The Bidding Law of the People's Republic of China

(Adopted by the Standing Committee of the Ninth National People's Congress at the 11th Session on August 30, 1999)

Chapter One General Provisions

Article 1 This law has been enacted for the purpose of regulating the activities of Invitation to Bid and bidding, safeguarding the rights of the State, the social public and the parties concerned in the process of bidding, enhancing the economic performance, and ensuring the quality of projects.

Article 2 This law shall be applicable to the bidding activities within the territory of the People's Republic of China.

Article 3 Bidding shall be carried out for the following construction projects, including the survey, design, construction, supervision of the project, and the procurement of the important equipment, materials relevant to the construction of the project:
- large projects of infrastructure facility or public utility that have a bearing on the social public interest and the safety of the general public;
- projects entirely or partially using state-owned funds or loans by the state;
- projects using loans of international organizations and foreign governments and aid funds.

The specific scope and size criteria of the projects as mentioned in the previous paragraph shall be formulated by the department of development and planning of the State Council and other relevant departments of the State Council.

Where the scope of other projects that must be carried out through bidding is provided by laws or the regulations of the State Council, such laws and regulations shall remain applicable.

Article 4 As pertains to projects legally requiring bidding, no entity or individual evade bidding by any means including the dismembering of projects.

Article 5 The principles of openness, fairness, justice, honesty and credit-worthiness shall be applied to bidding activities.

Article 6 As pertains to projects legally requiring bidding, the bidding activities shall not to be subject to district or departmental restrictions. No entity or individual shall illegally restrict or exclude the participation of legal persons or other organizations beyond the region or industry in the bidding, nor illegally interfere with the bidding activities in any other means.

Article 7 The bidding activities and the parties concerned shall accept legally conducted supervision.

The relevant administrative supervision departments shall conduct supervision over the bidding
activities and investigate illegal activities the bidding process.

The State Council shall stipulate the administrative supervision of bidding activities and division of authority of the relevant departments.

Chapter Two Invitation to Bid

Article 8 The term “tenderee” refers to a legal person or other organization that propose a project and put forth an Invitation to Bid.

Article 9 Where a bidding project is subject to examination and approval in accordance with the relevant provisions of the State, approval shall be obtained in advance.

A tenderee shall possess sufficient funds for the bidding project, or have definite resources of funds for the project, and shall truthfully state related facts in the bid-invitation documents.

Article 10 An Invitation to Bid shall be made through either public notices or special requests.

"Public Invitation to Bid" refers to that the tenderee putting forth an invitation to unspecified legal persons or other organization to tender bids.

"Invitation to Bid by Request" refers to that the tenderee requesting specified legal persons or other organizations to tender bids.

Article 11 Invitation to Bid by Request may be used for both key national projects confirmed by the National Development Planning Department of the State Council and key local projects confirmed as unsuitable for public bidding by the People’s Government of the province, autonomous region or municipality having been ratified by either the National Development Planning Department of the State Council or the People’s Government of the province, autonomous region or municipality.

Article 12 The tenderee shall be entitled to independent selection of bidding agencies for the execution of bidding operations. No entity or individual shall in any way designate any bidding agency on behalf of the tenderee.

The tenderee who has the capacity to formulate Bid-invitation documents and organize bid evaluations may handle bidding operations on its own initiative. No entity or individual may compel the tenderee to entrust any bidding agencies with bidding operations.

For projects subject to bidding in which the tenderee chooses to handle the bidding operations, the tenderee shall report to the relevant administrative supervisory departments.

Article 13 The term “bidding agency” refers to the legally established social intermediary organizations, acting as agents in bidding operations and providing relevant services.
A bidding agency shall satisfy the conditions as mentioned below:

Bidding agency shall possess a place of business and funds for acting as agent in bidding operations;

Bidding agency shall consist of professionals capable of making Bid-invitation documents and organizing bid evaluations;

Bidding agency shall maintain archives of technical and economic experts that meet the requirements as mentioned in Article 37.3 of This law so as to serve the members of the bid evaluation committee.

