Tender and Bidding Law of the PRC

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Chapter I — General Provisions

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

Article 2 — This Law applies to tender and bidding activities conducted within the territory of the People's Republic of China.

Article 3 — Tender and bidding procedures shall be followed for the following construction projects within the territory of the People's Republic of China, including the survey, design, construction, supervision of the project, and the procurement of key equipment and materials related to the construction of the project: (1) large-scale infrastructure and public utility projects that involve the public interest and public safety; (2) projects funded wholly or partly by state-owned capital or financed by the state; and (3) projects funded by international organizations or foreign government loans or aid funds. The specific scope and threshold

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standards for the projects specified in the preceding paragraph shall be formulated by the State Council development and reform department in conjunction with the relevant departments of the State Council and submitted to the State Council for approval. Where laws or the State Council provide otherwise for the scope of projects that must be subject to tender and bidding, such provisions shall prevail.

Article 4 — No entity or individual may break up into parts any project that is legally required to be subject to tender and bidding, or circumvent the tender and bidding requirement by any other means.

Article 5 — Tender and bidding activities shall comply with the principles of openness, fairness, impartiality, and good faith.

Article 6 — For projects that are legally required to be subject to tender and bidding, their tender and bidding activities shall not be subject to any regional or departmental restrictions. No entity or individual may illegally restrict or exclude legal persons or other organizations from outside the region or system from participating in bidding, or interfere in tender and bidding activities in any other manner.

Article 7 — Tender and bidding activities and the parties involved shall be subject to supervision in accordance with the law. The relevant administrative supervision departments shall exercise supervision over tender and bidding activities in accordance with the law and investigate and deal with illegal acts in tender and bidding activities. The State Council shall provide for the division of administrative supervision responsibilities for tender and bidding activities among the relevant administrative supervision departments. The relevant departments of local people's governments at or above the county level shall, in accordance with the division of responsibilities prescribed by the State Council, exercise supervision over tender and bidding activities.

Chapter II — Tender

Article 8 — A tenderer is a legal person or other organization that proposes a construction project subject to tender and conducts the tender in accordance with this Law.

Article 9 — Where a tenderer, in accordance with the relevant provisions of the state, needs to fulfill the project examination and approval procedures for a project subject to tender, the project shall first fulfill the examination and approval procedures and obtain approval. A tenderer shall have the corresponding funds for the project subject to tender or the sources of funds have been confirmed, and shall truthfully specify the same in the tender documents.

Article 10 — Tenders shall be classified as 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, by means of a letter of invitation to tender, invites three or more specific legal persons or other organizations with the capability and good reputation to undertake the project subject to tender to bid.

Article 11 — The State Council development and reform department shall determine the key national construction projects and the local key construction projects of the provinces, autonomous regions, and municipalities directly under the central government that are not suitable for open tender, and such projects may be tendered by invitation upon approval by the State Council development and reform department 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 tender agency on its own and entrust it with the handling of tender matters. No entity or individual may designate a tender agency for a tenderer in any manner. Where a tenderer is capable of preparing tender documents and organizing bid evaluation on its own, it may handle the tender matters on its own. No entity or individual may compel a tenderer to entrust a tender agency with the handling of tender matters. Where a tenderer handles tender matters on its own for a

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project that is legally required to be subject to tender, it shall register with the relevant administrative supervision department.

Article 13 — A tender agency is a social intermediary organization established in accordance with the law to engage in tender agency business and provide relevant services. A tender agency shall meet the following conditions: (1) having the business premises and corresponding funds suitable for the tender agency business it undertakes; (2) having the corresponding professional capabilities to prepare tender documents and organize bid evaluation; and (3) having a pool of technical and economic experts that meet the conditions for a bid evaluation expert committee as specified in Article 37, paragraph 3 of this Law.

Article 14 — The recognition of the qualifications of a tender agency engaged in the agency business for construction project tenders shall be administered by the State Council or the construction administrative departments of the people's governments of provinces, autonomous regions, and municipalities directly under the central government. The specific measures shall be formulated by the State Council construction administrative department in conjunction with the relevant departments of the State Council. No administrative department in charge of the recognition of the qualifications of tender agencies shall have any administrative affiliation or other interest relationship with any tender agency.

Article 15 — A tender agency shall handle tender matters within the scope authorized by the tenderer and shall comply with the provisions of this Law on tenderers.

Article 16 — Where a tenderer adopts an open tender, it shall issue a tender announcement. The tender announcement for a project that is legally required to be subject to tender 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, quantity, place of implementation, and time of the project subject to tender, the means of obtaining the tender documents, and other matters.

