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| **Regulations of Jiangsu Province on Tendering and Bidding** |
|   **Regulations of Jiangsu Province on Tendering and Bidding** Adopted at the Seventh Meeting of the Standing Committee of the Tenth People's Congress of Jiangsu Province on December 19, 2003 **Chapter I General Provisions**Article 1 These Regulations are formulated on the basis of the "Law of the People's Republic of China on Bidding and Bidding" and relevant laws and administrative regulations, combined with the actual conditions of this Province, in order to regulate bidding and bidding activities and protect the interests of the State, the societal public interest and the lawful rights and interests of the parties to bidding and bidding activities. Article 2 These Regulations shall apply to bidding and bidding activities carried out within the administrative region of this Province. Where laws and regulations have other provisions on government procurement, international bidding for mechanical and electrical products, bidding for scientific and technological projects, and bidding and bidding activities such as state-owned land use rights, mining rights, prospecting rights, and concession rights, those provisions shall prevail. Article 3 Bidding and bidding activities shall follow the principles of openness, fairness, impartiality and good faith. Article 4: Large-scale infrastructure and public utilities projects that have a bearing on the societal public interest and public safety within the administrative region of this province, projects that use state-owned funds to invest or finance by the State, and projects that use loans and aid funds from international organizations or foreign governments, must be tendered in accordance with law. Its specific scope shall be implemented in accordance with the relevant provisions of the State; the standard of its scale shall be prescribed by the provincial people's government, and where the State has already provided for it, its provisions shall prevail. No unit or individual may break down projects that must be tendered according to law or circumvent bidding by any other means. Article 5 The administrative departments in charge of development plans of local people's governments at or above the county level shall be responsible for guiding and coordinating bidding activities within their respective administrative regions. The administrative departments in charge of development plans of the people's governments of provinces and districted cities are responsible for inspecting the bidding and bidding activities of major construction projects. The relevant administrative supervision departments of local people's governments at or above the county level, such as for economy and trade, construction, transportation, and water conservancy, shall be responsible for supervising and managing bidding and bidding activities in accordance with laws, regulations, and duties determined by the people's governments at the same level. Article 6: Local people's governments at the county level or above shall, through supervision and inspection of the bidding and bidding market, guide all parties to market entities in establishing and improving social credit mechanisms for the bidding and bidding market. Through giving play to the self-regulatory role of the social credit mechanism, conduct negative evaluations and eliminations of all parties who violate the principles of good faith and fairness and impartiality in bidding and bidding activities. **Chapter II: Tendering** Article 7 Bidding is divided into open bidding and invitation to bid. Article 8 In any of the following circumstances, in projects that must be tendered in accordance with law, bidding shall be open: (1) Local key construction projects determined by the people's governments of provinces and districted cities; (2) Projects invested entirely using state-owned funds; (3) State-owned funds investing in projects in which they hold or dominate; (4) Other projects provided for by laws and regulations that shall be openly tendered. Article 9 In any of the following circumstances, in any of the following circumstances, a project construction project provided for in Article 8 of these Regulations is not suitable for public bidding, bids may be invited upon approval by the examination and approval department for projects at or above the districted city level or the relevant administrative supervision department; (1) Where the technology is complex or there are special professional requirements, and there are only a few potential bidders to choose from; (2) Where the proportion of expenses required for the use of public bidding to the total value of the project is too large, or otherwise does not meet the requirements of economic reasonableness; (3) Restricted by natural resources or environmental conditions; (4) Where laws, administrative regulations, or the State Council provide otherwise. Article 10 Projects that have any of the following circumstances that are not suitable for bidding may not be subject to bidding. However, projects that require examination and approval shall be examined and approved in accordance with Article 9 of these Regulations: (1) Involving national security and state secrets; (2) Emergency rescue and disaster relief; (3) Using poverty alleviation funds to carry out work-for-charity and needing to use migrant workers; (4) Where the main process or technology requires the use of a specific patent or proprietary technology; (5) Other circumstances provided for by laws or administrative regulations. Article 11 Where the tenderer handles the bidding matters on his own for