**Article 14** The State Council, or provincial, autonomous region, or municipal governments shall review the qualifications of the bidding agency that serves as the agent in bidding operations of construction projects. The state council administrative department in charge of construction shall, in conjunction with the appropriate department of the state council, formulate the specific plan for the examination and approval. The department in charge of the examination and approval of the qualifications of the bidding agencies engaged in other bidding operations shall be subject to the provisions of the State Council.

There shall not be any relationship of subordination or other interest between the bidding agency and the administrative departments or other organs of state power.

**Article 15** A bidding agency shall handle bidding operations within the limit of authorization of the tenderee, and shall observe the provisions of This law concerning the tenderee.

**Article 16** in cases of Public Bidding, the tenderee shall publish bidding notices. The bidding notices for projects that are subject to bidding shall be published in the newspapers, information networks or other mass media as designated by the State.

The bidding notices shall clearly set forth the title and address of the tenderee, the nature, quantity, place and time for execution of the bidding project, ways of obtaining Bid-invitation documents, etc..

**Article 17** Where the Invitation to Bid by Request is used, the tenderee shall send invitations to no less than three specified legal persons or other organizations that are capable of handling bidding operations and with good credit standing.

The invitation shall clearly set forth the items as mentioned in Article 16.2 of This law.

**Article 18** The tenderee may, according the specific condition of the bidding project, request the tenderer provide relevant credentials and evidence of performance in the bidding notices or invitations, and examine the qualifications of the potential tenderers. Where there are other provisions by the State concerning the qualifications of the tenderer, such provisions shall be applied.

No tenderer shall restrain or "squeeze out" potential tenderers by imposing unreasonable conditions, nor shall it discriminate against the potential tenderers.
Article 19 The tenderer shall make Bid-invitation documents according to the features and requirements of the bidding project. The Bid-invitation documents shall include all substantial requirements and all key terms for the conclusion of contracts, including: the project's technical requirements, the criteria for examination of the tenderer, the requirements for the bid price and the standard of evaluation of the bid, etc.

Where there are state provisions concerning the technology and criteria of the bidding project, the tenderer shall clearly specify corresponding provisions in the Bid-invitation documents.

If necessary, the tenderer shall properly divide the bidding project into sections or phases, and provide clear information on the sections and phases in the Bid-invitation documents.

Article 20 The Bid-invitation documents shall neither postulate nor set forth a specific producer or supplier or other contents favoring or excluding potential tenderers.

Article 21 The tenderer may, according to the specific condition of the project, arrange for on-site inspections by potential tenderers.

Article 22 The tenderer shall not disclose to any other person the title, quantity of the potential tenderers that have obtained Bid-invitation documents or any other information that may affect fair competition.

Where there is a minimum bid, it shall be kept confidential.

Article 23 In cases where the tenderer has to make necessary clarifications or modifications to the Bid-invitation documents, he shall inform all receivers of the Bid-invitation documents in writing within 15 days prior to the deadline of the submission of bidding documents, as mentioned in the Bid-invitation documents.

Article 24 The tenderer shall specify a reasonable period of time for the tenderer to formulate bid documents. However, in cases of projects legally subject to bidding, the period of time from the first day the Bid-invitation documents are sent out to the deadline for the tenderers' submission of bidding documents shall not be shorter than twenty days.

Chapter III Bidding

Article 25 A tenderer shall be a legal person or other organization that makes a response to a bid and participates in the competition for a bid.

Where individuals are permitted to participate in the bidding of projects of scientific research, the provisions of This law, as concern the tenderer, shall apply to the individual tenderers.

Article 26 The tenderer shall be capable of undertaking the bidding project and shall satisfy the
qualifications as provided by state regulations or the Bid-invitation documents concerning the qualifications of the tenderer.

**Article 27** The tenderer shall formulate the bidding documents in accordance with the requirements as set forth in the Bid-invitation documents. The bidding documents shall respond to the substantial requirements and conditions as provided in the Bid-invitation documents.

If the bidding project is a construction project, the Bid-invitation documents shall include such contents as the resume and performances of the person in charge of the project and technicians to be dispatched and the machinery and equipment to be used in executing the bidding project.

