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## Regulation on the Implementation of the Bidding Law of the People's Republic of China (2019 Revision) [Effective]

中华人民共和国招标投标法实施条例(2019修订) [现行有效]

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中华人民共和国招标投标法实施条例

(2011年12月20日中华人民共和国国务院令613号公布 根据2017年3月1日《国务院关于修改和废止部分行政法规的决定》第一次修订 根据2018年3月19日《国务院关于修改和废止部分行政法规的决定》第二次修订 根据2019年3月2日《国务院关于修改部分行政法规的决定》第三次修订)

### Chapter I General Provisions

### 第一章 总 则

**Article 1** To regulate bidding activities, this Regulation is formulated in accordance with the Bidding Law of the People's Republic of China (hereinafter referred to as the "Bidding Law").

第一条 为了规范招标投标活动,根据《中华人民共和国招标投标法》(以下简称招标投标法),制定本条例。

**Article 2** The term "construction projects" as mentioned in Article 3 of the Bidding Law means projects as well as goods and services related to project construction.

第二条 招标投标法第三条所称建设工程项目,是指工程以及与工程建设有关的货物、服务。

The term "projects" as mentioned in the preceding paragraph means construction projects, including new construction, refurbishing and expansion of buildings and fixtures and the relevant decorating, demolition and renovation of buildings and structures. The term "goods related to project construction" means equipment and materials which constitute an integral part of projects and are required for realizing the basic functions of projects. The term "services related to project construction" means services such as survey, design and supervision required for the completion of projects.

前款所称工程,是指建设工程,包括建筑物和构筑物的新建、改建、扩建及其相关的装修、拆除、修缮等;所称与工程建设有关的货物,是指构成工程不可分割的组成部分,且为实现工程基本功能所必需的设备、材料等;所称与工程建设有关的服务,是指为完成工程所需的勘察、设计、监理等服务。

**Article 3** The specific standards on the scope and size of construction projects that legally require bidding shall be determined by the development and reform department of the State Council jointly with the relevant departments of the State Council and be subject to the approval of the State Council before issuance and implementation.

第三条 依法必须进行招标的建设工程项目的具体范围和规模标准,由国务院发展改革部门会同国务院有关部门制订,报国务院批准后公布施行。

**Article 4** The development and reform department of the State Council shall guide and supervise the bidding work across the country and supervise and inspect the bidding activities for the state's major construction projects. The departments of industry and

第四条 国务院发展改革部门指导和协调全国招标投标工作,对国家重大建设项目的工程招标投标活动实施监督检查。国务院工业和信息化、住房城乡建设、交通运

information technology, housing and urban-rural development, transport, railways, water resources and commerce of the State Council shall supervise the relevant bidding activities according to the prescribed division of functions.

The development and reform department of the local people's government at or above the county level shall guide and coordinate the bidding work of its administrative region. The relevant departments of the local people's government at or above the county level shall, according to the prescribed division of functions, supervise bidding activities, and legally investigate and deal with violations in bidding activities. Where the local people's government at or above the county level otherwise prescribes for the division of supervisory functions of its subordinate departments on the relevant bidding activities, such provisions shall prevail. The public finance department shall, according to law, supervise the implementation of government procurement policies on government procurement construction projects that are subject to bidding.

The supervisory organ shall, according to law, supervise the relevant supervisory objects relevant to bidding activities.

**Article 5** The local people's government at or above the level of a city divided into districts may, according to the actual demand, establish uniform and standardized trading venues to provide services for bidding activities. Such trading venues for bidding shall not be affiliated with administrative supervision departments and shall not be aimed at seeking profits. The state encourages electronic bidding by means of an information network.

**Article 6** State officials shall be prohibited from illegally interfering in bidding activities in any form.

## Chapter II Bid Invitation

**Article 7** With regard to projects for which project examination, approval and verification formalities must be handled according to the relevant provisions of the state and bidding is required according to law, the bidding scope, methods and organizational forms shall be reported to the department in charge of project examination, approval and verification for examination, approval and verification. The department in charge of project examination, approval and verification shall, in a timely manner, notify the relevant administrative supervision department of the bidding scope, methods and organizational forms determined upon examination, approval and verification.

