

The Government Procurement Law of the People's Republic of China (Order of the President No.68)

Order of the President of the People's Republic of China

No. 68

The Government Procurement Law of the People's Republic of China, adopted at the 28th Meeting of the Standing Committee of the Ninth National People's Congress of the People's Republic of China on June 29, 2002, is hereby promulgated and shall go into effect as of January 1, 2003.

Jiang Zemin

President of the People's Republic of China

June 29, 2002

The Government Procurement Law of the People's Republic of China

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Contents

Chapter I General Provisions

Chapter II Parties to Government Procurement

Chapter III Methods of Government Procurement

Chapter IV Government Procurement Proceedings

Chapter V Government Procurement Contract

Chapter VI Query and Complaint

Chapter VII Supervision and Inspection

Chapter VIII Legal Liabilities

Chapter IX Supplementary Provisions

Chapter I

General Provisions

Article 1 This Law is enacted for purposes of regulating government procurement activities, improving efficiency in the use of government procurement funds, safeguarding the interests of the State and the public, protecting the legitimate rights and interests of the parties to government procurements and promoting honest and clean government.

Article 2 This Law is applicable to government procurement activities conducted within the territory of the People's Republic of China.

For purposes of this Law, "Government Procurement" refers to the purchasing activities conducted with fiscal funds by government departments, institutions and public organizations at all levels, where the goods, construction and services concerned are in the centralized procurement catalogue compiled in accordance with law or the value of the goods, construction or services exceeds the respective prescribed procurement thresholds.

The centralized procurement catalogue and the prescribed procurement thresholds mentioned above shall be complied within the limits of powers defined by this Law.

For purposes of this Law, "Procurement" refers to activities conducted by means of contract for the acquirement of goods, construction or services for consideration, including but not limited to purchase, lease, entrustment and employment.

For purposes of this Law, "Goods" refer to objects of every kind and form, including but not limited to raw and processed materials, fuel, equipment and products.

For purposes of this Law, "Construction" refers to all construction projects, including construction, reconstruction, expansion, fitting up, demolition and repair and renovation of a building or structure.

For purposes of this Law, "Services" refer to any object of government procurement other than goods and construction.

Article 3 The principles of openness and transparency, fair competition, impartiality and good faith shall be adhered to in government procurement activities.

Article 4 Where public invitation or invited bidding is adopted for government procurement of construction, the Law on Bid Invitation and Bidding shall apply.

Article 5 No entity or individual may, by any means, deny or restrict free access by outside suppliers to the local markets or the market of the same industry for government procurement.

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

Article 7 Government procurement shall be conducted by both centralized and decentralized procurement. The items of centralized procurement shall be determined in accordance with the centralized procurement catalogue published by people's governments at or above the provincial level.

The centralized procurement catalogue for government procurement items that come under the central budget shall be determined and published by the State Council; the centralized procurement catalogue for government procurement items that come under the local budgets shall be determined and published by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government or the departments authorized by them.

Centralized procurement shall be made for government procurement items that are included in the centralized procurement catalogue.

Article 8 The thresholds for government procurement items that come under the central budget shall be prescribed and published by the State Council; the thresholds for items that come under local budgets shall be prescribed and published by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government or the department authorized by them.

Article 9 Government procurement shall be conducted in such a manner as to facilitate achievement of the goals designed by State policies for economic and social development, including but not limited to environmental protection, assistance to underdeveloped or ethnic minority areas, and promotion of the growth of small and medium-sized enterprises.

Article 10 The government shall procure domestic goods, construction and services, except in one of the following situations:

(1) where the goods, construction or services needed are not available within the territory of the People's Republic of China or, though available, cannot be acquired on reasonable commercial terms;

(2) where the items to be procured are for use abroad; and

(3) where otherwise provided for by other laws and administrative regulations.

The definitions for the domestic goods, construction or services mentioned in the preceding paragraph shall be applied in accordance with the relevant regulations of the State Council.

