|  |
| --- |
| **Law of the People's Republic of China on Tendering and Bidding** |

|  |
| --- |
|  |

|  |  |
| --- | --- |
|   | Chapter I General ProvisionsArticle 1 This Law is formulated so as to standardize bidding and bidding activities, protect the interests of the State, the societal public interest and the lawful rights and interests of the parties to bidding and bidding activities, improve economic efficiency, and ensure the quality of projects.Article 2 This Law shall apply to tendering and bidding activities carried out within the territory of the People's Republic of China.Article 3 Tendering shall be conducted for the following engineering construction projects within the territory of the People's Republic of China, including the survey, design, construction, supervision of projects, as well as the procurement of important equipment and materials related to project construction:(1) Large-scale infrastructure, public utilities, and other projects that have a bearing on the societal public interest and public safety;(2) Projects that are invested or financed by the State in whole or in part using State-owned funds;(3) Projects that use loans or aid funds from international organizations or foreign governments.The specific scope and scale standards of the projects listed in the preceding paragraph shall be formulated by the development planning department of the State Council in conjunction with the relevant departments of the State Council and reported to the State Council for approval.Where laws or the State Council have provisions on the scope of other projects that must be tendered, follow those provisions.Article 4 No unit or individual may fragment projects that must be tendered in accordance with law or circumvent bidding by any other means.Article 5 Bidding and bidding activities shall follow the principles of openness, fairness, impartiality and good faith.Article 6 For projects that must be tendered in accordance with law, their bidding and bidding activities shall not be restricted by regions or departments. No unit or individual may illegally restrict or exclude legal persons or other organizations outside the region or system from participating in bidding, and must not illegally interfere in bidding and bidding activities in any way.Article 7 Bidding and bidding activities and their parties shall accept supervision carried out in accordance with law.Relevant administrative supervision departments shall supervise bidding and bidding activities in accordance with law, and investigate and deal with illegal acts in bidding and bidding activities in accordance with law.The administrative supervision of bidding and bidding activities and the specific division of powers of relevant departments shall be prescribed by the State Council.Chapter II: BiddingArticle 8 A tenderer is a legal person or other organization that submits a tendered project or conducts a tendering in accordance with the provisions of this Law.Article 9 Where a bidding project needs to perform the project examination and approval formalities in accordance with the relevant provisions of the State, it shall first perform the examination and approval formalities and obtain approval.The bidder shall have the corresponding funds for the bidding project or the source of funds has been implemented, and shall truthfully indicate it in the bidding documents.Article 10 Bidding is divided into open bidding and invitation to bid.Public bidding refers to the invitation of an unspecified legal person or other organization to bid by a tenderer in the form of a tender announcement.Invitation to tender means that the tenderer invites a specific legal person or other organization to bid in the form of a tender invitation to bid.Article 11 Where key national projects determined by the development planning department under the State Council and local key projects determined by the people's governments of provinces, autonomous regions, or municipalities directly under the Central Government are not suitable for public bidding, invitation to bid may be conducted upon approval by the development planning department under the State Council or the people's governments of provinces, autonomous regions, or municipalities directly under the Central Government.Article 12 The tenderer has the right to choose a tendering agency on its own and entrust it to handle the tendering matters. No unit or individual may appoint a bidding agency for the bidder in any way.Where the tenderer has the ability to prepare bidding documents and organize bid evaluation, he may handle the bidding matters on his own. No unit or individual may compel them to entrust a bidding agency to handle bidding matters.For projects that must be tendered according to law, where the tenderer handles the bidding matters on his own, he shall file a record with the relevant administrative supervision department.Article 13: Bidding agencies are social intermediary organizations established in accordance with law, engaged in bidding agency business and providing related services.The bidding agency shall meet the following conditions:(1) Have a business premises and corresponding funds for engaging in bidding agency business;(2) Have corresponding professional forces capable of compiling bidding documents and organizing bid evaluation;(3) There