**Article 28** The tenderer shall send the bidding documents to the place of bidding prior to the deadline for the submission of the bidding documents. The tenderee shall sign to acknowledge the receipt of the bidding documents and keep them without opening. If there are less than three tenderers, the tenderee shall make a new Invitation to Bid in accordance with This law.

The tenderee shall reject bidding documents arriving prior to the deadline.

**Article 29** The tenderer may supplement, modify, or revoke the Bid-invitation documents, in which case, the tenderer shall inform all tenderers prior to the deadline for the submission of the bidding documents. The supplements and modifications shall become a part of the Bid-invitation documents.

**Article 30** The tenderer shall, in accordance with the actual situation of the project as stated in the bidding documents, clearly state any intent of sub-contracting non-essential or non-critical parts of the project.

**Article 31** A consortium of two or more legal persons or other organizations may be formed to participate in the bidding competition as one tenderer.

All parties to the consortium shall be equipped with the corresponding capabilities for undertaking the bidding project. All parties shall satisfy the qualifications as provided in the rules of the state or in the Bid-invitation documents concerning the qualifications of the tenderer. The level of credit standing of a consortium made up of entities of a same profession shall be that of the entity with the lowest credit standing.

All parties to the consortium shall make an agreement, specifying the work to be undertaken and responsibilities, and shall submit said agreement, together with the bidding documents, to the tenderee. In the event the consortium wins the bid, all parties to the consortium shall make a contract together with the tenderee, and shall assume several and joint liability for the bidding project.

The tenderee shall not force the tenderers to form consortiums in the bidding, nor shall it constrain the competition of the tenderers.

**Article 32** Tenderers shall not collude with each other in setting bidding prices, nor shall they exclude
other tenderers from fair competition and harm the lawful rights and interests of the tenderee and other tenderers.

Tenderers shall not collude with the tenderee in injuring the interests of the state, general public and other people.

Tenderers shall be forbidden to win any bid by offering any bribe to the tenderee or any member of the bid-evaluation committee.

**Article 33** Tenderers shall not participate in the bidding competition by offering a price lower than the cost, nor shall they attempt to win the bid in the name of other persons or through other fraudulent means.

Chapter Four Opening, Evaluation and Winning of Bid

**Article 34** The opening of the bid shall be carried out in public at the time of the deadline for submission of bidding documents, as mentioned in the Bid-invitation documents. The place for opening bids shall be the place specified in the Bid-invitation documents.

**Article 35** The bid opening shall be presided by the tenderee with the participation of all tenderers.

**Article 36** Before opening a bid, the seal-integrity of bidding documents shall be examined by the tenderers or the representatives chosen by the tenderers. A public notary agency entrusted by the tenderee may also examine the seal-integrity of the documents and notarize the situation. After confirmation of the validity of the sealing, the person in charge shall open the bidding documents in public and announce the names or titles of the tenderers, the prices of the bids and other main contents of the bidding documents.

The tenderee shall, at the time of bid opening, open all the bidding documents received prior to the deadline of submission and read in public.

The process of bid opening shall be recorded kept in the archives for future reference.

**Article 37** A legally established bid evaluation committee shall be responsible for bid evaluation.

For projects legally subject to bidding, the bid evaluation committee shall be composed of representatives of the tenderee and experts in the technology and economics concerned. The number of members shall be an odd number larger than 5, of whom no less than two thirds of all the members shall be experts in the technology or economics concerned.

An expert as mentioned in the previous paragraph shall have an experience of no less than eight years in relevant fields and have a senior professional title or be of an equivalent level, and shall be selected by the tenderee from the lists of experts provided by the relevant departments of the State Council, the relevant departments of the provincial, autonomous region, or municipal government, or from the list of
related experts found within the expert archives of the tenderee-representative institutions. The random
selection method may be used in an ordinary bidding project, while for special projects, the method to
be used shall be subject to the decision of the tenderee.

Those with direct interest relationships to the tenderer shall not serve on the bid evaluation committee
for the relevant bidding projects. Those who are already members of the committee shall be removed.

