Documents of the Department of Housing and Urban-Rural Development of Jiangsu Province

Su Jianguizi [2016] No. 4

**The Provincial Department of Housing and Urban-Rural Development issued the "Housing Construction in Jiangsu Province."**

 **and municipal infrastructure project bidding and bidding activities objections and complaints**

**Notice of the Measures for the Implementation of the Handling Measures**

The Implementation Measures for the Handling of Objections and Complaints in Bidding and Bidding Activities for Housing Construction and Municipal Infrastructure Projects in Jiangsu Province were deliberated and approved by the executive meeting of the Department on May 30, 2016, and are hereby issued.

Department of Housing and Urban-Rural Development of Jiangsu Province

2016年6月13日

**Housing construction and municipal infrastructure projects in Jiangsu Province**

**Measures for the Implementation** of The Handling of Objections and Complaints in Bidding and Bidding Activities

1. General

**Article 1** In order to safeguard the societal public interest and the lawful rights and interests of the parties to bidding and bidding, establish a fair, just and efficient mechanism for handling objections and complaints in bidding and bidding activities, in accordance with the "Law of the People's Republic of China on Bidding and Bidding", "Regulations on the Implementation of the Law of the People's Republic of China on Bidding and Bidding", "Measures for the Handling of Complaints in Bidding and Bidding Activities for Engineering Construction Projects" (Order No. 11 of the Seven Ministries and Commissions) and other laws, Laws and regulations and relevant rules and regulations, combined with the actual conditions of our province, the formulation of these measures.

**Article 2** These Measures shall apply to the objections and complaints, acceptance and handling of bidding activities for housing construction and municipal infrastructure facilities projects that must be tendered in accordance with law within the scope of this Province.

**Article 3 The** provincial administrative department in charge of housing and urban-rural construction shall be responsible for guiding and supervising the handling of objections and complaints in the bidding and bidding activities of housing construction and municipal infrastructure facilities in the province.

The competent administrative departments for housing and urban-rural construction of people's governments at the county level or above (hereinafter collectively referred to as administrative supervision departments) shall, in accordance with their duties and division of labor and the scope of their supervisory authority, accept and handle complaints about bidding and bidding, and supervise the handling of objections to bidding and bidding. Where people's governments at the county level or above have other provisions on the division of labor in supervising bidding and bidding activities, follow those provisions.

**Article 4 Where** a bidder or other interested party considers that the bidding and bidding activities do not conform to the provisions of laws, regulations and rules, he may raise an objection to the bidder in accordance with law, and may also on the date on which he knows or should have known10 Within a day, if a complaint is made to the relevant administrative supervision department, but a complaint is made on the matters provided for in Articles 22, 44 and 54 of the Implementing Regulations of the Law of the People's Republic of China on Tendering and Bidding, an objection shall be raised to the bidder in accordance with law. The period for responding to objections is not counted in the complaint acceptance period.

**Article 5 The** tenderer shall specify the objections and complaint acceptance institutions in the prequalification documents and tender documents, as well as their telephone, fax, electronic mailbox and correspondence address. At the same time, the bidders and other interested parties are informed in the bidding documents to exercise their right to object or complain within the statutory time limit.

**Article 6: The** handling of objections and complaints shall adhere to the principles of fairness, impartiality, and efficiency, and make a decision on handling within the legally prescribed time limit, preserving the national interest, the societal public interest, and the lawful rights and interests of parties to bidding and bidding, and other interested parties.

**Article 7 The** bidder responsibility system shall be implemented in the bidding and bidding of housing construction and municipal infrastructure projects. Bidders shall handle objections in accordance with law and cooperate with administrative supervision departments in handling complaints.

Chapter II: Raising and Handling of Objections

**Article 8 The** time limit for raising objections is as follows:

(1) Where there is an objection to the prequalification documents, the potential bidders or other interested parties shall submit them 2 days before the deadline for submitting the prequalification application documents;

(2) Where there are objections to the bidding documents, the potential bidders or other interested parties shall submit them 10 days before the bidding deadline, among which the contract shall be submitted 1 day before the deadline for submitting the bidding documents if the contract is issued using the method of random determination of the winning bidder at a reasonable price;

(3) Where there is an objection to the unqualified results of the prequalification examination, it shall be raised within the period of publication of the results of the prequalification examination;

(4) Where there are objections to the opening of bids, they shall be raised at the bid opening site;

(5) Where there is an objection to the results of the bid evaluation, the bidder or other interested party shall raise it during the publicity period of the successful candidate.