Article 11 Information, with the exception of information related to business secrets, regarding government procurements shall be announced to the public in a timely manner through the media designated by the department for supervision over government procurement.

Article 12 Where in government procurement the procuring person or the person concerned has an interest in the suppliers, he shall withdraw from the procurement proceeding. Where a supplier believes that the person doing the procuring or the person concerned has an interest in other suppliers, it may apply for withdrawal of the said person.

The person concerned as mentioned in the preceding paragraph means any of the members of the bid evaluation committee for procurement through public invitation, of the negotiation team for procurement through competitive negotiations, or the inquiry team for procurement through inquiry of quotations.

Article 13 The finance departments of the governments at all levels are departments for supervision over government procurement, performing the duty of supervision over government procurement activities in accordance with law.

The departments concerned in the government at all levels shall, in accordance with law, perform the duty of supervision over activities related to government procurement.

Chapter II

Parties to Government Procurement

Article 14 The parties to government procurement refer to the principal entities of all kinds that enjoy rights and undertake obligations in government procurement, including the procuring entities, the suppliers and the procuring agencies.

Article 15 The procuring entities refer to the government departments, institutions and public organizations that engage in government procurement in accordance with law.

Article 16 The institutions for centralized procurement are the procuring agencies. People's governments at the level of cities divided into districts and of autonomous prefectures or above that make arrangements for centralized procurement on the basis of the items to be procured by the governments, are required to set up institutions for centralized procurement.

The institutions for centralized procurement are non-profit legal persons that conduct procurement as entrusted by the procuring entities.

Article 17 When conducting government procurement activities, institutions for centralized procurement shall meet the requirements for procurement at a lower-than-average market price, at higher efficiency, and of quality goods and services.

Article 18 When procuring items for the government that are included in the centralized procurement catalogue, the procuring entities shall entrust the matter to institutions for centralized procurement; they may do it themselves where the items to be procured are not included in the said catalogue, or they may entrust the matter to institutions for centralized procurement that shall do it on their behalf within the scope entrusted.

Items, included in the centralized procurement catalogue that are for general use by the governments, shall be procured by entrusting the matter to an institution for centralized procurement; items for the special need of a department or set-up shall be procured by the department or set-up in a centralized manner; items for the special need of an individual entity may be procured by the entity itself upon approval by the people's government at or above the provincial level.

Article 19 Procuring entities may entrust procuring agencies certified by the relevant department under the State Council or under the people's government at the provincial level, which shall conduct the government procurement within the scope entrusted.

Procuring entities shall have the right to choose procuring agencies on their own, no unit or individual may, by any means, designate procuring agencies for them.

Article 20 Where a procuring entity, in accordance with law, entrusts a procuring agency with the procurement, the two sides shall conclude an agreement to such an effect, in which the entrusted matters shall be defined and the rights and obligations for both sides shall be specified in accordance with law.

Article 21 The suppliers refer to the legal persons, other organizations or natural persons that provide goods, construction or services to the procuring entities.

Article 22 A supplier in government procurement shall meet the following requirements:

- (1) having the capacity to assume civil liabilities independently;
- (2) having a good business reputation and sound financial and accounting systems;
- (3) having the equipment and professional expertise needed for performing contracts;
- (4) having a clean record of paying taxes and making financial contributions to social security funds in accordance with law;
- (5) having committed no major breaches of law in its business operation in the three years prior to its participation in the procurement; and
- (6) other requirements provided for in laws and administrative regulations.

A procuring entity may specify special requirements for suppliers on the basis of the special need of a particular item for procurement, provided that they are not unreasonable requirements that result in differential or discriminatory treatment of suppliers.

Article 23 The procuring entity may require the suppliers participating in government procurement to provide the documents certifying their qualifications and information about their business performance and examine the qualifications of the suppliers against the requirements provided for in this Law and the special requirements necessitated by the items to be procured.