The name list of the members of the bid evaluation committee shall be kept confidential before the
winning of bid is determined.

Article 38 The tenderee shall take necessary measures to ensure that bid evaluations are conducted in
a strictly confidential manner.

No entity or individual shall unlawfully interfere with or influence the process or result of any bid
evaluation.

Article 39 The bid evaluation committee may demand tenderers to make clarifications or explanations
as to the ambiguities in the bidding documents, but such clarifications or explanations shall not go
beyond the limits as mentioned in the bidding documents or alter the substantial contents of the bidding
documents.

Article 40 The bid evaluation committee shall make evaluations and comparisons to the bidding
documents according to the criteria and methods as specified in the Bid-invitation documents. Where a
base price is set in the bidding documents, reference shall be made to the base price. After the
completion of bid evaluation, the bid evaluation committee shall submit a written report to the tenderee
and make recommendations as to candidates for the winning bid.

The winner of the bid shall be determined by the tenderee in accordance with the written evaluation
report by the committee and the candidates proposed by the committee. The winning candidate may
also be directly determined by the committee under the authorization of the tenderee.

Where there are special provisions by the State Council concerning a specific bidding project, such
provisions shall apply.

Article 41 The winning candidate shall meet at least one condition as mentioned below:

1) The candidate is to the maximum extent able to satisfy the bid evaluation criteria as specified in each
clause of the bid-invitation documents.

2) the tenderer is able to satisfy the substantial requirements, while providing the lowest bid (excluding
below-cost bids).

Article 42 The bid evaluation committee may decide to reject all bids if it finds that no bid is able to
meet the requirements stipulated in the Bid-invitation documents.
If all the bids on a project legally subject to bidding are rejecteed, the tenderee shall again invite bidding, as stipulated in This law.

**Article 43** Before the determination of the bid winner, no negotiations may be conducted between the tenderee and any tenderers concerning the substantial contents such as bid price, plans, etc.

**Article 44** Members of the bid evaluation committee shall perform their duties in an objective and fair manner, observe professional ethics, and assume individual responsibility for their evaluation opinions.

No member of the bid evaluation committee may have private contact with any tenderer or accept any money, property or other benefits from the tenderer.

No member of the bid evaluation committee nor any person engaged in the bid evaluation may disclose any information concerning bid evaluations and comparisons, nominations of bid winner candidates, or any other information related to the bid evaluation.

**Article 45** After the determination of the bid winner, the tenderee shall issue a bid winning notice to the winner, and at the same time inform all the other tenderers of the result.

The bid-winning notice shall be of legal effect to the tenderee and bid winner. If the tenderee changes the result of bid winning or the bid winner rejects the bid project after the notice has been sent out, the tenderee or tenderer shall be held legal liable.

**Article 46** A written contract shall be concluded between the tenderee and bid winner within 30 days after the issuance of the bid-winning notice according to the Invitation to Bid and bidding documents. The tenderee and bid winner shall not conclude other agreements deviating from any substantial provision of the contract.

Where the Bid-invitation documents require the bid winner pay a contract implementation security, the bid winner shall make such payments.

**Article 47** For a project which is legally subject to bidding, the tenderee shall submit a written report concerning the bidding to the relevant supervisory administrative departments within 15 days of the determination of the bid winner.

**Article 48** The bid winner shall perform duties and complete the bidding project, as specified in the contract. The bid winner shall neither assign the project to any other person nor dismember the project and then assign the project in part to other persons.

The bid winner may, according to the provisions of the contract or the consent of the tenderee, subcontract to other persons parts of the project that are not vital or key to the project.

The bid winner shall be responsible to the tenderee for the assigned part of the project, and the person
who accepts the subcontracted part of the project shall take joint and several liabilities.

Chapter Five Legal Liabilities

Article 49 Those failing to conduct bidding for project legally subject to bidding, or evading bidding by means of dismemberment other means shall be ordered to make corrections, and may be imposed upon a fine of not less than 1/2% but not more than 1% of the total value of the contracted project. For a project wholly or partly funded by state funds, implementation may be suspended or the transfer of funds may be suspended. The person(s)-in-charge directly responsible for the unit and other persons who are held in direct responsibility shall be punished according to law.