**Article 9 Where** an objector raises an objection to a matter involving the opening of bids, it shall submit it in writing at the bid opening site, and the bidder shall make a reply on the spot and make a record. Bidders shall not raise further objections to the opening of tenders after the opening of tenders has been completed.

**Article 10 Where** an objection is raised by an objector to a matter other than those involving the opening of bids, it shall submit an objection to the tenderer (see Annex 1 for the format), and the objection shall include the following main contents:

(1) The name, address, and effective contact information of the objector;

(2) The basic facts, effective clues, and relevant supporting materials of the objection;

(3) Relevant requests and claims;

(4) Explanations that the dissenter is another interested party.

**Article 11:** Where the objector requests the withdrawal of the objection, it shall be submitted in writing. If the bidder agrees to withdraw, the opposition procedure shall be terminated.

Where the objector withdraws his objection, he must not raise the objection or lodge a complaint again on the same grounds.

**Article 12 The** tenderer shall complete the handling of objections within the statutory time limit. The tenderer shall make a written reply to objections to prequalification documents, bidding documents and evaluation results within 3 days from the date of acceptance of the objection (see Annex 2 for the format), and the content of the reply shall not involve commercial secrets. If there is no reply within the prescribed time limit, the administrative supervision department shall order the bidder to make a reply in accordance with law.

Where the tenderer needs to conduct inspection, testing, appraisal, investigation and evidence collection, organize expert review, or go to a field to investigate the handling of objections, the time required is not counted into the time limit provided for in the preceding paragraph.

Bidding and bidding activities shall be suspended before the objection is answered.

**Article 13** The tenderer shall send a copy of the written reply to the administrative supervision department within 2 working days from the date of making it.

Chapter III: Raising and Handling complaints

**Article 14** **Where a complaint is** made against the prequalification announcement, the bidding announcement, the prequalification documents, the bidding documents, the bidding control price, the prequalification results, or the bid evaluation results, the date of their release or publicity shall be the date on which the complainant knows or should know.

**Article 15** The complainant shall complain to the administrative supervision department at the place where the project is located. The complaint shall be submitted in a complaint (see Annex 3 for the format), and the complaint shall include the following contents:

(1) The complainant's name, address, and effective contact information;

(2) The name, address, and effective contact information of the respondent;

(3) The basic facts of the complaint matter;

(4) Relevant requests and claims;

(5) Effective leads and relevant supporting materials.
 For matters that should be raised before the complaint is made in accordance with law, the complaint shall be accompanied by a written objection and a reply letter from the bidder's objection.

**Article 16**: After the administrative supervision department receives the complaint, it shall conduct a review within 3 working days, and make the following disposition decisions as appropriate:

(1) Where the conditions for handling the complaint are not met, it is decided not to accept it, and the complainant is informed in writing of the reasons for the inadmissibility (see Annex 4 for the format), of which the complainant shall be informed to submit an objection to the bidder in a timely manner if the objection should be raised before the complaint in accordance with the law and is still within the objection period;

(2) Where there are multiple complaints but some of them do not meet the requirements for handling complaints, the matters that meet the requirements for handling complaints shall be accepted, and the matters that do not meet the requirements for handling complaints are not accepted, and the complainant is informed in writing of the reasons for inadmissibility;

(3) Inform the complainant in writing to submit a complaint to other administrative supervision departments for complaints that meet the requirements for handling complaints but are not accepted by that department;

For those who meet the conditions for handling complaints and decide to accept them, the date of receipt of the complaint shall be the date of acceptance. When necessary, the administrative supervision department may order the suspension of bidding and bidding activities.

**Article 17: Complaints** in any of the following circumstances shall not be accepted:

(1) The complainant is not a participant in the bidding and bidding activity complained about, or has no interest in the project complained of, or cannot prove that he is a participant in the bidding activity or other interests;

(2) The complaint is not specific, and no effective leads are provided, making it difficult to verify;

(3) The complaint is not signed with the complainant's real name, signature, and effective contact information; where the complaint is made in the name of a legal person, the complaint is not signed and affixed with the official seal of the legal representative or the authorized client;

(4) Exceeding the statute of limitations for complaints;

(5) a disposition decision has been made and the complainant has not submitted new evidence;

(6) Where the withdrawal of the complaint is granted and then the complaint is filed on the same facts and grounds;

(7) Where no objection has been raised to the matter of the complaint that should have been raised first, or the bidder has suspended the bidding activities and is investigating and handling the objection raised by the objector;

(8) The complaint has entered administrative reconsideration or administrative litigation procedures;

(9) The complainant submits a complaint again on the same facts and reasons.