is a pool of experts in technical, economic and other fields who meet the requirements provided for in paragraph 3 of Article 37 of this Law and can be selected as members of the bid evaluation committee.Article 14 The qualifications of a bidding agency engaged in the business of bidding agency for engineering construction projects shall be determined by the competent administrative department for construction under the State Council or the people's government of a province, autonomous region or municipality directly under the Central Government. The specific measures shall be formulated by the competent administrative department for construction under the State Council in conjunction with the relevant departments of the State Council. The competent department for the qualification determination of bidding agencies engaged in other bidding agency business shall be prescribed by the State Council.Bidding agencies shall not have a subordinate relationship or other interest relationship with administrative organs and other state organs.Article 15 The bidding agency shall handle the bidding matters within the scope entrusted by the bidder and abide by the provisions of this Law on the bidder.Article 16 Where a bidder adopts the method of open bidding, it shall issue a bidding announcement. The announcement of bidding for projects that must be tendered in accordance with law shall be published through newspapers and periodicals designated by the State, information networks or other media.The tendering announcement shall indicate the name and address of the tenderer, the nature, quantity, place and time of implementation of the tendering project, and the method of obtaining the tendering documents.Article 17 Where a tenderer adopts the method of invitation to bid, it shall issue an invitation to bid to three or more specific legal persons or other organizations that have the ability to undertake the bidding project and have good credit standing.The invitation to tender shall clearly state the matters provided for in paragraph 2 of Article 16 of this Law.Article 18 The tenderer may, in accordance with the requirements of the bidding project itself, require the potential bidder to provide relevant qualification certification documents and performance in the bidding announcement or the invitation to bid, and to conduct a qualification review of the potential bidder;Tenderers shall not restrict or exclude potential bidders under unreasonable conditions, and shall not discriminate against potential bidders.Article 19 The bidder shall prepare the bidding documents according to the characteristics and needs of the bidding project. The bidding documents shall include all substantive requirements and conditions such as the technical requirements of the bidding project, the criteria for the qualification examination of the bidders, the bidding quotation requirements and the evaluation criteria, as well as the main terms of the contract to be signed.Where the State has provisions on the technology and standards of the bidding project, the bidder shall submit corresponding requirements in the bidding documents in accordance with its provisions.Where the bidding project needs to divide the bidding section and determine the construction period, the bidder shall reasonably divide the bidding section and determine the construction period, and indicate it in the bidding documents.Article 20 The solicitation documents shall not require or indicate specific production suppliers and other contents that contain a tendency or exclusion of potential bidders.Article 21 The tenderer may, on the basis of the specific conditions of the tendered project, organize potential bidders to investigate the project site.Article 22 The tenderer shall not disclose to others the name and number of potential bidders who have obtained the tender documents, as well as other circumstances related to tendering and bidding that may affect fair competition.If the bidder has a bid base, the bid base must be kept confidential.Article 23 Where the tenderer makes necessary clarifications or amendments to the tender documents that have been issued, it shall notify all the recipients of the tender documents in writing at least fifteen days before the deadline for submission of the tender documents. The clarification or modification shall form an integral part of the solicitation documents.Article 24 The tenderer shall determine the reasonable time required by the bidder to prepare the bidding documents; however, the minimum period for projects for which bidding must be conducted in accordance with the law shall be no less than 20 days from the date of issuance of the bidding documents to the date on which the bidding documents are submitted.Chapter III: BiddingArticle 25 A bidder is a legal person or other organization that responds to bidding or participates in bidding competition.Where individuals are allowed to participate in bidding for scientific research projects that are tendered in accordance with law, the provisions of this Law on bidders shall apply to the individual bidders.Article 26 Bidders shall have the ability to undertake bidding projects; where the relevant provisions of the State stipulate the qualifications of bidders or the bidding documents on the bidders, the bidders shall have the