**Article 8** Projects for which state-owned funds take the controlling or leading position and bidding is required according to law shall be subject to public bidding. Selected bidding is permitted under any of the following circumstances:

1. only a small number of potential bidders are available for selection because of complicated technologies, special requirements or restrictions from the natural environment; or
2. the cost of adopting public bidding accounts for an excessively large proportion of the project contract amount.

Where the circumstances as listed in item 2 of the preceding paragraph occur to the projects prescribed in Article 7 of this Regulation, the department in charge of project examination, approval and verification shall make a determination when it conducts project examination, approval and verification. Other projects shall be determined by the relevant administrative supervision department upon receiving an application from the tenderer.

**Article 9** In addition to the special circumstances under which bidding is not required as prescribed in Article 66 of the [Bidding Law](#), a project is not required to undergo bidding under any of the following circumstances:

输、铁道、水利、商务等部门，按照规定的职责分工对有关招标投标活动实施监督。

县级以上地方人民政府发展改革部门指导和协调本行政区域的招标投标工作。县级以上地方人民政府有关部门按照规定的职责分工，对招标投标活动实施监督，依法查处招标投标活动中的违法行为。县级以上地方人民政府对其所属部门有关招标投标活动的监督职责分工另有规定的，从其规定。

财政部门依法对实行招标投标的政府采购工程建设项目的政府采购政策执行情况实施监督。

监察机关依法对与招标投标活动有关的监察对象实施监察。

第五条 设区的市级以上地方人民政府可以根据实际需要，建立统一规范的招标投标交易场所，为招标投标活动提供服务。招标投标交易场所不得与行政监督部门存在隶属关系，不得以营利为目的。

国家鼓励利用信息网络进行电子招标投标。

第六条 禁止国家工作人员以任何方式非法干涉招标投标活动。

## 第二章 招 标

第七条 按照国家有关规定需要履行项目审批、核准手续的依法必须进行招标的项目，其招标范围、招标方式、招标组织形式应当报项目审批、核准部门审批、核准。项目审批、核准部门应当及时将审批、核准确定的招标范围、招标方式、招标组织形式通报有关行政监督部门。

第八条 国有资金占控股或者主导地位的依法必须进行招标的项目，应当公开招标；但有下列情形之一的，可以邀请招标：

(一) 技术复杂、有特殊要求或者受自然环境限制，只有少量潜在投标人可供选择；

(二) 采用公开招标方式的费用占项目合同金额的比例过大。

有前款第二项所列情形，属于本条例第七条规定的项目，由项目审批、核准部门在审批、核准项目时作出认定；其他项目由招标人申请有关行政监督部门作出认定。

第九条 除[招标投标法第六十六条](#)规定的可以不进行招标的特殊情况外，有下列情形之一的，可以不进行招标：

1. any irreplaceable patent or proprietary technology is required;
2. the project can be legally constructed, produced or provided by the purchaser;
3. the project can be legally constructed, produced or provided by the franchise project investor that has been selected through bidding;
4. it is necessary to purchase projects, goods or services from the original bid winner, otherwise the construction or supporting functions would be affected; or
5. any other special circumstance prescribed by the state.

Where the tenderer makes falsifications for the purpose of complying with the provisions of the preceding paragraph, the tenderer shall be deemed as evading bidding as prescribed in Article 4 of the [Bidding Law](#).

**Article 10** The tenderer having the capacity to prepare bid invitation documents and organize bid evaluations as prescribed in paragraph 2 of Article 12 of the [Bidding Law](#) means that the bidder has professionals in the areas of technology and economy who are suitable for the project's scale and the complexity of the bid invitation project.