Article 24 Two or more natural persons, legal persons or other organizations may form a consortium to participate in government procurement in the capacity of a single supplier.

Where the form of consortium is taken in government procurement, each of the suppliers in the consortium shall meet the requirements specified in Article 22 of this law and, in addition, a consortium agreement shall be submitted to the procuring entity, in which the assignments allotted to and the obligations undertaken by each party to the consortium are clearly stated. All parties to the consortium shall jointly enter into a procurement contract with the procuring entity, bearing joint and several liabilities to the procuring entity for matters agreed upon in the contract.

Article 25 No parties to government procurement may act in collusion with each other to harm the interest of the State or the public or the legitimate rights and interests of other parties to government procurement, or exclude, by any means, other potential suppliers from participating in competition.

No supplier may try to win a bid or conclude a deal by bribing members of the procuring entity, the procuring agency, or members of the bid evaluation committee, the competition negotiation team or quotation inquiry team, or by any other illegitimate means.

No procuring agency may seek illegal interests through bribing members of the procuring entity or by any other illegitimate means.

Chapter III

Methods of Government Procurement

Article 26 The following methods shall be adopted for government procurement:

- (1) public invitation;
- (2) invited bidding;
- (3) competitive negotiation;
- (4) single-source procurement;
- (5) inquiry about quotations; and

(6) other methods confirmed by the department for supervision over government procurement under the State Council.

Public invitation shall be the principal method of government procurement.

Article 27 Where public invitation is required for procurement of goods or services by the procuring entity, if such goods or services are included in the government procurement items covered by the central budget, the specific quotas shall be determined by the State Council; if the items covered by local budgets, the specific quotas shall be determined by the people's government of a province, autonomous region or municipality directly under the Central Government. Where it is necessary to adopt a method other than public invitation under special circumstances, the matter shall be subject to approval by the department for supervision over procurement under the people's government at or above the level of the city divided into districts or of the autonomous prefecture, before procurement is conducted.

Article 28 No procuring entity may avoid public invitation required for procuring certain goods or services by breaking them up into parts or by any other means.

Article 29 Under one of the following conditions, goods or services may be procured by invited bidding in accordance with this Law:

(1) where the goods or services in question are special in character and can only be procured from a limited number of suppliers; or

(2) where the cost of public invitation forms an excessive proportion of the total value of the government procurement items.

Article 30 Under one of the following conditions, goods or services may be procured through competitive negotiation in accordance with this Law:

(1) where, after bidding is invited, no supplier submits any tender, or qualified tender is lacking, or re-invitation fails;

(2) where it is hard to determine the detailed specifications or specific requirements because of technical complexity or special nature;

(3) where bid invitation takes so long a time that it is hard to satisfy the urgent needs of the procuring entity; or

(4) where the total value of the goods or services to be procured cannot be determined in advance.

Article 31 Under one of the following conditions, goods or services may be procured through single-source procurement in accordance with this Law:

(1) where goods or services can be procured from only one supplier;

(2) where goods or services can not be procured from other suppliers due to an unforeseeable emergencies; or

(3) where consistency of the items or compatibility of the services procured requires procurement of additional items or services from the same supplier, provided that the total value of the additional procurement does not exceed 10 percent of the value of the base procurement contract.

Article 32 Inquiry about quotations may be adopted in accordance with this law for government procurement of those goods the specifications and standards of which are uniform, the supply of which for spot transaction is sufficient and the prices of which fluctuate very little.

Chapter IV

Government Procurement Proceedings

Article 33 When the department in charge of departmental budgeting drafts the budget for the next fiscal year, the items to be procured and the funds required shall be included in the budget and submitted to the financial department at the same level for compilation. The departmental budget shall be subject to examination and approval conducted and granted within the limits of powers of budgetary administration and in accordance with budgetary administration procedures.