Article 50 Any bidding agency disclosing information of materials relating to the bidding, in violation of This law, or conspiring with the tenderee or tenderer(s), so as to injure the lawful rights or interests of the state, the general public or any other persons, shall be subject to a fine of not less than 50,000 yuan but not more than 250,000 yuan RMB; the person-in-charge directly responsible for the entity or any other person who are held directly responsible shall be subject to a fine of not less than 5% but not more than 10% of the total amount of fine imposed upon the entity. Where any illegal gains have resulted, such gains shall be confiscated; under serious circumstances, the agency may be suspended or even be disqualified. If any violation of law constitutes a crime, violators shall be criminally prosecuted. Where losses have resulted, the agency shall make compensations.

If the winning of the bid has been affected by any of the acts as mentioned in the previous paragraph, the bid shall be held invalid.

Article 51 In cases where the tenderee has been found guilty of restraint or exclusion of potential tenderers through unreasonable conditions, application of discriminatory treatment of tenderers, forcing tenderers to form consortiums, or restraining the competition among tenderers the tenderee shall be ordered to make corrections, and may be subject to a fine of not less than 10,000 yuan but not more than 50,000 yuan.

Article 53 If the tenderer wins the bid by conspiring with the tenderers or with the tenderee or paying bribes to the tenderee or members of the bid evaluation committee, the bid shall be invalid, and the bid winner shall be subject to a fine of not less than 1/2% but not more than 1% of the total value of the bidding project. The person-in-charge directly responsible for the entity or any other person who are held directly responsible shall be subject to a fine of not less than 5% but not more than 10% of the total amount of fine imposed upon the entity. Where any illegal gains have resulted, such gains shall be confiscated; where the circumstance are serious, the tenderer shall be disqualified from participation in bidding for a term of 1 to 2 years for and shall be published in public notices, or be revoked of his business license by the administration for industry and commerce. If any violation of law constitutes a crime, the tenderer shall be criminally prosecuted. If losses have been caused to other persons, the tenderer shall be responsible for making compensations.

Article 54 If the tenderer wins the bid by using another person's name or through other fraudulent means, the bid shall be invalid. If losses have been caused to any other person, he shall be responsible
for making compensations. If any violation of this constitutes a crime, the tenderer shall be criminally prosecuted.

If the tenderee of a project legally subject to bidding commits as mentioned in the previous paragraph but does not constitute a crime, he shall be subject to a fine of not less than 1/2% but not more than 1% of the total value of the bidding project. The person-in-charge directly responsible for the entity or any other person who are held directly responsible shall be subject to a fine of not less than 5% but not more than 10% of the total amount of fine imposed upon the entity. Where any illegal gains have resulted, such gains shall be confiscated; where the circumstance are serious, the tenderer shall be disqualified from participation in bidding for a term of 1 to 3 years from participation in bidding and shall be published in public notices, or be subject to revocation of license by the administration for industry and commerce.

Article 55 For a project legally subject to bidding where the tenderee violates This law by negotiating with any tenderer about substantial contents of the bid such as the bid price or plan, he shall be warned, and the person-in-charge directly responsible for the entity or any other person who are held in direct responsibility shall be punished according to law.

If the winning bid has been affected by any of the acts as mentioned in the previous paragraph, the bid shall be invalid.

Article 56 If any member of the bid evaluation committee accepts the property or other benefits of any tenderer, or any member of the bid evaluation committee or relevant worker engaged in the bid evaluation disclose information about the evaluation or comparison of bid, or the nomination of candidates for winning the bid or any other information about the bid evaluation, he shall be subject to a warning, confiscation of property accepted, and may be concurrently subject to a fine of not less than 3,000 yuan but not more than 50,000 yuan. Any member committing any of the acts as mentioned in the previous paragraph shall be disqualified and no longer be allowed to participate in the evaluation of any bid legally subject to bidding. If any of the acts constitute a crime, the violator shall be prosecuted.