projects that must be tendered according to law, he shall have the ability to compile bidding documents and organize bid evaluation, meet the following conditions, and file with the relevant administrative supervision departments: (1) Have the qualifications of a legal person or other organization; (2) Have technical, economic and other professionals appropriate to the scale and complexity of the bidding project; (3) Having a special bidding body or having three or more personnel with the ability to bid for bidding business; (4) Familiar with the laws, regulations and rules related to bidding and bidding. Article 12 Where a bidder has the ability to bid on his own, he may independently choose to bid on his own or entrust a qualified bidding agency to act as an agent for bidding matters. Where the bidder does not have the ability to prepare bidding documents and organize bid evaluation, it shall entrust a qualified bidding agency to handle bidding matters. No unit or individual may designate an agency for them in any way. Article 13: Bidding agencies are social intermediary organizations established in accordance with law, engaged in bidding agency business and providing related services. The qualification determination of the bidding agency shall be carried out in accordance with the relevant provisions of the State. The relevant administrative departments shall promptly announce to the public the list of bidding agencies that have been qualified. Bidding agencies shall be organized independently, and there shall be no affiliation or other interest relationships with administrative organs and other state organs. Bidding agencies shall not accept the contents and requirements of the bidders' illegal entrustment; in the bidding activities, they shall not engage in fraud to harm the interests of the state and the legitimate rights and interests of the bidders and bidders. Article 14 The bidding agency shall undertake the bidding matters within the scope of its qualification level and abide by the provisions of these Regulations on the bidders. Where a bidding agency is entrusted to handle bidding matters, its agency authority and agency fees shall be specified in the bidding agency contract. Where laws or administrative regulations have provisions on the collection of agency fees, follow those provisions. The bidding agency shall, in accordance with the provisions of the bidding agency contract, handle the bidding matters within the scope of the agency's authority, and shall not accept the bidding consulting services of the same bidding project. Article 15 Where the bidder adopts the method of open bidding, it shall issue a bidding announcement. The bidder is responsible for the authenticity and accuracy of the content of the announcement. The tender announcement of projects that must be tendered according to law shall be published in at least one media designated by the state or province. Article 16 For projects to be openly tendered, the bidders may pre-qualify potential bidders. Where prequalification is carried out, the prequalification conditions, standards, and methods shall be set forth in the prequalification documents or the bidding announcement, but potential bidders must not be restricted or excluded from bidding under unreasonable conditions. When conducting pre-qualification, the tenderer shall base itself on the content specified in the prequalification documents or the tender announcement, and shall not set other conditions to restrict, exclude or discriminate against potential bidders. The tenderer shall issue a notice of prequalification to the potential bidders who have passed the prequalification examination, inform them of the time, place and method of obtaining the bidding documents, and at the same time inform other potential bidders of the results of the prequalification examination. Article 18 The bidding documents shall clearly and unambiguously state the following contents: (1) The name of the bidder and the name of the project and their profile; (2) The quantity, scale and main technical and quality requirements of the project; (3) The completion period of the project or the time for delivery or service provision; (4) requirements for the qualifications of bidders and bidding documents and the validity period of bidding; (5) the manner, place and deadline for submitting bidding documents; (6) requirements for bidding and quotation; (7) The basis, standards and methods of bid evaluation, the principle of bid determination and the main factors for determining the scrap bid; (8) The main contract terms and the content of the agreement; (9) Requirements for drawings, format appendices and other bidding-related materials and technical documents; (10) Other matters that need to be specified. The substantive requirements and conditions specified by the tenderer in the solicitation documents shall be indicated in a conspicuous manner. For projects for which tendering is required by law, the sale time of the tender documents or prequalification documents shall not be less than five working days, and the sale price shall be determined on the basis of the printing cost; Article 19 The bidding documents shall clearly stipulate all the factors for bid evaluation, and quantify or evaluate the evaluation factors accordingly. Where the State has provisions on the qualifications of bidders, the qualifications of bidders specified in the bidding documents shall meet the conditions prescribed by the State. The technical indicators specified in the bidding documents shall comply with the national mandatory standards. Article 20 Where a bidding project needs to divide the bidding section and