Article 34 Where invited bidding is adopted for the procurement of goods or services, the procuring entity shall randomly choose three or more suppliers from among those that meet the qualifications required, and send invitation documents to them.

Article 35 Where public invitation is adopted for the procurement of goods or services, the period of time beginning from the date of issuance of the bid invitation documents to the deadline for submission of the bid documents by bidders shall be not less than 20 days.

Article 36 When one of the following circumstances arises in procurement through bid invitation, the bid proceeding shall be annulled:

(1) where there are less than three suppliers that meet the professional qualifications required or that have made substantive response to the bid invitation documents;

(2) where violations of laws or regulations occur to the detriment of impartial procurement;

(3) where all the prices offered by the bidders exceed the budget for procurement so that the procuring entity can not afford them; or

(4) where the procurement project is cancelled due to major changes in circumstances.

Once the bid proceeding is annulled, the procuring entity shall inform all the bidders of the reasons for the annulment.

Article 37 After annulment, the bid proceedings shall be rearranged unless the procurement project is cancelled. Where it is necessary to adopt other methods of procurement, the matter shall, before procurement starts, be subject to approval by the department for supervision over procurement under the people's government at or above the level of a city divided into districts or of an autonomous prefecture, or by a relevant government department.

Article 38 Where competitive negotiation is adopted for procurement, the following procedure shall be followed:

(1) Setting up of a negotiation team. The team shall be composed of three or more representatives of the procuring entity and experts in the relevant fields, the number shall be odd, and the number of experts shall be not less than two-thirds of the total.

(2) Drafting of documents for negotiation. In the documents shall be clearly stated the negotiation procedure and contents, the terms of a draft contract and the criteria for evaluating a deal concluded.

(3) Deciding on the name list of the suppliers to be invited to participate in the negotiation. The negotiation team shall choose not less than three suppliers from among all the qualified suppliers in the name list to participate in negotiation and provide them with the documents for negotiation.

(4) Negotiating. All members of the negotiation team together negotiate with the suppliers individually. In the course of negotiation, neither side may disclose other suppliers' technical data, prices or other information related to the negotiation. Where there are any substantive changes made in the documents for negotiation, the negotiation team shall inform, in writing, all the suppliers participating in the negotiation of the changes.

(5) Deciding on the successful supplier. Once the negotiation is concluded, the negotiation team shall request all the suppliers participating in the negotiation to quote their final offering prices within a specified time limit. The procuring entity shall decide on the successful supplier from among the candidates recommended by the negotiation team on the principle that the supplier meets the need of procurement and that the price it quotes is the lowest among the prices quoted for goods of equal quality and for equal services, and it shall inform all the unsuccessful suppliers that participate in the negotiation of the result.

Article 39 Where the single-source procurement is adopted, the procuring entity and suppliers shall follow the principles provided for by this Law in carrying out the procurement on the basis of guaranteed quality and the reasonable price agreed by both sides.

Article 40 Where inquiry about quotations is adopted, the following procedure shall be followed:

(1) Setting up of a quotation inquiry team. The team shall be composed of three or more representatives of the procuring entity and experts in the relevant fields, the number shall be odd, and the number of the experts shall be not less than two-thirds of the total. The team shall specify

the composition of price for the items to be procured and the criteria for evaluating a deal concluded.

(2) Deciding on the name list of the suppliers to be inquired of about quotations. The quotations inquiry team shall, on the basis of the procurement need, choose not less than three suppliers from among all the qualified suppliers in the name list and send to each of them a quotations inquiry notice to solicit their quotations.

(3) Inquiry about quotations. The quotations inquiry team shall request the suppliers to be inquired of about quotations, to quote their prices just for once, which are not to be changed.

(4) Determining the successful supplier. The procuring entity shall determine the successful supplier on the principle that the supplier meets the need of procurement and the price it quotes is the lowest among the prices quoted for goods of equal quality and equal services, and it shall inform all the unsuccessful suppliers that are inquired of about quotations of the result.