Article 57 If the tenderee selects the bid winner beyond the range of candidates as legally recommended by the bid evaluation committee, or if the tenderee of a project legally subject to bidding selects the bid winner on his own initiative after all bids have been rejected by the bid evaluation committee, said bid shall be invalid; the tenderee shall be ordered to make corrections and may be subject to a fine of not less than 1/2% but not more than 1% of the total value of the bidding project. The person-in-charge directly responsible for the entity or any other person who are held in direct responsibility shall be punished according to law.

Article 58 Where the winner of a bid assigns the bidding project to another person or dismembers the project and then assigns it to other persons, or subcontracts any vital or key part of the project to other persons, or if the subcontractor further subcontracts his part, such assignments and subcontracts shall be invalid, and the persons who are held responsible shall be imposed upon a fine of not less than 5 but not more than 10 of the total value of the part assigned or subcontracted. Where any illegal gains have been incurred, such gains shall be confiscated. The persons responsible may also be ordered to
suspend business for internal rectification. If the circumstances are serious, the business license of the person responsible may also be canceled by the administration for industry and commerce.

**Article 59** Where a contract is not concluded between the tenderee and the bid winner as per with the Invitation to Bid and bidding documents, or if the tenderee and bid winner make an agreement deviating from the substance of the contract, they shall be ordered to make corrections, and may be subject to a fine of not less than 5 but not more than 10 of the total value of the bidding project.

**Article 60** If the bid winner fails to perform the contract entered into with the tenderee, the guarantee money for implementation shall not be returned; if the losses caused to the tenderee exceed the guarantee money, he shall make compensations for the balance; if he has failed to pay guarantee money, he shall be responsible for making compensations for the losses of the tenderee.

If the failure of the bid winner to perform his contractual obligations is serious, he shall be disqualified from participating in bidding for a term of 2 to 5 years and his violations shall be published in public notices, up to and including the cancelation of his business by the administration for industry and commerce.

If the failure to perform the contract is caused by force majeure, the provisions as mentioned in the previous two paragraphs shall not apply.

**Article 61** The administrative penalties as stipulated in this chapter shall be subject to the decision of the administrative department of supervision designated by the State Council, with the exception of the state organs already stipulated in This law for the executing penalties.

**Article 62** Any entity violating This law by restricting or excluding legal persons or other organizations beyond its own geographical area or industry from participating in bidding, designating bidding agencies for the tenderee, forcing the tenderee to entrust bidding agencies for participation in bidding, or interfering with the bidding in any other means, shall be ordered to make corrections; the person-in-charge directly responsible for the entity or any other persons who are held in direct responsibility shall be warned, demerited, or given a special demerit; if the circumstances are serious, the person shall be punished by demotion, removal from office, or dismissal from work.

If any one commits any of the acts as mentioned in the previous paragraph, he shall be punished in accordance with the provisions of the previous paragraph.

**Article 63** If any officer of the state organs responsible for the administrative supervision over bidding activities resorts to irregularities for favoritism, abuse of power or neglect of duties, he shall be administratively punished; if any of the acts constitutes a crime, he shall be criminally prosecuted.

**Article 64** If a winning bid is held invalid for a project legally subject to bidding due to violations of This law, a bid winner shall be selected according to the provisions of This law from the remaining tenderers, or a new bidding shall be conducted.
Chapter Six Supplementary Provisions

**Article 65** If the tenderee or any other interested party believes that a bidding has been conducted in violation of This law, he shall be entitled to raise objections to the tenderee or file a complaint with the relevant administrative departments of supervision.

**Article 66** For a project concerned with national security, state secrets, emergency handling, disaster relief, or belonging to special occasions such as the use of poverty alleviation funds or the use of the labor of farmers and is not suitable for bidding, the method of bidding shall not be applied.

**Article 67** The bidding of a project using funds from international organizations or loans from foreign countries or aid funds and the lender or provider of funds has different provisions concerning the specific conditions or procedure of bidding, such provisions may be applied, but with the exception of those in breach of public interest.

**Article 68** This law shall come into effect on January 1, 2000.