prescribed qualifications.Article 27 Bidders shall prepare bidding documents in accordance with the requirements of the bidding documents. The tender documents shall respond to the substantive requirements and conditions set forth in the solicitation documents.Where the bidding project belongs to construction, the content of the bidding documents shall include the resumes, performances and mechanical equipment to be used to complete the bidding project, such as the resumes and performances of the project leaders and main technical personnel to be dispatched.Article 28 The bidder shall deliver the bidding documents to the bidding place before the deadline for submitting the bidding documents required. After the bidder receives the bidding documents, it shall sign for them and save them, and shall not open them. Where there are less than three bidders, the bidders shall re-bid in accordance with this Law.Tender documents delivered after the deadline for submission of tender documents required by the tender documents shall be rejected by the tenderer.Article 29 Bidders may supplement, modify or withdraw the submitted bidding documents before the deadline for submitting bidding documents in the bidding documents, and notify the bidders in writing. Supplements and amendments are part of the tender documents.Article 30 Where a bidder intends to subcontract part of the non-main body and non-key work of the winning project after winning the bid according to the actual situation of the project specified in the bidding documents, it shall be specified in the bidding documents.Article 31 Two or more legal persons or other organizations may form a consortium to jointly bid as a bidder.Each party to the consortium shall have the corresponding ability to undertake the bidding project; if the relevant provisions of the State or the bidding documents have provisions on the qualifications of the bidders, the parties to the consortium shall have the corresponding qualifications and conditions stipulated. A consortium of units of the same specialty determines the qualification level according to the unit with the lower qualification level.The parties to the consortium shall sign a joint bidding agreement, clearly stipulating the work and responsibilities to be assumed by the parties, and submit the joint bidding agreement together with the bidding documents to the bidder. Where the consortium wins the bid, the parties to the consortium shall jointly sign a contract with the bidder and bear joint and several liability to the bidder for the winning project.Bidders shall not compel bidders to form a consortium to bid jointly, and shall not restrict competition among bidders.Article 32 Bidders shall not collude with each other in bidding and quotation, shall not exclude fair competition among other bidders, and harm the lawful rights and interests of bidders or other bidders.Bidders must not collude with bidders to bid, harming the interests of the state, the societal public interest, or the lawful rights and interests of others.Bidders are prohibited from seeking to win the bid by paying bribes to the bidders or members of the bid evaluation committee.Article 33 Bidders shall not bid on bids lower than the cost, nor shall they bid in the name of others or deceive in other ways to win the bid.Chapter IV Bid Opening, Evaluation and Winning BidsArticle 34 The opening of bids shall be carried out in public at the same time as the deadline for submission of bidding documents determined in the bidding documents;Article 35 The opening of bids shall be presided over by the bidders and all bidders shall be invited to participate.Article 36 When opening bids, the bidders or their elected representatives shall inspect the sealing of the bidding documents, and may also be inspected and notarized by a notary institution entrusted by the bidders; after confirmation, the staff shall open the seals in public and read out the names of the bidders, the bidding price and other main contents of the bidding documents.All tender documents received by the tenderer before the deadline for submission of tender documents shall be opened and read out in public at the time of opening of tenders.The bid opening process shall be recorded and archived for future reference.Article 37 The bid evaluation committee established by the bidder in accordance with law shall be responsible.For projects that must be tendered according to law, the bid evaluation committee shall be composed of representatives of the bidders and experts on relevant technical and economic aspects, and the number of members shall be an odd number of more than five, of which experts in technical and economic fields shall not be less than two-thirds of the total number of members.The experts mentioned in the preceding paragraph shall have been engaged in work in relevant fields for eight years and have senior professional titles or have the same professional level, and the bidders shall be determined by the bidders from the roster of experts provided by the relevant departments of the State Council or the relevant departments of the people's governments of provinces, autonomous regions, or municipalities directly under the Central Government, or from the list of experts in the expert pool of the bidding agency;Persons with an interest in the