**Article 18**: Staff members of administrative supervision departments responsible for handling complaints shall voluntarily recuse themselves in any of the following circumstances:

(1) Close relatives are the respondent or complainant, or the principal responsible person of the respondent or complainant;

(2) In the past three years, he or she has held a senior management position in the complainant or the respondent's unit;

(3) Having other interests with the respondent or complainant, which might affect the fair handling of the complaint matter.

**Article 19**: Administrative supervision departments handling complaints have the right to consult and copy relevant documents and materials, and to investigate relevant circumstances. Investigations shall be conducted by two or more administrative law enforcement personnel. The investigation record shall be submitted to the person under investigation for signature and confirmation.

For investigations lawfully conducted by administrative supervision departments, the complainant, the respondent, members of the bid evaluation committee, and other parties related to the complaint shall cooperate, truthfully provide relevant information and circumstances, and must not refuse, conceal, or falsely report.

**Article 20:** In the course of handling complaints, the administrative supervision departments shall hear the respondent's statements and defenses, and when necessary, may notify the complainant and the respondent to conduct cross-examination in accordance with the procedures in the following example.

(i). The complainant makes a statement of the facts, reasons and claims of the complaint and presents evidence, and the respondent cross-examines the evidence provided by the complainant;

(ii). The respondent responds to the facts, reasons and claims of the complaint and presents evidence, and the complainant cross-examines the evidence provided by the complainant;

(iii). The complainant and the respondent make their final statements separately.

Evidence collected by the administrative supervision department may be presented during cross-examination, the opinions of the complainant and the respondent may be heard, and the circumstances of the investigation and collection of such evidence may be explained.

**Article** **21:** Where relevant units and personnel refuse to cooperate with the administrative supervision departments' investigations, they are to be handled in accordance with the following provisions:

(1) For bidders, the administrative supervision department may reject their complaints, record the bad behavior and make them public;

(2) For bidders, the administrative supervision department may order them to suspend bidding and bidding activities;

(3) Members of the bid evaluation committee may be disqualified from being included in the bid evaluation expert pool.

**Article** 22: The following conduct is an act of refusing to cooperate with an administrative supervision department's investigation:

(1) Refusing to submit relevant evidence or materials to the administrative supervision departments;

(2) Forging certificates or supporting materials;

(3) Refusing to conduct investigations and interviews or collect evidence on the spot;

(4) Concealing or fabricating facts during administrative law enforcement investigations;

(5) Obstructing relevant personnel from cooperating with administrative supervision departments in conducting investigations in accordance with law.

**Article 23** **Where a** complaint involves project information that needs to be investigated across districts, the competent department of housing and urban-rural construction may send a letter to the competent department of housing and urban-rural construction at the place where the project is located, submitting a request for assistance in the investigation;

**Article 24: Where** complaints involve professional or technical issues, conclusions drawn in the following ways may be used as the basis for administrative supervision departments to handle complaints:

(1) The review explanation of the original qualification review committee or the bid evaluation committee;

(2) Expert arguments or deliberation opinions;

(3) Opinions on hearings.

When organizing expert arguments, priority is given to selecting senior experts from the expert pool.

**Article 25**: Where the complainant requests the withdrawal of the complaint before a decision on the handling of a complaint is made, it shall submit it in writing and explain the reasons, and the administrative supervision department shall decide whether to approve the withdrawal based on the following circumstances:

(1) Where it has been verified that there is a clear violation of law, it shall not be allowed to be withdrawn, and the investigation shall continue until a disposition decision is made;

(2) Where the withdrawal of a complaint does not harm the national interest, the societal public interest, or the lawful rights and interests of other parties, the withdrawal shall be granted, and the complaint handling process shall be terminated.

**Article 26**: Administrative supervision departments shall conduct a review of the complaint matters on the basis of investigation and evidence collection, and make a disposition decision in accordance with the following provisions:

(1) Where the complaint lacks a factual or legal basis, or where the complainant fabricates facts, fabricates materials, or obtains supporting materials by illegal means to make a complaint, the complaint is rejected;

(2) Where the complaint is true and there are indeed violations of laws and regulations in the bidding and bidding activities, the relevant units or personnel shall be handled in accordance with national laws, regulations and rules and these Measures, and administrative penalties shall be imposed in accordance with the "Administrative Punishment Law of the People's Republic of China".

**Article 27**: Administrative supervision departments shall, within 30 working days of accepting a complaint, make a decision on the handling of the complaint, and notify the complainant, the respondent, and other parties related to the outcome of the complaint in writing. Where inspection, testing, appraisal, or expert review are required, the time required is not counted.