**Article 11** The departments of housing and urban-rural development, commerce, development and reform, and industry and information technology of the State Council shall supervise and administer bidding agencies according to the prescribed division of functions.

**Article 12** Bidding agencies shall have a certain number of professionals that have the corresponding capacity of preparing bidding documents and organizing bid evaluation, among others.

**Article 13** Bidding agencies shall carry out bidding agency business within the scope entrusted by the tenderer, and no entity or individual shall interfere. To conduct agency bidding business, a bidding agency shall abide by the [Bidding Law](#) and the provisions of this Regulation on the tenderer. No bidding agency shall bid in a bid invitation project under its agency or do so as an agency, or shall provide consulting to bidders for a bid invitation project under its agency.

**Article 14** The tenderer shall sign a written entrustment contract with the entrusted bidding agency, and fee standards prescribed in the contract shall comply with the relevant provisions of the state.

**Article 15** For a project subject to public bidding, the bidding notice shall be issued and bid invitation documents shall be prepared in accordance with the provisions of the [Bidding Law](#) and this Regulation.

Where the tenderer examines the qualifications of potential bidders by means of pre-qualification, it shall issue a pre-qualification announcement and prepare pre-qualification documents.

The pre-qualification announcement and bidding notice on a project legally requiring bidding shall be published through the media legally designated by the development and reform department of the State Council. The content of a pre-qualification announcement or bidding notice on the same bid invitation project that is published on different media shall be consistent. No fee shall be charged for the issuance of the domestic pre-qualification announcement or bidding notice on a project legally requiring bidding through the designated media.

To prepare the pre-qualification documents and bid invitation documents on a project legally requiring bidding, the standard texts prepared by the development and reform department of the State Council jointly with the relevant administrative supervision department shall be adopted.

(一) 需要采用不可替代的专利或者专有技术;

(二) 采购人依法能够自行建设、生产或者提供;

(三) 已通过招标方式选定的特许经营项目投资人依法能够自行建设、生产或者提供;

(四) 需要向原中标人采购工程、货物或者服务, 否则将影响施工或者功能配套要求;

(五) 国家规定的其他特殊情形。

招标人为适用前款规定弄虚作假的, 属于[招标投标法](#)第四条规定的规避招标。

第十条 [招标投标法](#)第十二条第二款规定的招标人具有编制招标文件和组织评标能力, 是指招标人具有与招标项目规模和复杂程度相适应的技术、经济等方面的专业人员。

第十一条 国务院住房城乡建设、商务、发展改革、工业和信息化等部门, 按照规定的职责分工对招标代理机构依法实施监督管理。

第十二条 招标代理机构应当拥有一定数量的具备编制招标文件、组织评标等相应能力的专业人员。

第十三条 招标代理机构在招标人委托的范围内开展招标代理业务, 任何单位和个人不得非法干涉。

招标代理机构代理招标业务, 应当遵守[招标投标法](#)和本条例关于招标人的规定。招标代理机构不得在所代理的招标项目中投标或者代理投标, 也不得为所代理的招标项目的投标人提供咨询。

第十四条 招标人应当与被委托的招标代理机构签订书面委托合同, 合同约定的收费标准应当符合国家有关规定。

第十五条 公开招标的项目, 应当依照[招标投标法](#)和本条例的规定发布招标公告、编制招标文件。

招标人采用资格预审办法对潜在投标人进行资格审查的, 应当发布资格预审公告、编制资格预审文件。

依法必须进行招标的项目的资格预审公告和招标公告, 应当在国务院发展改革部门依法指定的媒介发布。在不同媒介发布的同一招标项目的资格预审公告或者招标公告的内容应当一致。指定媒介发布依法必须进行招标的项目的境内资格预审公告、招标公告, 不得收取费用。

编制依法必须进行招标的项目的资格预审文件和招标文件, 应当使用国务院发展改革部门会同有关行政监督部门制定的标准文本。

**Article 16** The tenderer shall sell pre-qualification documents or bid invitation documents at the time and place prescribed in the pre-qualification announcement, bidding notice or bid invitation. Pre-qualification documents or bid invitation documents shall be sold for a period of not less than five days.