Article 41 The procuring entity or the entrusted procuring agency shall, before acceptance, make arrangements for inspection of the fulfillment of the procurement contract on the part of the supplier. For large and complex procurement items, it shall invite quality-testing institutions confirmed by the State to participate in the inspection. Members of the inspecting side shall sign their names on the inspection report and shall bear corresponding legal responsibilities.

Article 42 The procuring entity or the procuring agency shall properly keep all the procurement documents relating to the procurement of each item, and it may not fabricate, forge, conceal or destroy such documents. The period of time for preservation of procurement documents shall be not less than 15 years starting from the date the procurement is completed.

The procurement documents include the records of procurement, procurement budget, bid invitation documents, bid documents, criteria for bid evaluation, evaluation report, documents relating to decision on the awarding of a bid, contract text, inspection-acceptance certificates, replies to queries, decisions on complaints handled and other related documents and data.

The records of procurement shall, at least, include the following:

- (1) the types and names of the items to be procured;
- (2) the budget for procurement items, composition of funds and price fixed by contract;
- (3) the procurement method; where a method other than public invitation is adopted, the reasons shall be stated clearly;
- (4) qualification requirements and reasons for inviting or selecting suppliers;
- (5) criteria for bid evaluation and reasons for deciding on the winner of the bid;
- (6) reasons for canceling the bid proceeding; and

(7) the records relating to adoption of the procurement method other than bid invitation.

Chapter V

Government Procurement Contract

Article 43 The Contract Law is applicable to government procurement contract. The rights and obligations of the procuring entity and the supplier respectively shall, on the principle of equality and voluntariness, be agreed on in a contract.

The procuring entity may entrust a procuring agency with the conclusion, on its behalf, of a government procurement contract with the supplier. Where the contract is signed by the procuring agency in the name of the procuring entity, the entrustment document shall be submitted as an annex to the contract.

Article 44 The government procurement contract shall be made in written form.

Article 45 The department for supervision over government procurement under the State Council shall, in conjunction with the relevant departments under the State Council, specify the provisions essential to government procurement contracts.

Article 46 The procuring entity, the winner of the bid or the successful supplier shall, within 30 days from the date the notice informing the said winner or supplier of their acceptance is sent out, sign a government procurement contract pursuant to the particulars set in the procurement documents.

The notice informing the winner of a bid or the successful supplier of their acceptance shall be legally effective to both the procuring entity and the said winner or supplier. After the said notice is sent out, if the procuring entity alters the result regarding the winner of a bid or the successful supplier, or the said winner or supplier gives up the project for which it wins the bid, it shall bear legal responsibility in accordance with law.

Article 47 Within seven working days beginning from the date the contract for government procurement items is concluded, the procuring entity shall submit a copy of the contract to the department for supervision over government procurement at the same level and a copy to the relevant department for the record.

Article 48 Subject to consent of the procuring entity, the winner of the bid or the successful supplier may perform the contract by subcontract in accordance with law.

Where the government procurement contract is performed by subcontract, the winner of the bid or the successful supplier shall be responsible to the procuring entity for both the whole procurement project and its subcontracted parts, while the subcontractors shall be responsible for the subcontracted part.

Article 49 If, when the government procurement contract is being performed, the procuring entity needs to procure additional goods, construction or services of the same nature as those of the base government procurement contract, it may, on the premise that no change is made in the other clauses of the contract, conclude a supplementary contract with the supplier, provided that the total value of all the additional procurements does not exceed 10 percent of that of the principal contract.

Article 50 No parties to the government procurement contract may, without authorization, alter, suspend or terminate the contract.

Where continued performance of the government procurement contract is detrimental to the interests of the State or of the public, the parties to the contract shall alter, suspend or terminate the contract. The party at fault shall bear the liability to pay compensation; where both parties to the contract are at fault, each shall honor its own liability.