**Article 28: The** written decision on handling complaints shall include the following content (see Annex 5 for the format):

(1) The name and address of the complainant and the respondent;

(2) The complainant's complaint matters and claims;

(3) The respondent's defense and request;

(4) The basic facts ascertained through investigation;

(5) The administrative supervision department's handling opinions and basis.

**Article 29**: Administrative supervision departments shall establish complaint handling archives, and do a good job of preservation and management work, and accept supervision and inspections by relevant parties.

Chapter IV: Supervision and Management

**Article 30: Where** clues or evidence of violations of discipline or law are discovered in the course of handling objections, the bidders shall lawfully transfer them to the administrative supervision department or supervision department, public security or judicial organ for investigation and handling, and must not conceal or cover it up.

Where the bidder does not accept the objection or respond to the objection in accordance with the provisions, and continues to carry out the bidding and bidding activities, the relevant administrative supervision department shall order corrections. Those who refuse to make corrections or cannot make corrections and affect the results of winning the bid shall be dealt with in accordance with the relevant provisions of the "Regulations on the Implementation of the Law of the People's Republic of China on Bidding and Bidding".

**Article** **31:** Where all parties involved in the process of handling objections to bidding or complaints and their staffs have untrustworthy conduct, punishment is to be conducted in accordance with the "Jiangsu Provincial Housing and Urban-Rural Construction System Implementation Measures for the Management and Punishment of Untrustworthy Conduct (Trial Implementation)".

Where bidding agencies or bid evaluation experts have violations of laws and regulations, and the circumstances are serious, they shall be suspended or cancelled as bidding agents and suspended or cancelled as bid evaluation experts respectively.

Where the above-mentioned units and personnel are suspected of committing a crime, transfer them to the judicial organs for handling.

**Article 32: Where** a complainant deliberately fabricates facts, fabricates supporting materials, or makes a malicious complaint by obtaining supporting materials by illegal means, causing losses to others, he shall bear liability for compensation in accordance with law.

Where there is a complaint under the circumstances of the preceding paragraph, the administrative supervision department is to reject the complaint, record the negative conduct, and publicize it.

**Article 33:** Staff responsible for handling complaints shall strictly abide by confidentiality provisions. State secrets and commercial secrets that are exposed to in the course of handling complaints shall be kept confidential in accordance with law, and the matters to which the complaints are made must not be disclosed to other units or individuals unrelated to the complaints.

**Article 34**: Personnel related to accepting, investigating, and handling complaints must abide by discipline, handle affairs in accordance with law, be honest and self-disciplined, and must not engage in the following conduct:

(1) Illegally interfering with complaint acceptance, investigation, and handling activities in any way;

(2) Favoritism, abuse of power, or dereliction of duty;

(3) Leaking materials or circumstances that shall be kept confidential in accordance with law;

(4) Concealing, suppressing, withholding, replacing, or delaying complaint information or investigating facts and circumstances;

(5) Entrusted by an interested party, threatening or inducing the complainant to withdraw the lawsuit;

(6) Soliciting or accepting property from the complainant, the respondent, or an intermediary;

(7) Using the convenience of work to seek private interests for oneself or others;

(8) Other conduct violating laws, regulations, or rules.

Where in the course of handling complaints, the staff of the administrative supervision department engages in favoritism, malpractices, abuses their powers, or neglects their duties, and retaliates against the complainant, it shall be reported to the relevant departments for handling in accordance with discipline and law.

Article 35: In the course of handling complaints, administrative supervision departments must not collect any fees from complainants or respondents.

Chapter V Supplementary Provisions

**Article 36**: The meanings of the following terms used in these Measures are:

(1) Objection refers to the act of bidders or other interested parties submitting different opinions to bidders in accordance with law on possible violations of laws, regulations and rules on issues that may exist in the prequalification documents, prequalification results, bidding documents, bid opening or evaluation results.

Where potential bidders raise doubts about possible omissions, errors, unclear meanings or even contradictory issues in the prequalification documents and solicitation documents, it is not an objection provided for in these Measures. Doubts shall be raised within the time specified in the prequalification documents or the solicitation documents.

(2) Complaint refers to the act of the bidder or other interested party that the bidding and bidding activities do not comply with the provisions of laws, regulations and rules, or that their own lawful rights and interests have been infringed, and the dissenter is dissatisfied with the objections of the bidders, and submits a request to the administrative supervision department to stop the illegal acts or protect their lawful rights and interests within the prescribed time limit in accordance with law.

(3) Other interested parties refer to legal persons, other organizations and individuals other than bidders who have direct or indirect interests in bidding projects or bidding activities, mainly including bidders, users of bidding projects, potential bidders, specific suppliers or subcontractors of goods or services related to bidding projects, etc.