The fees charged by the tenderer for selling pre-qualification documents and bid invitation documents shall be limited to offsetting the cost of printing and postage, and shall not be aimed at seeking profits.

**Article 17** The tenderer shall reasonably determine the time for the submission of pre-qualification application documents. The time for the submission of pre-qualification application documents on a project legally requiring bidding shall not be less than five days from the day when the sale of pre-qualification documents is stopped.

**Article 18** Pre-qualification shall be conducted according to the standards and methods indicated in the pre-qualification documents.

With regard to projects for which state-owned funds take the controlling or leading position and bidding is required according to law, the tenderer shall establish a qualification examination committee to examine the pre-qualification application documents. The qualification examination committee and its members shall abide by the [Bidding Law](#) and the provisions of this Regulation on the bid evaluation committee and its members.

**Article 19** After completion of pre-qualification, the tenderer shall, in a timely manner, issue a pre-qualification result notice to the pre-qualification applicant. An applicant that fails to pass pre-qualification shall not have the qualification to submit bids.

Where less than three applicants pass pre-qualification, the tenderer shall launch a new bid invitation.

**Article 20** Where the tenderer examines the qualification of bidders by post-qualification, the bid evaluation committee shall examine the qualifications of bidders according to standards and methods prescribed in the bid invitation documents after opening the bids.

**Article 21** The tenderer is allowed to make necessary clarifications or amendments on the issued pre-qualification documents or bid invitation documents. Where the clarified or amended content may affect the preparation of pre-qualification application documents or bidding documents, the tenderer shall notify all potential bidders that have obtained the pre-qualification documents or bid invitation documents in writing at least three days before the deadline for submitting pre-qualification application documents, or at least 15 days before the deadline for submitting bidding documents; and if such a time is less than the three or 15 day periods, the tenderer shall postpone the deadline for submitting the pre-qualification application documents or bidding documents.

**Article 22** Where a potential bidder or any other interested party has any objection to the pre-qualification documents, it shall raise such an objection two days before the deadline for submitting the pre-qualification application documents; if it has any objection to the bid invitation documents, it shall raise such an objection 10 days before the deadline for submitting bidding documents. The tenderer shall give a reply within three days after receiving an objection; and suspend bidding activities before replying.

**Article 23** Where the content of pre-qualification documents or bid invitation documents prepared by the tenderer violates any compulsory provision of laws and administrative regulations, or is against the principle of openness, fairness, impartiality or good faith, which affects the pre-qualification result or a potential bidders' submission of bids, the tenderer of a project legally requiring bidding shall launch a new bid invitation after amending the pre-qualification documents or bid invitation documents.

**Article 24** Where the tenderer divides bid invitation projects into different stages, it shall

第十六条 招标人应当按照资格预审公告、招标公告或者投标邀请书规定的时间、地点发售资格预审文件或者招标文件。资格预审文件或者招标文件的发售期不得少于5日。

招标人发售资格预审文件、招标文件收取的费用应当限于补偿印刷、邮寄的成本支出，不得以营利为目的。

第十七条 招标人应当合理确定提交资格预审申请文件的时间。依法必须进行招标的项目提交资格预审申请文件的时间，自资格预审文件停止发售之日起不得少于5日。

第十八条 资格预审应当按照资格预审文件载明的标准和方法进行。

国有资金占控股或者主导地位的依法必须进行招标的项目，招标人应当组建资格审查委员会审查资格预审申请文件。资格审查委员会及其成员应当遵守[招标投标法](#)和本条例有关评标委员会及其成员的规定。