Chapter VI

Query and Complaint

Article 51 Where suppliers have queries about matters regarding government procurement activities, they may raise the queries to the procuring entity, the latter shall make a timely reply, in which no business secrets may be contained.

Article 52 Where a supplier believes that the procurement documents, procurement proceeding or the results regarding the winner of the bid or the successful supplier harm its own rights and interests, it may, within 7 working days from the date it knows or should know that its rights and interests are harmed, raise queries to the procuring entity in writing.

Article 53 The procuring entity shall, within seven working days from the date it receives the queries of the supplier in writing, make a reply and notify in writing the supplier that raises the queries and the other suppliers concerned of the reply, in which no business secrets may be contained.

Article 54 Where a procuring agency is entrusted by the procuring entity with the procurement, the suppliers may address inquiries or queries to the agency, which shall, pursuant to Articles 51 and 53 of this Law, make a reply regarding matters within the limits of authorization given by the procuring entity.

Article 55 Where the supplier that raises queries is not satisfied with the reply made by the procuring entity or the procuring agency, or the latter fails to make a reply within the specified time limit, the supplier may, within 15 working days following the expiration of the time limit, lodge a complaint with the department for supervision over government procurement at the same level.

Article 56 The department for supervision over government procurement shall, within 30 working days after receiving the complaint, make a decision after handling the complaint and inform in writing the complainant and the parties related to the complaint of its decision.

Article 57 Depending on the specific circumstances, the department for supervision over government procurement may, during the period in which it is dealing with the complaint, notify in writing the procuring entity to suspend its procurement activities, provided that the period of suspension does not exceed a maximum of 30 days.

Article 58 Where the complaint is not satisfied with the decision made by the department for supervision over government procurement, or the latter fails to make a decision within the specified time limit, the complainant may, in accordance with law, apply for administrative reconsideration or initiate administrative proceedings in a People's Court.

Chapter VII

Supervision and Inspection

Article 59 The department for supervision over government procurement shall conduct rigorous supervision and inspection over government procurement activities and the institutions for centralized procurement.

The supervision and inspection chiefly consist of the following:

- (1) implementation of laws, administrative regulations and rules concerning government procurement;
- (2) implementation of the procurement scope, methods and procedures; and
- (3) professional qualifications and expertise of the procuring personnel.

Article 60 No department for supervision over government procurement may set up an institution for centralized procurement or participate in procuring items for the government.

No procuring agency may be subordinate to any government department or have other relationship of interest with it.

Article 61 Institutions for centralized procurement shall establish a sound internal supervision system. The policy decisions on procurement activities and the procedures for carrying them out shall be clear-cut, and the institutions shall supervise and restrain each other. The powers and duties of the persons who are engaged in procurement and of the persons who are in charge of examination and acceptance of procurement contracts shall be defined explicitly and be separate from each other.

Article 62 The procuring persons of the institutions for centralized procurement shall possess the necessary professional qualifications and expertise for the specialized posts, as required by the regulations of the department for supervision over government procurement.

The institutions for centralized procurement shall conduct rigorous education and training among their staff members, regularly examine and appraise their professional capabilities, performance and ethics. No one who fails in the examination and appraisal may remain in the post.

Article 63 The standards for a government procurement items shall be made known to the public.

Where the procurement methods provided for in this Law are adopted, the procuring entity, upon completion of the procurement, shall publicize the final results of the procurement.

Article 64 The procuring entity shall make its procurements according to the methods and procedures provided in this Law.

No units or individuals may, in violation of the provisions in this Law, require the procuring entity or its staff members to procure from the suppliers designated by them.

Article 65 The department for supervision over government procurement shall inspect government procurement activities, and the parties to government procurement shall give truthful reports and provide related materials.