bidder shall not enter the bid evaluation committee of the relevant project;The list of members of the bid evaluation committee shall be kept confidential until the result of the winning bid is determined.Article 38 The tenderer shall take necessary measures to ensure that the evaluation of bids is carried out under strict confidentiality. No unit or individual may illegally interfere with or influence the process and results of bid evaluation.Article 39 The bid evaluation committee may require the bidder to make necessary clarifications or explanations on the contents of the bidding documents that are not clear in meaning, but the clarifications or explanations shall not exceed the scope of the bidding documents or change the substantive content of the bidding documents.Article 40 The bid evaluation committee shall evaluate and compare the bid documents in accordance with the evaluation standards and methods determined in the bidding documents; where there is a bid base, it shall refer to the bid base. After the bid evaluation committee completes the bid evaluation, it shall submit a written bid evaluation report to the bidder and recommend qualified candidates for winning the bid.The tenderer determines the successful bidder on the basis of the written evaluation report submitted by the bid evaluation committee and the recommended successful candidate. The tenderer may also authorize the bid evaluation committee to directly determine the successful bidder.Where the State Council has special provisions on the evaluation of bids for specific bidding projects, those provisions shall prevail.Article 41 The successful bidder's bid shall meet one of the following conditions:(1) Be able to meet the comprehensive evaluation criteria specified in the bidding documents to the greatest extent possible;(b) be able to meet the substantive requirements of the solicitation documents and shall have the lowest evaluated bidding price, unless the bidding price is lower than the cost.Article 42 If, after evaluation, the bid evaluation committee finds that all bids do not meet the requirements of the bidding documents, it may reject all bids.If all bids for projects for which tendering must be conducted in accordance with law are rejected, the tenderer shall re-bid in accordance with this Law.Article 43 Before determining the successful bidder, the bidder shall not negotiate with the bidder on the substantive content such as the bidding price and the bidding plan.Article 44 The members of the bid evaluation committee shall perform their duties objectively and impartially, abide by professional ethics, and bear personal responsibility for the appraisal opinions submitted.Members of the bid evaluation committee shall not have private contact with bidders and shall not accept property or other benefits from bidders.The members of the bid evaluation committee and the relevant staff participating in the bid evaluation shall not disclose the evaluation and comparison of the bidding documents, the recommendation of the successful candidate and other information related to the evaluation of the bid.Article 45 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 result of the winning bid.The notice of winning the bid has legal effect on the bidder and the successful bidder. After the notice of winning the bid is issued, if the bidder changes the result of winning the bid, or the winning bidder abandons the winning project, it shall bear legal responsibility in accordance with law.Article 46 The bidder 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. The tenderer and the successful bidder shall not enter into other agreements that deviate from the substance of the contract.If the bidding documents require the successful bidder to submit a performance bond, the successful bidder shall submit it.Article 47 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 a written report on the bidding and bidding situation to the relevant administrative supervision department.Article 48 The successful bidder shall perform its obligations in accordance with the contract and complete the winning project. The successful bidder shall not transfer the winning project to others, nor shall he dismember the winning project to others separately.The successful bidder may, in accordance with the contract or with the consent of the bidder, subcontract some of the non-main and non-key work of the winning project to others to complete. The person accepting the subcontract shall have the corresponding qualifications and shall not subcontract again.The successful bidder shall be responsible to the bidder for the subcontracted project, and the person who accepts the subcontract shall bear joint and several liability for the subcontracted project.Chapter V: Legal LiabilityArticle 49 Where, in violation of the provisions of this Law, a project that must be tendered is not tendered, and the project that must be tendered is reduced to zero or the tendering is circumvented by any other means, it shall be ordered to make corrections within a specified period of time and may be fined not less than 5/1000 of the amount of the project contract; for projects that use all or part of the state-owned funds, the implementation of the project or the disbursement of funds may be suspended; and the directly responsible supervisors