第十九条 资格预审结束后，招标人应当及时向资格预审申请人发出资格预审结果通知书。未通过资格预审的申请人不具有投标资格。

通过资格预审的申请人少于3个的，应当重新招标。

第二十条 招标人采用资格后审办法对投标人进行资格审查的，应当在开标后由评标委员会按照招标文件规定的标准和方法对投标人的资格进行审查。

第二十一条 招标人可以对已发出的资格预审文件或者招标文件进行必要的澄清或者修改。澄清或者修改的内容可能影响资格预审申请文件或者投标文件编制的，招标人应当在提交资格预审申请文件截止时间至少3日前，或者投标截止时间至少15日前，以书面形式通知所有获取资格预审文件或者招标文件的潜在投标人；不足3日或者15日的，招标人应当顺延提交资格预审申请文件或者投标文件的截止时间。

第二十二条 潜在投标人或者其他利害关系人对资格预审文件有异议的，应当在提交资格预审申请文件截止时间2日前提出；对招标文件有异议的，应当在投标截止时间10日前提出。招标人应当自收到异议之日起3日内作出答复；作出答复前，应当暂停招标投标活动。

第二十三条 招标人编制的资格预审文件、招标文件的内容违反法律、行政法规的强制性规定，违反公开、公平、公正和诚实信用原则，影响资格预审结果或者潜在投标人投标的，依法必须进行招标的项目的招标人应当在修改资格预审文件或者招标文件后重新招标。

第二十四条 招标人对招标项目划分标段的，应当遵

abide by the relevant provisions of the [Bidding Law](#), and it shall not restrict or exclude potential bidders by dividing stages. The tenderer shall not evade bidding by dividing stages for projects legally requiring bidding.

**Article 25** The tenderer shall indicate the validity term of bids, which shall be calculated from the bidding document submission deadline, in the bid invitation documents.

**Article 26** Where the tenderer requires bidders to provide a bid bond in the bid invitation documents, the bid bond shall not exceed 2% of the estimated value of the bid invitation project. The validity term of bid bonds shall be consistent with the validity term of bids. Bid bonds submitted in the form of cash or check by a domestic entity bidding for a project legally requiring bidding shall be transferred from its basic account. The tenderer shall not misappropriate the bid bonds.

**Article 27** The tenderer may decide whether to prepare a base bid price. Each bid invitation project shall only have one base bid price. The base bid price must be kept confidential. An intermediary that accepts entrustment to prepare the base bid price shall not participate in the bidding for a project whose base bid price is prepared by it upon entrustment, nor shall it prepare bidding documents or provide consulting for the bidder of such a project. Where the tenderer has set a maximum bid price, it shall specify in the bid invitation documents the maximum bid price or the methods for calculating the maximum bid price. The tenderer shall not prescribe a minimum bid price.

**Article 28** The tenderer shall not organize a single potential bidder or partial potential bidders to make an on-site investigation of a project site.

**Article 29** The tenderer may, according to law, carry out overall contracting bidding for all or a portion of the projects and the goods and services relevant to project construction. Where the projects, goods and services at temporarily evaluated prices within the overall contracting scope fall under the scope of projects legally requiring bidding and reach the standards regarding scale as required by the state, the tenderer shall invite bids according to law. The term "temporarily evaluated price" as mentioned in the preceding paragraph means the value of projects, goods and services that cannot be determined in the overall contracting bidding and is thereby temporarily evaluated by the tenderer in the bid invitation documents.

**Article 30** The tenderer may invite bids in two stages if the project has complicated technologies or its technical specifications cannot be precisely formulated. At the first stage, the bidders shall submit technical suggestions without quotation according to the requirements of the bidding notice or bid invitation, and the tenderer shall determine the technical standards and requirements according to the technical suggestions submitted by the bidders and prepare bid invitation documents. At the second stage, the tenderer shall provide bid invitation documents to the bidders that submitted technical suggestions at the first stage, and the bidders shall submit bidding documents including the final technical plans and bidding prices according to the requirements of the bid invitation documents. Where the tenderer requires the bidders to provide a bid bond, it shall put forward such requirements at the second stage.