determine the construction period, the bidder shall reasonably divide the bidding section, determine the construction period, and indicate it in the bidding documents. Article 21 In any of the following circumstances of a bidding project, the bidder may organize potential bidders to visit the project site: (1) Where there are special requirements for project site selection or working conditions; (2) The conditions for implementing the project are relatively complex; (3) where a majority of potential bidders make a request. Questions raised by potential bidders during reading the tender documents or conducting on-site surveys may be answered in writing or by convening a preparatory meeting, and shall notify all potential bidders who purchase tender documents in writing of the answers. The content of the answers shall be an integral part of the solicitation documents. Article 22 Where a project design bidding is conducted in accordance with law, the bidder shall indicate in the bidding announcement or the invitation to bid whether to give economic compensation to the bidders for the design project that has not won the bid, and where economic compensation is given, the compensation standard shall be specified. The bidder shall compensate the bidders of the design project who participate in the design of the plan and invite the bidder but do not win the bid, and clarify the compensation standard. Article 23 According to the characteristics of the project, the bidder may carry out bidding without a bid base without a bid base. Where the base of the bid is prepared, the process of preparing the bid base and the base of the bid must be kept confidential. Article 24 In any of the following circumstances for a project that must be tendered in accordance with law, the bidder shall re-bid in accordance with law: (1) Where there are less than three potential bidders who have passed the pre-qualification examination; (2) Where there are less than three bidders who submit bidding documents at the expiration of the bidding deadline; (3) all bids are disposed of as scrap bids; (4) After evaluation, if there are less than three valid bids, the bidding is obviously lacking in competition, and the bid evaluation committee decides to reject all bids. Article 25 The tenderer shall properly keep the relevant documents and materials of the tendering project and shall not forge, conceal or destroy them. The relevant documents and materials of projects that must be tendered according to law shall be preserved in accordance with the relevant provisions on the preservation of archives. **Chapter III Bidding**Article 26 Bidders shall provide the following materials when applying for bidding, and shall be responsible for the authenticity and accuracy of the information provided: (1) Business licenses and qualification certificates or their supporting documents; (2) Credit certificates, performance status, and performance materials; (3) Other materials specified in the prequalification documents or the bidding documents; (4) Other materials provided for by laws and regulations. For bidding projects such as scientific research, consultation, and design that allow individuals to participate in bidding, the provisions of these Regulations on bidders shall apply to individual bidders. Article 27 Bidders shall enjoy the following rights: (1) Independently prepare bidding documents in accordance with the requirements and conditions of the bidding documents; (2) For the contents of the solicitation documents that are not clear, the tenderer may be inquired about and a clear reply shall be obtained that does not exceed the scope of the solicitation documents; (3) Before the deadline for submission of bidding documents required by the bidding documents, the submitted bidding documents may be supplemented, modified or withdrawn; (4) May inquire about bidders or bidding agencies or make complaints to the relevant administrative supervision departments; (5) Other rights enjoyed in accordance with law. Article 28 Where bidders have an interest in the bidders, they shall not participate in the bidding of their projects. If there is a subordinate relationship between bidders, they shall not participate in the bidding of the same bidding section. Article 29 The following acts are all collusion of bidders in bidding and quotation: (1) Bidders mutually agree to raise or lower bidding prices; (2) Bidders mutually agree to bid at high, medium and low prices in the bidding projects; (3) The bidders shall first conduct internal bidding, determine the winning bidder internally, and then participate in the bidding; (4) Other acts of collusion between bidders in bidding and quotation. Article 30 The following acts constitute collusion between the bidder and the bidder in bidding: (1) The tenderer opens the bidding documents before the opening of the bidding, and informs other bidders of the bidding situation, or assists the bidders in withdrawing and replacing the bidding documents and changing the quotation; (2) The bidder discloses the bid floor to the bidder; (3) The bidder and the bidder agree to lower or raise the bid price when bidding, and after winning the bid, additional compensation will be given to the bidder or bidder; (4) The bidder shall determine the successful bidder in advance; (5) Other collusive bidding conduct provided for by laws and regulations. Article 31 Where there is a requirement for a bidding deposit in the bidding documents, the deposit shall not exceed one percent of the total bidding price, and the maximum limit shall comply with the relevant provisions of the State. The bid bond can be cash, or it can be a bank