Article 66 Departments for supervision over government procurement shall assess the performance of the institutions for centralized procurement in respect of such matters as their procurement prices, cost-effectiveness, quality of services, reputation and compliance with law, and regularly publish the final results of the assessment.

Article 67 The relevant government departments charged with the duty of administrative supervision over government procurement, as provided for in laws or administrative regulations, shall exercise rigorous supervision over government procurement activities in compliance with the division of duties.

Article 68 The auditing authorities shall exercise supervision over the government procurements. The department for supervision over government procurement and the parties to government procurement shall subject themselves to supervision by the auditing authorities.

Article 69 The supervisory authorities shall exercise strict supervision over the State organs, public servants and other persons appointed by administrative departments of the State that participate in government procurements.

Article 70 All units and individuals shall have the right to accuse or inform against violations of law in government procurement activities, and the relevant authorities and departments shall, without delay, handle such matters in compliance with their respective duties.

Chapter VIII

Legal Liabilities

Article 71 Where a procuring entity or procuring agency commits one of the following acts, it shall be ordered to set it right within a time limit and be given a disciplinary warning, and may also be fined, and the persons directly in charge and the other persons directly responsible shall be given sanctions by the competent administrative department where they belong or by the relevant authority, and the matter shall be circulated:

- (1) adopting, without authorization, other procurement methods, instead of public invitation;
- (2) elevating, without authorization, the criteria for procurement thresholds;
- (3) entrusting matters of government procurement to an agency that is not qualified for the job;
- (4) treating suppliers differentially or discriminatingly by raising unreasonable requirements;
- (5) in the course of procurement through bid invitation, holding consultation or negotiation with bidders;
- (6) failing to conclude a procurement contract with the winner of the bid or the successful supplier after the notice informing the said winner or supplier of its acceptance is sent out; and
- (7) refusing to subject itself to supervision conducted by the relevant department in accordance with law.

Article 72 Where a procuring entity or procuring agency or its staff member commits one of the following acts, which constitutes a crime, it/he shall be investigated for criminal responsibility in accordance with law; if the offence is not serious enough to constitute a crime, it/he shall be fined, and the illegal gains, if any, shall be confiscated, if the person involved is a State functionary, he shall be given an administrative sanction in accordance with law:

- (1) colluding, in bad faith, with a supplier or a procuring agency;
- (2) in the course of procurement, accepting bribes or obtaining other illegitimate interests;
- (3) providing false information to the relevant department that is conducting supervision in accordance with law; or
- (4) Divulging the base price of a bid before opening of bids.

Article 73 The violations, mentioned in the preceding two articles, that affect or are likely to affect the results in respect of the winner of a bid or the successful supplier, shall be dealt with respectively in accordance with the following:

(1) where the winner of the bid or the successful supplier is not determined, the procurement proceeding shall be terminated;

(2) where, although the winner of the bid or the successful supplier is determined, the procurement contract is not performed, the contract shall be cancelled and a new winner of the bid or successful supplier shall be selected from among the remaining qualified candidates; and

(3) where fulfillment of the procurement contract causes losses to the procuring entity or supplier, the person liable shall bear the responsibility to pay compensation.

Article 74 The procuring entity that fails to entrust institutions for centralized procurement with government procurement items, as is required, shall be ordered by the department for supervision over government procurement to rectify; if it refuses to comply, payment of budgetary funds to it shall be suspended, and the persons directly in charge and the other person directly responsible shall be given sanctions by the competent administrative department at the next higher level or the relevant authority in accordance with law.

Article 75 Where the procuring entity fails to publish the standards for government procurement items and the results of the procurement, it shall be ordered to rectify and the persons directly in charge shall be given sanctions in accordance with law.

Article 76 Where the procuring entity or the procuring agency, in violation of the provisions of this Law, conceals or destroys the procurement documents that are required to be preserved, or fabricates or forges such documents, it shall be fined not less than RMB 20,000 yuan but not more than 100,000 yuan by the department for supervision over government procurement, and the persons directly in charge and the other persons directly responsible shall be given sanctions in accordance with law; if the offence constitutes a crime, it shall be investigated for criminal responsibility in accordance with law.