 Article **37:** These Measures take effect on July 1, 2016. Where other documents promulgated in the past are inconsistent with these Measures, these Measures shall prevail.

**Article 38**: The Provincial Department of Housing and Urban-Rural Development is responsible for the interpretation of these Measures.

Annex 1: Opposition

Annex 2: Letter of Objection Response

Annex 3: Project Complaint Form

Annex 4: Notice of Inadmissibility

Annex 5: Complaint Handling Decision

Annex 1:

**Opposition Form (Format)**

Project Name:

Objector:

Domicile: Zip code:

Legal representative: Contact number

Authorized representative of the objector: Gender: Age:

Address: Tel:

Basic facts of the matter of filing an objection:

Related Requests and Claims:

Valid clues and relevant supporting materials:

Proof that the objector has an interest in the project:

 Dissenter (official seal):

 Legal representative or authorized representative (signature)

 Year Month Day

Illustrate:

1. If the objector is a legal person, the opposition letter must be signed and sealed by its legal representative or authorized representative.

2. Where the relevant materials of the opposition letter are in a foreign language, the objector shall provide a translation of his Chinese at the same time.

Annex 2:

**Objection Response Letter (Format)**

(Name of the dissenter):

Your unit has raised relevant objections to the bidding activities (name of the bidding project):

(i) ......... ；

(ii) ......... ；

(iii) ...

At the same time, supporting materials (relevant facts and basis) are also provided.

The unit accepted it on The year, month and day, after reviewing the relevant materials of this bidding activity, and in accordance with the relevant provisions of (laws and regulations) and the bidding documents, the reply is as follows:

(i) ......... ；

(ii) ......... ；

(iii) ...

In summary, the unit believes that:

 Unit: (Stamp)

Contact Tel:

Year Month Day

Annex 3:

**Complaint Form (Format)**

**Complainant (Name):**

Domicile: Zip code:

Tel: Fax:

Legal Representative Name: Position: Tel:

Authorized Principal Name (if any): Title: Tel:

Resident Identity Card Number:

**Respondent (**name):

Domicile:

Zip Code: Tel:

Legal Representative Name: Position: Tel:

**Basic facts of the complaint:**

**Related requests and claims:**

**Relevant supporting materials and valid clues:**

**Proof of the complainant's interest in the complaint project:**

**If a complaint is made about the objection matter, the supporting documents of the objection and the reply to the objection of the bidder:**

Complainant (with official seal)

Legal representative (signature)

Year Month Day

Illustrate:

1. If the complainant is a legal person, the complaint must be signed and sealed by its legal representative or authorized representative.

2. If the relevant materials of the complaint are in a foreign language, the complainant shall also provide a translation of the Chinese.

Annex 4:

**Notice of Inadmissibility (Format**).

Numbering:

：

Your unit submitted the pair on the year month day

The complaint materials of the project have been reviewed, and according to the relevant laws, regulations and rules of bidding and bidding, there are the following problems in your unit's complaint:

 □ the complainant is not a participant in the bidding activity complained about, or has no interest in the project complained of, or cannot prove that he is a participant in the bidding activity or other interests;

□ the complaint is not specific, and does not provide effective clues, it is difficult to verify;

□ the complaint does not contain the complainant's real name, signature and valid contact information; where the complaint is made in the name of a legal person, the complaint is not signed and stamped with the official seal by the legal representative or authorized principal;

□ exceed the statute of limitations for complaints;

□ has taken a decision to deal with it and the complainant has not presented new evidence;

□ the withdrawal of the complaint and then file the complaint on the same facts and grounds;

□ the complaint matters that should be raised first have not been raised or the complaints have entered administrative reconsideration or administrative litigation procedures; or the bidder has not replied after accepting the objections but has been investigated and handled and the bidding activities have been suspended;

□ the complainant to lodge a complaint again on the same facts and grounds.

After research, it was decided that complaints from your unit would not be accepted.

 Department of Administrative Supervision of Bidding and Bidding (Official Seal)

Year Month Day

Annex 5:

**Complaint Handling Decision Form (Format**).

Complainant:

Contact Tel:

Contact Address:

Respondent:

Contact Tel:

Contact Address:

Complainant's complaints and claims:

Respondent's Defence and Request:

The basic facts identified in the investigation:

Complaint Acceptance Department's Handling Opinions and Basis:

If a party is dissatisfied with this disposition decision, it may apply for reconsideration within 60 days of receiving this disposition decision or directly file a lawsuit within six months of receiving this disposition decision in accordance with the provisions of the Administrative Litigation Law of the People's Republic of China.

Department of Administrative Supervision of Bidding and Bidding (Official Seal)

Year Month Day