guarantee issued by a bank, a confirmed check, a bank draft or a cash check. The validity period of the bid bond shall not be shorter than the validity period of the bid. Article 32 The bidding documents shall respond to the substantive requirements and conditions set forth in the bidding documents. Where bidding is made in the form of a consortium, the parties to the consortium shall sign a joint bidding agreement and submit it to the bidder together with the bidding documents. **Chapter IV Bid Opening, Evaluation and Winning Bids** Article 33 The bid opening process shall be recorded and archived for future reference. The opening record of bids includes the following: (1) The name of the bidding project; (2) The time and place of bid opening; (3) Units and personnel participating in the opening of bids; (4) The sealing of bidding documents; (5) the name of the bidder and the bidding quotation; (6) the bidding base of the bidding project with a bidding base; (7) Other important matters. Article 34 The bid evaluation committee established by the bidder in accordance with law shall be responsible. The list of members of the bid evaluation committee shall be kept confidential until the result of the winning bid is determined. The relevant departments of the provincial people's government shall, in accordance with the relevant provisions of the State, form a roster of experts for bid evaluation. Expert members of the bid evaluation committee using state-owned funds for investment or government-financed projects shall be randomly selected from the roster of bid evaluation experts provided by the relevant provincial departments. The bid evaluation experts provided for in the preceding paragraph shall meet the following conditions: (1) Have been engaged in work in related fields for eight years and have a senior professional title or have the same professional level; (2) Familiar with the relevant laws and regulations on bidding and bidding, and have relevant practical experience; (3) Be able to perform duties conscientiously, justly, honestly and honestly, and abide by professional ethics. Article 35 In any of the following circumstances, he shall not serve as a member of the bid evaluation committee: (1) close relatives of the person in charge of the bidder; (2) Personnel of the competent administrative department for the project or the administrative supervision department; (3) Having an interest in the bidder, which may affect the fair evaluation of the bid; (4) Having committed illegal conduct in bidding and bidding activities; (5) Other circumstances provided for by laws and regulations. Where members of the bid evaluation committee have any of the circumstances provided for in the preceding paragraph, they shall voluntarily submit a recusal. If the bidder discovers that the members of the bid evaluation committee have the circumstances provided for in the first paragraph of this article, they shall make adjustments.Article 36 The bid evaluation committee shall evaluate bids in accordance with the following requirements and procedures: (1) Familiar with the requirements and provisions of the bidding documents; (2) Systematically compare and evaluate the bidding documents in accordance with the evaluation criteria and evaluation methods specified in the bidding documents; (3) require bidders to make necessary written clarifications or explanations on the unclear meaning of the bidding documents; (4) Where the bid is clearly lower than other bidding bids or is significantly lower than the bid floor when there is a bid floor, the bidder may be required to provide written explanations and relevant supporting materials; (e) to examine whether each tender document responds to all the substantive requirements and conditions set forth in the tender documents and to list all the tender deviations in each tender document item by item; (6) For bidding documents that meet the substantive requirements of the bidding documents, but there are omissions in individual places or slight deviations in the technical information and data provided, the bidders are required in writing to provide written corrections that will not cause unfair results to other bidders; (7) Recommend the successful bidders in accordance with the evaluation of bids; (8) Submit a written bid evaluation report to the bidder; (9) Other requirements and procedures provided for by laws and regulations. Article 37 The bid evaluation committee shall determine the scrap bid in accordance with the provisions of laws and regulations and the conditions for scrapping the bid as expressly stated in the bidding documents, and shall not arbitrarily determine the bidding documents as scrap bids. If the bidding documents do not respond to the substantive requirements and conditions set forth in the bidding documents, they shall be regarded as invalid bids. Article 38 Bid evaluation may adopt the lowest bid price method or comprehensive assessment method after evaluation and other evaluation methods permitted by laws and regulations. For general engineering construction and goods procurement projects with general technology or performance standards or for which the bidder has no special requirements for its technology or performance, the lowest bid price method after evaluation shall be adopted. The bid that can meet the substantive requirements of the bidding documents after evaluation and has the lowest bidding price shall be recommended as the winning candidate. However, the bid price is lower than the cost. For project construction, cargo procurement or service procurement projects with complex technical requirements, the comprehensive assessment method