and his or her property or other benefits illegally accepted shall be confiscated, and he or she may be concurrently fined not less than 3,000 yuan but not more than 50,000 yuan. A member of a bid evaluation

committee who commits an act listed in the preceding paragraph shall be disqualified from serving on a bid evaluation committee and shall not participate in the bid evaluation of any project for which tenders must be invited in accordance with the law. Where a crime is constituted, criminal liability shall be investigated in accordance with the law.

Article 57 — Where a tenderer determines the successful bidder from among persons other than the candidates for the successful bidder recommended by the bid evaluation committee, or where all bids for a project for which tenders must be invited in accordance with the law are rejected by the bid evaluation committee and the tenderer determines the successful bidder on its own, the bid award shall be invalid. The tenderer shall be ordered to make corrections and may be fined not less than 0.5 percent but not more than 1 percent of the successful bid project amount. The directly responsible person in charge and other directly responsible persons of the entity shall be given sanctions in accordance with the law.

Article 58 — Where a successful bidder transfers the successful bid project to another person, fragments the successful bid project and transfers it to another person, or subcontracts part of the successful bid project to another person in violation of the provisions of this Law, the transfer or subcontract shall be invalid, and the successful bidder shall be fined not less than 0.5 percent but not more than 1 percent of the amount of the transferred or subcontracted project. The illegal gains, if any, shall be confiscated. The successful bidder may be ordered to suspend business for rectification. Where the circumstances are serious, its business license shall be revoked by the administrative authority for industry and commerce.

Article 59 — Where a tenderer and a successful bidder fail to enter into a contract in accordance with the tender documents and the bid documents, or where the tenderer and the successful bidder enter into an agreement that deviates from the substantive content of the contract, they shall be ordered to make corrections and may be fined not less than 0.5 percent but not more than 1 percent of the successful bid project amount.

Article 60 — Where a successful bidder fails to perform its obligations under the contract concluded with the tenderer and the circumstances are serious, its qualification to participate in bidding for projects for which tenders must be invited in accordance with the law shall be cancelled within two to five years and an announcement shall be made. Its business license shall be revoked by the administrative authority for industry and commerce.

Where the performance bond is not returned due to force majeure, the provisions of the preceding paragraph shall not apply.

Article 61 — The administrative penalties provided for in this Chapter shall be decided by the relevant administrative supervision authorities prescribed by the State Council. This shall not apply where the State Council has prescribed the authorities to make such decisions.

Article 62 — Any entity that restricts or excludes legal persons or other organizations from outside the region or system from bidding in violation of the provisions of this Law, designates a tendering agency for a tenderer, compels a tenderer to entrust a tendering agency with the handling of tender matters, or interferes in tenders and bids by any other means, shall be ordered to make corrections. The directly responsible person in charge and other directly responsible persons of the entity shall be given warnings, demerits, or major demerits in accordance with the law. Where the circumstances are serious, they shall be given sanctions of demotion, removal from office, or dismissal in accordance with the law.

Article 63 — Where a staff member of a state organ engaged in the supervision of tenders and bids engages in malpractice for personal gain, abuses his or her authority, or neglects his or her duties, and the case constitutes a crime, criminal liability shall be investigated in accordance with the law. Where the case does not constitute a crime, administrative sanctions shall be imposed in accordance with the law.

Article 64 — Where a bid award is invalid due to a violation of the provisions of this Law affecting the bid award result, the tenderer shall select a successful bidder from among the remaining candidates for the successful bidder recommended by the bid evaluation committee, or invite tenders anew in accordance with this Law.

Chapter VI — Supplementary Provisions

Article 65 — Where a bidder or any other interested party considers that a tender or bid does not comply with the provisions of this Law, it shall have the right to raise an objection to the tenderer or lodge a complaint with the relevant administrative supervision authority in accordance with the law.

Article 66 — Where special circumstances such as state security, state secrets, emergency relief and disaster relief, or poverty alleviation with the use of work-for-relief funds are involved, and it is not suitable for tenders to be invited, tenders may not be invited in accordance with the relevant provisions of the state.

Article 67 — Where tenders and bids involving the use of loans or aid funds from international organizations or foreign governments are involved and the lender or the provider of funds has provided otherwise for the specific conditions for tenders and bids, such provisions may be applied, provided that the public interest of the state is not prejudiced.

Article 68 — This Law shall come into force on January 1, 2000.

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