and other directly responsible personnel of the unit shall be punished in accordance with law.Article 50 Where a bidding agency violates the provisions of this Law by divulging the circumstances and materials related to bidding and bidding activities that should be kept confidential, or colludes with bidders or bidders to harm the interests of the State, the societal public interest, or the lawful rights and interests of others, it shall be fined not less than 50,000 yuan but not more than 250,000 yuan, and the supervisors and other directly responsible personnel directly responsible for the unit shall be fined not less than 5 percent but not more than 10 percent of the amount; Suspension or even cancellation of bidding agency qualifications; where a crime is constituted, criminal responsibility shall be pursued in accordance with law. Whoever causes losses to others shall bear the liability for compensation in accordance with law.Where the acts listed in the preceding paragraph affect the outcome of the winning bid, the winning bid shall be invalid.Article 51 Where a bidder restricts or excludes potential bidders with unreasonable conditions, discriminates against potential bidders, compulsorily requires bidders to form a consortium to bid jointly, or restricts competition between bidders, he shall be ordered to make corrections and may be fined not less than 10,000 yuan but not more than 50,000 yuan.Article 52 Where a tenderer for a project that must be tendered in accordance with law discloses to others the name, number, or other circumstances related to tendering and bidding that may affect fair competition, or leaks the bidding floor, a warning may be given and a fine of not less than 10,000 yuan but not more than 100,000 yuan may be imposed; the directly responsible supervisors and other directly responsible personnel of the unit shall be punished in accordance with law; and where a crime is constituted, criminal responsibility shall be pursued in accordance with law.Where the acts listed in the preceding paragraph affect the outcome of the winning bid, the winning bid shall be invalid.Article 53 Where bidders collude with each other in bidding or collude with bidders to bid, and the bidders seek to win the bid by bribing the bidders or the members of the bid evaluation committee, the winning bid is invalid, and a fine of not less than 5/1000 to 1000% of the amount of the winning project shall be imposed, and the directly responsible supervisor and other directly responsible personnel of the unit shall be fined not less than 5% but not more than 10% of the amount of the unit; The bidding qualifications for projects that must be tendered according to law within one to two years shall be cancelled and announced until the business license is revoked by the administrative organ for industry and commerce; Whoever causes losses to others shall bear the liability for compensation in accordance with law.Article 54 Where a bidder bids in the name of another person or fraudulently deceives the winning bid, the winning bid is invalid, causing losses to the bidder, he shall bear the liability for compensation in accordance with law; if a crime is constituted, criminal responsibility shall be pursued in accordance with law. Where the bidders of a project that must be tendered in accordance with the law have the acts listed in the preceding paragraph that have not yet constituted a crime, they shall be fined not less than 5/1000 but not more than 10/100 of the amount of the project that wins the bid, and a fine of not less than 5% but not more than 10% of the amount of the unit's fine shall be imposed on the directly responsible supervisors and other directly responsible personnel of the unit; Until the business license is revoked by the administrative authority for industry and commerce.Article 55 Where a tenderer violates the provisions of this Law by negotiating with the bidder on the substantive contents such as the bidding price and the bidding plan for a project that must be tendered in accordance with the law, a warning shall be given and the directly responsible supervisors and other directly responsible personnel of the unit shall be punished in accordance with law.  Where the acts listed in the preceding paragraph affect the outcome of the winning bid, the winning bid shall be invalid.Article 56 Where a member of the bid evaluation committee accepts property or other benefits from a bidder, if the members of the bid evaluation committee or the relevant staff participating in the bid appraisal disclose to others the evaluation and comparison of the bidding documents, the recommendation of the successful candidate, and other circumstances related to the bid evaluation, they shall be given a warning, confiscate the property they have received, and may also impose a fine of not less than 3,000 yuan but not more than 50,000 yuan, and the members of the bid evaluation committee who have committed the illegal acts listed shall be disqualified from serving as members of the bid evaluation committee. They shall no longer participate in the evaluation of bids for any projects that must be tendered in accordance with law; if a crime is constituted, criminal responsibility shall be pursued in accordance with law.Article 57 Where a bidder determines the successful