shall generally be adopted. Bids that meet the comprehensive evaluation criteria specified in the solicitation documents to the greatest extent possible shall be recommended as successful candidates. Article 39 The evaluation criteria and methods not specified in the bidding documents shall not be used as the basis for bid evaluation. If the bidder has a bid base, the bid base may be used as a reference in the bid evaluation, but it shall not be used as the sole basis for the evaluation of the bid. Article 40 After the bid evaluation committee completes the bid evaluation, it shall submit to the bid inviter a written bid evaluation report signed by all the members of the bid evaluation committee, and recommend qualified candidates for winning the bid. The bid evaluation report shall truthfully record the following contents: (1) Basic information and data tables; (2) The list of members of the bid evaluation committee; (3) Records of bid opening; (4) a list of bids that meet the requirements; (5) An explanation of the situation of the scrapped bid; (6) A list of bid evaluation criteria, bid evaluation methods or bid evaluation factors; (7) A list of the prices or evaluation factors after evaluation; (8) Ranking of bidders after evaluation; (9) The list of recommended successful candidates and the matters to be handled before signing the contract; (10) Minutes of clarification, explanation, and correction of matters. If the bid evaluation committee decides to reject all bids, it shall specify the reasons in the bid evaluation report. Article 41 Bidders, members of the bid evaluation committee and staff related to bid evaluation activities shall not divulge or infringe on the technical secrets and commercial secrets of bidders, and shall not divulge the comparison and evaluation of bidding documents, the recommendation of successful candidates and other circumstances related to bid evaluation. Article 42 The bidder shall, within 15 days after receiving the written bid evaluation report of the bid evaluation committee, determine the successful bidder from the winning candidates recommended by the bid evaluation committee from the first to third bidders recommended by the bid evaluation committee. For projects that use state-owned funds to invest or be financed by the government, the bidder shall determine the winning candidate who ranks first as the winning bidder. Article 43 After the successful bidder is determined, the bidder shall issue a notice of winning the bid to the successful bidder, and at the same time notify all bidders who have not won the bid of the winning bid. The tenderer and the successful bidder shall, within 30 days from the date of issuance of the notice of winning the bid, conclude a written contract in accordance with the bidding documents and the bidding documents of the successful bidder. Article 44 Where there is a bidding deposit, the bidder shall refund the bidding deposit and its interest to the successful bidder and the unsuccessful bidder within five working days after the notice of winning the bid is issued. Where the tender announcement or the invitation to tender stipulates that economic compensation shall be given to the unsuccessful bidder, it shall also be paid within this period. Article 45 For projects for which bidding must be conducted in accordance with law, the bidder shall, within 15 days from the date of determining the successful bidder, submit to the relevant administrative supervision department a written report on the bidding situation with the basic circumstances of the bidding project, the announcement of the bidding, the situation of the bidders, the list of members of the bid evaluation committee, the criteria and methods for bid evaluation, the situation of bid scrapping, the ranking of successful candidates recommended by the bid evaluation committee, and the results of the winning bid.**Chapter V: Supervision and Management**Article 46 The relevant administrative supervision departments of local people's governments at the county level or above shall, in accordance with their respective statutory duties, strengthen supervision and inspection of bidding and bidding activities. The main contents of supervision and inspection include: (1) the implementation of laws, regulations and rules on tendering and bidding; (2) The circumstances of bidding for projects that must be tendered in accordance with law; (3) Circumstances such as the implementation of legally prescribed procedures and rules for bidding and bidding activities; (4) To determine the successful bidder, the signing and performance of the contract in accordance with law on the basis of the bidding documents and the results of the bid evaluation; (5) Other circumstances provided for by laws and regulations on bidding and bidding. Article 47 The relevant administrative supervision departments of local people's governments at the county level or above may supervise bidding and bidding activities through methods such as inspection, inspection, and on-site supervision, and all parties to bidding and bidding shall consciously accept supervision and inspection. The relevant administrative supervision departments of local people's governments at the county level or above shall promptly investigate, verify, and investigate complaints from parties involved in bidding and bidding activities, and inform the complainant of the results of the handling. Article 48 The relevant administrative supervision departments of local people's governments at the county level or above shall perform their supervisory duties in accordance with law, increase the efficiency of their work, and must not arbitrarily