Regulations on the Implementation of the Government Procurement Law of the PRC

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Adopted at the 75th Executive Meeting of the State Council on December 31, 2014
Promulgated by Decree No. 658 of the State Council of the People's Republic of China on January 30, 2015
Effective: March 1, 2015

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Chapter I — General Provisions

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Article 1 — These Regulations are formulated in accordance with the Government Procurement Law of the People's Republic of China.

Article 2 — The term "government procurement" as used in the Government Procurement Law and these Regulations refers to the procurement of goods, construction works, and services within the centralized procurement catalogue formulated in accordance with law, or where the procurement value exceeds the prescribed procurement thresholds, by state organs, public institutions, and public organizations at various levels using government funds.

Article 3 — "Goods" as used in the Government Procurement Law refers to articles in various forms and types, including raw materials, fuel, equipment, and products. "Construction works" refers to construction projects, including new construction, renovation, expansion, demolition, and repair of buildings and structures. "Services" refers to subjects of government procurement other than goods and construction works.

Article 4 — The fiscal departments of the people's governments at or above the county level shall, in accordance with law, perform their duties of supervision and administration of government procurement activities. Relevant government departments shall, in accordance with law, perform their duties of supervision and administration of government procurement activities related to their respective supervisory and administrative functions.

Article 5 — Government procurement projects shall be subject to budget management. Procuring entities shall prepare government procurement budgets in accordance with the relevant regulations and standards and submit them for approval.

Article 6 — The departments responsible for formulating government procurement catalogues or procurement threshold limits under the State Council and under the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government shall formulate such catalogues and limits in accordance with law and make them public.

Article 7 — Government procurement shall strictly follow the approved budgets. No government procurement may be conducted for projects that are not listed in the government procurement budget or for projects whose procurement value exceeds the approved budget, unless otherwise provided for by the state.

Chapter II — Parties to Government Procurement

Article 8 — A procuring entity shall establish and improve its internal government procurement management system and clarify the division of responsibilities for government procurement within the entity. Where a procuring entity entrusts a procurement agency with the handling of procurement, it shall enter into an entrustment agreement with the procurement agency. The entrustment agreement shall clearly specify the matters entrusted and the rights and obligations of both parties.

Article 9 — A centralized procurement institution shall establish and improve its internal supervision and management system, improve the professional level and overall quality of its procurement staff, allocate procurement posts in a scientific and rational manner, and implement a system of periodic job rotation for procurement personnel.

Article 10 — A centralized procurement institution shall, in accordance with the entrustment of the procuring entity, organize and carry out procurement activities within the scope of the entrustment, and may not transfer the procurement activities it has undertaken to another party. Where a centralized procurement institution, due to a shortage of procurement staff, finds it difficult to complete the entrusted procurement tasks within the prescribed timeframe, it may, with the consent of the procuring entity, entrust other procurement agencies to handle part of the procurement activities, but the primary responsibility shall remain with the centralized procurement institution.

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Article 11 — A procuring entity shall not discriminate against suppliers on unreasonable grounds. No unit or individual may, through any means, designate suppliers for procuring entities or adopt any other means to interfere with government procurement activities.

Article 12 — Suppliers shall, in accordance with the provisions of the Government Procurement Law and these Regulations, participate in government procurement activities. Where a supplier participates in government procurement activities, it shall have the capacity to independently bear civil liability, a good business reputation, a sound financial and accounting system, the equipment and professional technical capabilities necessary for performing the contract, a good record of paying taxes and social insurance funds in accordance with law, and no record of major violations of law in its business activities within the three years preceding its participation in government procurement activities.

Article 13 — Where a procuring entity discovers during the procurement process that a supplier falls under any of the circumstances where it is prohibited from participating in government procurement activities as provided for in the Government Procurement Law, it shall report to the relevant fiscal department for handling.

Article 14 — In government procurement activities, a procuring entity shall, in accordance with the provisions of the Government Procurement Law and these Regulations, disclose government procurement information on the media designated by the fiscal departments of the people's governments at or above the provincial level, including procurement project announcements, procurement documents, procurement project budget amounts, procurement results, and other information.

Chapter III — Methods of Government Procurement

Article 15 — Public invitation to tender shall be the primary method for government procurement. Where a procuring entity needs to adopt a procurement method other than public invitation to tender, it shall obtain approval from the fiscal department of the people's government at or above the level of a city divided into districts or of an autonomous prefecture before the procurement activities commence.