Article 17 — Where a tenderer adopts an invitation tender, it shall issue a letter of invitation to tender to three or more specific legal persons or other organizations with the capability and reputation to undertake the project subject to tender. The letter of invitation to tender shall specify the matters set out in Article 16, paragraph 2 of this Law.

Article 18 — A tenderer may, in light of the specific requirements of the project subject to tender, require potential bidders to provide relevant qualification certificates and performance records in the tender announcement or letter of invitation to tender, and examine the qualifications of potential bidders; where the state has provisions on the qualifications of bidders, such provisions shall apply. No tenderer may restrict or exclude potential bidders by imposing unreasonable conditions, nor may it discriminate against potential bidders.

Article 19 — A tenderer shall prepare tender documents in accordance with the characteristics and needs of the project subject to tender. The tender documents shall include all substantive requirements such as the technical specifications for the project subject to tender, the standards for examining the qualifications of bidders, the requirements for bidding quotations, and the criteria for bid evaluation, as well as the main terms of the contract to be concluded. Where the state has provisions on the technology and standards for the project subject to tender, the tenderer shall, in accordance with those provisions, set out the corresponding requirements in the tender documents. Where a construction project subject to tender requires division into bid lots or stipulates a construction period, the tenderer shall reasonably divide bid lots and determine the construction period, and shall specify the same in the tender documents.

Article 20 — The tender documents shall not require or specify a specific manufacturer or supplier, nor shall they contain any other content that tends to favor or exclude potential bidders.

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Article 21 — A tenderer may, according to the specific circumstances of the project subject to tender, organize potential bidders to inspect 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, as well as other information relating to tender and bidding activities that may affect fair competition. Where a tenderer has a pre-tender estimate price, the pre-tender estimate price shall be kept confidential.

Article 23 — Where it is necessary for a tenderer to clarify or modify the tender documents already issued, the tenderer 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 clarification or modification shall become an integral part of the tender documents.

Article 24 — A tenderer shall determine the reasonable time needed by bidders to prepare bid documents; however, the minimum period from the date the tender documents are first issued to the deadline for submission of bid documents by bidders shall not be less than 20 days.

Chapter III — Bidding

Article 25 — A bidder is a legal person or other organization that responds to a tender and participates in the bidding competition. Where a scientific research project subject to tender in accordance with the law allows an individual to participate in the bidding, the bidding by individuals shall be governed by the provisions of this Law on bidders.

Article 26 — A bidder shall have the capability to undertake the project subject to tender; where the state has relevant provisions or the tender documents set out qualification requirements for bidders, the bidder shall have the corresponding 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 out in the tender documents. Where a construction project subject to tender is a construction project, the content of the bid documents shall include the resume and performance of the project manager and key technical personnel to be assigned, and the machinery and equipment to be used in the project subject to tender.

Article 28 — A bidder shall deliver its bid documents to the place where the bids are to be submitted before the deadline for submission of bid documents specified in the tender documents. Upon receiving the bid documents, the tenderer shall sign for receipt and keep them, and shall not open them. A bidder may supplement, modify, or withdraw its bid documents already delivered before the deadline for submission of bid documents, and shall notify the tenderer in writing. The supplementary and modified content shall become an integral part of the bid documents.

Article 29 — Where a bidder, after submitting its bid documents, intends to subcontract part of the non-major and non-key work of the successful bid project, it shall specify the same in its bid documents.

Article 30 — Where two or more legal persons or other organizations may form a consortium to bid as one bidder. Each party to the consortium shall have the corresponding capability to undertake the project subject to tender; where the state has relevant provisions or the tender documents set out qualification requirements for bidders, each party to the consortium shall have the corresponding qualifications. A consortium comprising entities of the same profession shall be graded according to the entity with the lowest qualification level. Each party to the consortium shall execute a consortium agreement specifying the work and responsibilities to be undertaken by each party, and shall submit the consortium agreement to the tenderer together with the bid documents. Where a consortium wins the bid, each party to the consortium shall jointly execute 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 for joint bidding, nor

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shall it restrict competition among bidders.

Article 31 — Bidders shall not collude with each other in bidding quotations, nor shall they exclude other bidders from fair competition, thereby harming the lawful rights and interests of the tenderer or other bidders. Bidders and tenderers shall not collude in bidding, thereby harming the interests of the state, the public interest, or the lawful rights and interests of others. Bidders shall be prohibited from obtaining the bid by offering bribes to the tenderer or members of the bid evaluation committee. Bidders shall not bid at a price below cost, nor shall they bid in the name of another person or use any other means to obtain the bid by fraud.