Article 77 Any supplier than commits one of the following acts shall be fined not less than 0.5 percent but not more than 1 percent of the total procurement value, be included in the list of those with records of misconduct and be prohibited, within one to three years, from participating in government procurement activities, the illegal gains, if any, shall be confiscated by the administrative department for industry and commerce, and if the circumstances are serious, its business license shall be revoked by the administrative department for industry and commerce; if a crime is constituted, it shall be investigated for criminal responsibility in accordance with law:

(1) providing false materials in an attempt to win a bid or become the successful supplier;

(2) defaming or excluding other suppliers by illegitimate means;

(3) colluding , in bad faith, with the procuring entity, other suppliers or the procuring agency;

(4) bribing or providing illegitimate benefits to the procuring entity or agency;

(5) in the course of procurement through bid invitation, holding consultation or negotiation with the procuring entity; and

(6) refusing to subject itself to supervision by the relevant department or providing false information.

Where a supplier commits one of the first five acts mentioned in the preceding paragraph, its winning of or success in a bid shall be invalidated.

Article 78 Where the procuring agency, in making procurement on behalf of the government, commits an illegal act, it shall be fined pursuant to the provisions of relevant laws, and it may be disqualified for doing business in this field; if a crime is constituted, it shall be investigated for criminal responsibility in accordance with law.

Article 79 Where the party to government procurement commits illegal acts prescribed in Articles 71, 72 and 77 of the Law and thus causes losses to other persons, it shall, in addition, bear civil liability pursuant to the provisions of relevant civil laws.

Article 80 Where, in exercising supervision, the official of the department for supervision over government procurement, in violation of the provisions of this Law, abuses his powers, neglects his duty or commits malpractices for personal gain, he shall be given an administrative sanction in accordance with law; if a crime is constituted, he shall be investigated for criminal responsibility in accordance with law.

Article 81 Where the department for supervision over government procurement fails, within the specified time limit, to deal with the complaint lodged by a supplier, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions.

Article 82 Where the department for supervision over government procurement in appraising the performance of an institution for centralized procurement makes false statements or conceals the truth, or it fails to conduct regular appraisal and to publish the results of the appraisal, it shall rectify without delay, and the authority at the next higher level or the supervisory authority shall criticize, in an official dispatch, the leading members of the department and, in accordance with law, give administrative sanctions to the persons directly responsible.

Where the institution for centralized procurement, when undergoing appraisal by the department for supervision over government procurement, makes a false report of its performance or conceals the truth, it shall be fined not less than 20,000 yuan but not more than 200,000 yuan, and the matter shall be made known in an official dispatch; if the circumstances are serious, it shall be disqualified as a procuring agency.

Article 83 Any entity or individual that attempts to deny or restrict access by outside suppliers to the local markets or the market of the same industry for government procurement, shall be ordered to rectify within a specified time limit; if it/he refuses to comply, the competent administrative department at the next higher level of the entity or individual or the relevant authority shall give sanctions to the leading members of the entity or the individual in question.

Chapter IX

Supplementary Provisions

Article 84 Where with regard to the specific terms for government procurement to be made with loans from international organizations or foreign governments, the agreement reached between the creditor or financing side and the Chinese side provides otherwise, the provisions there shall prevail, provided that the interests of the State and of the public are not harmed.

Article 85 This Law is not applicable to the emergency procurements for serious natural disasters and other force majeure incidents, or to procurements that have to do with State security and State secrets.

Article 86 Regulations on military procurement shall be formulated separately by the Central Military Commission.

Article 87 Specific steps and measures for implementation of this Law shall be formulated by the State Council.

Article 88 This Law shall enter into force as of January 1, 2003.

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