Article 16 — Where the goods or services to be procured have special characteristics and can only be procured from a limited range of suppliers, invitation to tender may be adopted. Invitation to tender shall involve the procuring entity issuing invitations to tender to three or more qualified suppliers in accordance with law.

Article 17 — Competitive negotiation may be adopted under any of the following circumstances: (1) no supplier submits a bid, or no bid meets the qualification requirements, or the number of qualified suppliers is less than three after public invitation to tender; (2) the goods or services are of a special nature and the detailed specifications or specific requirements cannot be determined; (3) where the time required for adopting public invitation to tender cannot meet the urgent needs of the procuring entity; or (4) the total price of the procurement project cannot be calculated in advance.

Article 18 — Single-source procurement may be adopted under any of the following circumstances: (1) the goods or services can only be procured from a single supplier; (2) unforeseen emergencies make it impossible to procure from other suppliers; or (3) consistency or matching of services requires continued procurement from the original supplier, and the total amount of the additional procurement does not exceed 10% of the original contract amount.

Article 19 — Inquiry-based procurement may be adopted where the specifications and standards of the goods to be procured are uniform, the supply of goods on the spot is sufficient, and price fluctuations are minimal.

Chapter IV — Government Procurement Procedures

Article 20 — A procuring entity or a procurement agency shall prepare procurement documents in accordance with the characteristics and needs of the procurement project. Procurement documents shall include the procurement project budget, procurement requirements, qualification requirements of suppliers, bid or response document preparation requirements, bid submission requirements, bid evaluation methods and criteria, and the main terms of the proposed contract.

Article 21 — Bid evaluation methods shall be divided into the lowest bid price method and the comprehensive scoring method. The lowest bid price method means that the bid or response documents of suppliers that satisfy all substantive requirements of the procurement documents shall be ranked according to their offered prices, and the supplier with the lowest bid price shall be designated as the winning supplier. The comprehensive scoring method means that the bid or response documents of suppliers that satisfy all substantive requirements of the procurement documents shall be scored according to the evaluation criteria specified in the procurement documents, and the supplier with the highest overall score shall be designated as the winning supplier.

Article 22 — Procurement documents shall not contain unreasonable conditions that discriminate against or exclude specific suppliers, or that restrict fair competition among suppliers through unreasonable qualification requirements or technical specifications.

Article 23 — Where a procuring entity or procurement agency needs to make clarifications or modifications to the procurement documents that have been issued, it shall notify all suppliers that have obtained the procurement documents in writing within the prescribed time limit.

Article 24 — A bid evaluation committee shall be composed of representatives of the procuring entity and experts in the evaluation of bids. The number of expert members shall not be less than two-thirds of the total membership of the bid evaluation committee. Members of the bid evaluation committee shall perform their duties objectively, impartially, and prudently, and shall comply with professional ethics.

Article 25 — The procuring entity shall, within two working days after the winning or transaction supplier is determined, issue an announcement of the winning bid or transaction result on the designated media. The content of the announcement shall include the list of members of the bid evaluation committee.

Article 26 — Within five working days after the announcement of the winning bid or transaction result, the procuring entity or the procurement agency shall issue a notice of winning bid or transaction result to the winning or transaction supplier. The notice of winning bid or transaction result shall be legally binding on both the procuring entity and the winning or transaction supplier.

Chapter V — Government Procurement Contracts

Article 27 — The procuring entity and the winning or transaction supplier shall, within 30 days from the date of issuance of the notice of winning bid or transaction result, enter into a government procurement contract in accordance with the procurement documents. The procurement contract concluded shall be in writing.

Article 28 — The procuring entity shall, within two working days from the date when the government procurement contract is concluded, make an announcement of the government procurement contract on the media designated by the fiscal departments of the people's governments at or above the provincial level, except where state secrets or commercial secrets are involved.

Article 29 — Where a government procurement contract needs to be modified, supplemented, or terminated in the course of performance, the procuring entity shall report to the fiscal department for the record.

Article 30 — A procuring entity shall organize acceptance inspection of the procured goods, construction works, and services in accordance with the government procurement contract. The acceptance inspection report shall serve as a necessary document for applying for payment of procurement funds. Where a government procurement contract has a large amount or involves complex technology, the procuring entity

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shall invite experts or testing institutions recognized by the state to participate in the acceptance inspection.