Chapter IV — Bid Opening, Evaluation and Award

Article 32 — The bid opening shall take place publicly at the time and place specified in the tender documents at the same time as the deadline for submission of bid documents, and the bid opening shall be presided over by the tenderer, who shall invite all bidders to participate.

Article 33 — At the bid opening, the bidders or their elected representatives shall check the sealing of the bid documents, and the tenderer may also entrust a notary public to inspect and notarize the sealing of the bid documents; upon confirmation that the bid documents are in order, the staff shall open the bid documents in public and read aloud the names of the bidders, 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 and read aloud in public at the bid opening. The tenderer shall record the bid opening process and preserve the record for future reference.

Article 34 — Bid evaluation shall be the responsibility of a bid evaluation committee established by the tenderer in accordance with the law. For projects that are legally required to be subject to tender, the bid evaluation committee shall be composed of representatives of the tenderer and experts in the relevant technology and economics fields, and the membership shall be an odd number of five or more, of which experts in technology and economics shall account for not less than two-thirds of the membership. The experts specified in the preceding paragraph shall have at least eight years of experience in the relevant field and have senior professional titles or equivalent professional levels, and shall be selected by the tenderer from the list of experts in the relevant fields provided by the relevant departments of the State Council or the relevant departments of the people's governments of provinces, autonomous regions, or municipalities directly under the central government, or from the list of experts in the relevant fields in the expert pool of the tender agency; experts in general projects may be selected at random; for special projects, experts may be directly selected by the tenderer. Persons who have an interest in the bidders shall not enter the bid evaluation committee for the relevant project; persons who have already entered the committee shall be replaced.

Article 35 — A tenderer shall take measures to ensure that the bid evaluation is conducted in strict confidence. No entity or individual may illegally interfere or exert influence on the bid evaluation process and results.

Article 36 — The bid evaluation committee may require a bidder to clarify or explain any ambiguous or unclear content in its bid documents, but such clarification or explanation shall not exceed the scope of the bid documents or change the substantive content of the bid documents.

Article 37 — The bid evaluation committee shall evaluate the bids in accordance with the bid evaluation criteria and methods specified in the tender documents. Where the tender documents do not specify bid evaluation criteria and methods, such criteria and methods shall not be the basis for bid evaluation. Where the tenderer is provided with a pre-tender estimate price, the pre-tender estimate price shall be used as a reference for bid evaluation. The bid evaluation committee shall, upon completion of the evaluation, propose the winning bidder candidates in writing to the tenderer and submit a written bid evaluation report with the

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signatures of all members of the committee.

Article 38 — A tenderer may, in accordance with the written bid evaluation report submitted by the bid evaluation committee and the winning bidder candidates proposed, determine the winning bidder. The tenderer may also authorize the bid evaluation committee to directly determine the winning bidder. Where the State Council provides otherwise for the determination of the winning bidder for a specific project subject to tender, such provisions shall prevail.

Article 39 — Where, after bid evaluation, the bid evaluation committee deems that none of the bids conforms to the requirements of the tender documents, it may reject all bids. For a project that is legally required to be subject to tender where all bids are rejected, the tenderer shall re-conduct the tender in accordance with this Law.

Article 40 — After the winning bidder is determined, the tenderer shall issue a letter of acceptance to the winning bidder and simultaneously notify the unsuccessful bidders of the result. The letter of acceptance shall have the same legal effect on the tenderer and the winning bidder. Where the tenderer changes the result of the letter of acceptance or the winning bidder abandons the successful bid project, the party in breach shall bear legal liability in accordance with the law.

Article 41 — Within 30 days from the date of issuance of the letter of acceptance, the tenderer and the winning bidder shall conclude a written contract in accordance with the tender documents and the bid documents of the winning bidder. No tenderer or winning bidder shall conclude any other agreement deviating from the substantive content of the contract.

Article 42 — Where a project that is legally required to be subject to tender is awarded, the tenderer shall, within 15 days from the date the winning bidder is determined, submit a written report on the tender and bidding to the relevant administrative supervision department.