**Article 31** Where the tenderer terminates a bid invitation, it shall make an announcement in a timely manner, or notify in writing the potential bidders that have been invited or have obtained pre-qualification documents and bid invitation documents. Where the tenderer has sold pre-qualification documents and bid invitation documents or has collected a bid bond, the tenderer shall refund the fees charged for pre-qualification documents and bid invitation documents in a timely manner, as well as the charged bid bond and the bank deposit interest over the same period.

守**招标投标法**的有关规定，不得利用划分标段限制或者排斥潜在投标人。依法必须进行招标的项目的招标人不得利用划分标段规避招标。

第二十五条 招标人应当在招标文件中载明投标有效期。投标有效期从提交投标文件的截止之日起算。

第二十六条 招标人在招标文件中要求投标人提交投标保证金的，投标保证金不得超过招标项目估算价的2%。投标保证金有效期应当与投标有效期一致。依法必须进行招标的项目的境内投标单位，以现金或者支票形式提交的投标保证金应当从其基本账户转出。招标人不得挪用投标保证金。

第二十七条 招标人可以自行决定是否编制标底。一个招标项目只能有一个标底。标底必须保密。接受委托编制标底的中介机构不得参加受托编制标底项目的投标，也不得为该项目的投标人编制投标文件或者提供咨询。招标人设有最高投标限价的，应当在招标文件中明确最高投标限价或者最高投标限价的计算方法。招标人不得规定最低投标限价。

第二十八条 招标人不得组织单个或者部分潜在投标人踏勘项目现场。

第二十九条 招标人可以依法对工程以及与工程建设有关的货物、服务全部或者部分实行总承包招标。以暂估价形式包括在总承包范围内的工程、货物、服务属于依法必须进行招标的项目范围且达到国家规定规模标准的，应当依法进行招标。前款所称暂估价，是指总承包招标时不能确定价格而由招标人在招标文件中暂时估定的工程、货物、服务的金额。

第三十条 对技术复杂或者无法精确拟定技术规格的项目，招标人可以分两阶段进行招标。第一阶段，投标人按照招标公告或者投标邀请书的要求提交不带报价的技术建议，招标人根据投标人提交的技术建议确定技术标准和需求，编制招标文件。第二阶段，招标人向在第一阶段提交技术建议的投标人提供招标文件，投标人按照招标文件的要求提交包括最终技术方案和投标报价的投标文件。招标人要求投标人提交投标保证金的，应当在第二阶段提出。

第三十一条 招标人终止招标的，应当及时发布公告，或者以书面形式通知被邀请的或者已经获取资格预审文件、招标文件的潜在投标人。已经发售资格预审文件、招标文件或者已经收取投标保证金的，招标人应当及时退还所收取的资格预审文件、招标文件的费用，以及所收取的投标保证金及银行同期存款利息。

**Article 32** The tenderer shall not, with unreasonable conditions, restrict or exclude bidders or potential bidders.

Where the tenderer commits any of the following conduct, it shall be deemed as restricting or excluding bidders or potential bidders with unreasonable conditions:

1. provides different information on the same bid invitation project to bidders or potential bidders;
2. the determined qualification, technical or business conditions do not meet the specific features and actual demands of the bid invitation project or are irrelevant to the performance of the contract;
3. for a project legally requiring bidding, the tenderer regards the performance or awards of the specific administrative region or specific industry as a condition for earning extra marks or for winning the bid;

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第三十二条 招标人不得以不合理的条件限制、排斥潜在投标人或者投标人。

招标人有下列行为之一的，属于以不合理条件限制、排斥潜在投标人或者投标人：

(一) 就同一招标项目向潜在投标人或者投标人提供有差别的项目信息；

(二) 设定的资格、技术、商务条件与招标项目的具体特点和实际需要不相适应或者与合同履行无关；

(三) 依法必须进行招标的项目以特定行政区域或者特定行业的业绩、奖项作为加分条件或者中标条件；

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