Article 31 — A procuring entity shall, in accordance with the procurement contract, make timely payment of procurement funds to the winning or transaction supplier. Where the procuring entity fails to make payment within the prescribed time limit without just cause, it shall pay liquidated damages as agreed in the contract.

Chapter VI — Inquiries and Complaints

Article 32 — Where a supplier has inquiries regarding government procurement activities, it may raise them with the procuring entity or the procurement agency, and the procuring entity or procurement agency shall respond within three working days. Where a supplier believes that the procurement documents, the procurement process, or the winning bid or transaction result has harmed its own rights and interests, it may raise a written inquiry with the procuring entity or procurement agency within seven working days from the date it knew or should have known that its rights and interests were harmed.

Article 33 — Where a supplier is dissatisfied with the response of the procuring entity or the procurement agency, or the procuring entity or procurement agency fails to respond within the prescribed time limit, the supplier may lodge a complaint with the fiscal department at the same level within 15 working days after the expiration of the time limit for the response.

Article 34 — The fiscal department shall, within 30 working days from the date of accepting a complaint, make a decision on the complaint and notify the complainant and the parties involved in the complaint in writing. Where the fiscal department needs to conduct inspections, evaluations, or expert appraisals in handling the complaint, the time required for such inspections, evaluations, or expert appraisals shall not be counted in the time limit for handling the complaint.

Article 35 — Where a supplier is dissatisfied with the decision of the fiscal department, or the fiscal department fails to handle the complaint within the prescribed time limit, the supplier may apply for administrative reconsideration or bring an administrative lawsuit in accordance with law.

Chapter VII — Supervision and Inspection

Article 36 — Fiscal departments shall strengthen supervision and inspection of government procurement activities and the performance of duties by centralized procurement institutions. Fiscal departments shall conduct regular assessments of the performance of duties by centralized procurement institutions; the results of such assessments shall be made public.

Article 37 — Audit organs and supervisory organs shall strengthen supervision over government procurement in accordance with law. No unit or individual may refuse or obstruct supervision and inspection conducted by relevant departments in accordance with law.

Article 38 — Fiscal departments shall establish and improve a government procurement information disclosure mechanism and a government procurement credit management system, and strengthen supervision and management of government procurement activities.

Chapter VIII — Legal Liability

Article 39 — Where a procuring entity or procurement agency falls under any of the following circumstances, the fiscal department shall order rectification within a prescribed time limit, give a warning, and may concurrently impose a fine; administrative sanctions shall be imposed on the directly responsible person in charge and other directly responsible persons in accordance with law: (1) failing to adopt the procurement method in accordance with the provisions of the Government Procurement Law and these Regulations; (2) disclosing procurement information in a manner not in accordance with the provisions; (3) discriminating against or treating suppliers with unreasonable conditions; or (4) other circumstances as provided for by law.

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Article 40 — Where a supplier falls under any of the following circumstances, the winning bid or transaction result shall be invalid, and the supplier shall be fined, included in the list of records of bad conduct, and prohibited from participating in government procurement activities for one to three years: (1) providing false materials to seek the winning bid or transaction; (2) resorting to unfair means to discredit or exclude other suppliers; (3) colluding with the procuring entity, other suppliers, or the procurement agency; (4) offering bribes to the procuring entity or procurement agency or providing other improper benefits; or (5) negotiating with the procuring entity on matters such as the procurement price and procurement plan during the procurement process.

Article 41 — Where a member of a bid evaluation committee commits any violation of law, the fiscal department shall issue a warning, confiscate illegal income, and impose a fine; if the circumstances are serious, the person shall be disqualified from serving on government procurement bid evaluation committees; if the case constitutes a crime, criminal liability shall be pursued in accordance with law.

Article 42 — Where a functionary of a fiscal department abuses his or her power, neglects his or her duties, or engages in malpractice for personal gain in the performance of government procurement supervision and administration duties, administrative sanctions shall be imposed in accordance with law; if the case constitutes a crime, criminal liability shall be pursued in accordance with law.

Chapter IX — Supplementary Provisions

Article 43 — Government procurement activities of state organs, public institutions, and public organizations that use international organizations' or foreign governments' loans or grants may be conducted in accordance with the relevant provisions of the loan or grant agreements, provided that the interests of the state and the public interest are not harmed.

Article 44 — These Regulations shall apply, mutatis mutandis, to procurement activities using government funds that are conducted by enterprises and other organizations other than state organs, public institutions, and public organizations as provided for in the Government Procurement Law.

Article 45 — These Regulations shall enter into force on March 1, 2015.

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