Article 43 — The winning bidder shall, in accordance with the provisions of the contract, fulfill its obligations and complete the successful bid project. The winning bidder shall not transfer the successful bid project to another person, nor shall it break up the project and transfer it to another person in disguised form. The winning bidder may, in accordance with the provisions of the contract or with the consent of the tenderer, subcontract part of the non-major and non-key work of the successful bid project to another person. The party accepting the subcontract shall have the corresponding qualifications and shall not further subcontract. The winning bidder shall be accountable to the tenderer for the subcontracted work, and the party accepting the subcontract shall bear joint and several liability for the subcontracted work.

Chapter V — Legal Liability

Article 44 — Where a project that is legally required to be subject to tender is not tendered but the tenderer circumvents the tender requirement by breaking up the project or by any other means, or where a project not suitable for open tender is subject to open tender without approval, the relevant administrative supervision department shall order the tenderer to rectify the matter within a prescribed time limit and may impose a fine of not less than 0.5% but not more than 1% of the contract price of the project; for a project funded wholly or partly by state-owned capital, the implementation of the project or the allocation of funds may be suspended.

Article 45 — Where a tender agency, in violation of this Law, divulges information relating to the tender and bidding activities that should be kept confidential, or colludes with the tenderer or a bidder, thereby harming the interests of the state, the public interest, or the lawful rights and interests of others, a fine of not less than RMB 50,000 but not more than RMB 250,000 shall be imposed; the illegal gains, if any, shall be confiscated; the person directly in charge and other persons directly responsible shall be fined not less than 5% but not more than 10% of the fine imposed on the entity; where the circumstances are serious, the tender agency qualifications of the tender agency may be suspended or revoked; where a crime is constituted, criminal liability shall be pursued in accordance with the law. Where damage is caused to another person, the tender

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agency shall be liable for compensation in accordance with the law.

Article 46 — Where a tenderer restricts or excludes potential bidders by imposing unreasonable conditions, discriminates against potential bidders, compels bidders to form a consortium for joint bidding, or restricts competition among bidders, the relevant administrative supervision department shall order the tenderer to rectify the matter and may impose a fine of not less than RMB 10,000 but not more than RMB 50,000.

Article 47 — Where bidders collude with each other or with the tenderer in bidding, or bribe the tenderer or members of the bid evaluation committee to obtain the bid, the successful bid shall be invalid, and a fine of not less than 0.5% but not more than 1% of the bid price of the successful bid project shall be imposed; the person directly in charge and other persons directly responsible shall be fined not less than 5% but not more than 10% of the fine imposed on the entity; the illegal gains, if any, shall be confiscated; where the circumstances are serious, the bidder's qualifications to participate in legally required tender projects for a period of one to two years shall be revoked, and the matter shall be announced; where a crime is constituted, criminal liability shall be pursued in accordance with the law. Where damage is caused to another person, compensation shall be paid in accordance with the law.

Article 48 — Where a bidder bids in the name of another person or uses any other fraudulent means to obtain the bid, the successful bid shall be invalid and the bidder shall compensate the tenderer for the loss; where a crime is constituted, criminal liability shall be pursued in accordance with the law. Where a bidder that is legally required to participate in the tender for a project commits the act specified in the preceding paragraph and the circumstances are not yet serious enough to constitute a crime, the bidder shall be fined not less than 0.5% but not more than 1% of the bid price of the successful bid project, and the person directly in charge and other persons directly responsible shall be fined not less than 5% but not more than 10% of the fine imposed on the entity; the illegal gains, if any, shall be confiscated; where the circumstances are serious, the bidder's qualifications to participate in legally required tender projects for a period of one to three years shall be revoked, and the matter shall be announced.

Article 49 — Where the winning bidder transfers the successful bid project to another person, breaks up the project and transfers it in disguised form, or subcontracts in violation of this Law, the transfer or subcontract shall be invalid, and a fine of not less than 0.5% but not more than 1% of the contract price of the transferred or subcontracted project shall be imposed; the illegal gains, if any, shall be confiscated; and the winning bidder may be ordered to suspend business for rectification; where the circumstances are serious, its business license shall be revoked by the administrative department for industry and commerce.

Article 50 — Where a tenderer and the winning bidder fail to conclude a contract in accordance with the tender documents and the bid documents of the winning bidder, or where the tenderer and the winning bidder conclude an agreement deviating from the substantive content of the contract, the relevant administrative supervision department shall order them to rectify the matter and may impose a fine of not less than 0.5% but not more than 1% of the price of the successful bid project.

Article 51 — Any person who, in violation of this Law, interferes in tender and bidding activities shall be ordered to rectify the matter and shall be given sanctions in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 52 — This Law shall come into force on January 1, 2000.

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