bidder in addition to the successful candidate recommended by the bid evaluation committee in accordance with law, and the project that must be tendered in accordance with law determines the successful bidder on its own after all bids are rejected by the bid evaluation committee, the winning bid shall be invalid. Ordering corrections may be imposed with a fine of not less than 5/1000 to 10/1000 of the amount of the winning project; the supervisors and other directly responsible personnel of the unit shall be punished in accordance with law.Article 58 Where the successful bidder transfers the winning project to another person, dismembers the winning project and then separately transfers it to another person, and subcontracts part of the main body or key work of the winning project to another person in violation of the provisions of this Law, or if the subcontractor subcontracts again, the transfer or subcontracting shall be invalid and a fine of not less than 5/1000 but not more than 10/1000 of the amount of the transferred or subcontracted project shall be imposed; where there are illegal gains, the illegal gains shall be confiscated; the business suspension and rectification may be ordered; and if the circumstances are serious, the administrative organ for industry and commerce shall revoke the business license.Article 59 Where the bidder and the successful bidder do not conclude a contract in accordance with the bidding documents and the bidding documents of the successful bidder, or if the bidder or the successful bidder enters into an agreement that deviates from the substantive content of the contract, it shall be ordered to make corrections; a fine of not less than 5/1000 and not more than 10/1000 of the amount of the winning project may be imposed.Article 60 If the successful bidder fails to perform the contract concluded with the bidder, the performance bond shall not be refunded, and if the loss caused to the bidder exceeds the amount of the performance bond, it shall also compensate for the excess; if the performance bond is not submitted, it shall bear the liability for compensation for the loss of the tenderer. If the successful bidder fails to perform its obligations in accordance with the contract concluded with the bidder, and the circumstances are serious, its bidding qualifications for participating in the projects that must be tendered according to law within two to five years shall be cancelled and announced, until the business license is revoked by the administrative organ for industry and commerce. If the contract cannot be performed due to force majeure, the provisions of the preceding two paragraphs shall not apply.Article 61: The administrative punishments provided for in this Chapter are to be decided by the relevant administrative supervision departments provided for by the State Council. The exceptions already provided for in this Law for organs that impose administrative penalties are provided for.Article 62 Where any unit violates the provisions of this Law by restricting or excluding legal persons or other organizations outside the region or system from participating in bidding, and appoints a bidding agency for the bidder, the bidder is compelled to entrust the bidding agency to handle bidding matters, or interferes in bidding and bidding activities in other ways, it shall be ordered to make corrections; Where individuals use their authority to carry out the illegal acts mentioned in the preceding paragraph, responsibility is to be pursued in accordance with the provisions of the preceding paragraph.Article 63 Where a functionary of a state organ who has the responsibility of administrative supervision over bidding and bidding activities in accordance with law engages in malpractice for personal gain, abuses of power, or neglects his duties, and constitutes a crime, criminal responsibility shall be pursued in accordance with law; where it does not constitute a crime, administrative sanctions shall be given in accordance with law.Article 64 Where a project that must be tendered in accordance with law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid provided for in this Law.Chapter VI Supplementary ProvisionsArticle 65 Where bidders and other interested parties find that bidding and bidding activities do not conform to the relevant provisions of this Law, they have the right to raise objections to the bidders or to complain to the relevant administrative supervision departments in accordance with law.Article 66: Projects involving national security, state secrets, emergency rescue and disaster relief, or projects that are not suitable for bidding under special circumstances such as the use of poverty alleviation funds to carry out work-for-charity, or the need to use migrant workers, may not be subject to bidding in accordance with the relevant provisions of the State.Article 67 Where a project using loans or assistance funds from an international organization or a foreign government is used to conduct bidding, and the lender or provider of funds has different provisions on the specific conditions and procedures for bidding and bidding, those provisions may apply, except where it is contrary to the societal public interest of the People's Republic of China.Article 68 This Law shall enter into force on January 1, 2000. |