add matters for the examination and approval of bidding and bidding, and must not interfere with the bidders' autonomy in selecting bidding agencies, compiling bidding documents, organizing the examination of bidding qualifications, compiling bidding bases, organizing bid evaluations, determining successful bidders, and signing contracts. Article 49 The administrative supervision organs of local people's governments at the county level or above shall, in accordance with law, supervise state administrative organs, state civil servants, and other personnel appointed by state administrative organs participating in bidding and bidding activities. **Chapter VI: Legal Liability**Article 50 Where the bidder commits any of the following acts in a project that must be tendered in accordance with law, he shall be ordered to make corrections within a time limit and may be fined not less than 5,000 yuan but not more than 30,000 yuan; (1) Where there are no conditions for self-bidding and self-bidding is conducted; (2) Where bids should be openly tendered but not publicly solicited; (3) where a tendering announcement shall be issued but not published; (4) Where the project must be openly tendered, and the method of invitation to bid is adopted without approval; (5) The period is less than five working days from the date of sale of the bidding documents or prequalification documents to the date of cessation of sale; (6) The period is less than 20 days from the date of issuance of the solicitation documents to the date on which the submission of the bidding documents is closed; (7) The number of bidders does not meet the legally prescribed requirements and does not re-bid; (8) Entrusting a bidding agency that is unqualified or whose qualification level does not meet the requirements of the bidding project to act as an agent for bidding. If the bidder has one of the acts mentioned in the preceding paragraph, but the main project of the project has been basically completed, and the re-bidding in accordance with the law may cause major losses to state property, the re-bidding may not be carried out. Article 51 Where a bidding agency forges, lends, alters or transfers a qualification certificate, or engages in bidding agency business without qualification or exceeding the qualification level, it shall be ordered to make corrections and shall be fined not less than 10,000 yuan but not more than 30,000 yuan; Where a bidding agency accepts bidding consulting services for the same bidding project, it shall be ordered to make corrections, confiscate the illegal gains, and may also impose a fine of between 10,000 and 30,000 yuan. Article 52 Where members of the bid evaluation committee leave their posts without authorization during the bid evaluation process, affecting the normal progress of the bid evaluation procedure, or failing to perform their duties objectively and impartially during the bid evaluation process, a warning shall be given; if the circumstances are serious, the qualifications of the members of the bid evaluation committee shall be cancelled and they shall not participate in the evaluation of any bidding project. Article 53 Where the tenderer has any of the following circumstances for a project that must be tendered in accordance with law, the bid evaluation is invalid, and the bid evaluation shall be re-evaluated or re-bid in accordance with law, and a fine of between 10,000 and 30,000 yuan may be imposed: (1) The evaluation criteria are not quantified or the evaluation criteria and methods not specified in the bidding documents are used, affecting the evaluation results; (2) The establishment of the bid evaluation committee and the composition of its personnel do not meet the statutory requirements; (3) Illegal conduct in the course of bid evaluation, affecting the results of bid evaluation; (4) Taking the bid base as the sole basis for bid evaluation. Article 54 Where a tenderer forges, conceals or destroys the documents and materials related to tendering and bidding for a project that must be tendered in accordance with law, he shall order corrections and may impose a fine of between 10,000 and 30,000 yuan, and give sanctions to the directly responsible managers and other directly responsible personnel in accordance with law; if a crime is constituted, criminal responsibility shall be pursued in accordance with law. Article 55 Where the relevant administrative supervision departments and their staff of local people's governments at the county level or above have any of the following circumstances in the course of supervision activities on bidding and bidding, the administrative supervision organs of the local people's governments at the county level or above shall give administrative sanctions to the directly responsible managers and other directly responsible personnel; (1) Adding examination and approval matters without authorization; (2) Illegally interfering with the autonomy of the tenderer; (3) Illegally collecting fees and property from bidders, bidding agencies, or bidders; (4) Illegally engaging in bidding agency work; (5) Other conduct violating laws and regulations. Article 56: The administrative punishments provided for in this Chapter are to be decided by the relevant administrative supervision departments of local people's governments at the county level or above in accordance with their respective duties and law. Where laws or administrative regulations already have provisions on administrative punishment for conduct violating these Regulations, follow those provisions.**Chapter VII Supplementary Provisions**Article 57 These Regulations shall enter into force on February 1, 2004 |