

# 中华人民共和国招标投标法

## Law of the People's Republic of China on Tenders and Bids

### 第一章 总 则

#### Chapter I General Provisions

第一条 为了规范招标投标活动，保护国家利益、社会公共利益和招标投标活动当事人的合法权益，提高经济效益，保证项目质量，制定本法。

Article 1 For the purposes of regulating tender and bid activities, protecting the State's interests, the social and public interests and the legitimate rights and interests of parties to tender and bid activities, improving the economic effects and ensuring the quality of projects, this Law is enacted.

第二条 在中华人民共和国境内进行招标投标活动，适用本法。

Article 2 This Law applies to tender and bid activities in the territory of the People's Republic of China.

第三条 在中华人民共和国境内进行下列工程建设项目包括项目的勘察、设计、施工、监理以及与工程建设有关的重要设备、材料等的采购，必须进行招标：

Article 3 The following construction projects in the territory of the People's Republic of China, including surveying and prospecting, design, engineering and supervision of such projects as well as the procurement of major equipment and materials related to the construction of such projects, must be subject to tenders:

(一) 大型基础设施、公用事业等关系社会公共利益、公众安全的项目；

1. projects such as large-scale infrastructure facilities and public utilities involving the social and public interests and public safety;

(二) 全部或者部分使用国有资金投资或者国家融资的项目；

2. projects which are, completely or partly, invested by the State-owned funds or funded through State financing; and

(三) 使用国际组织或者外国政府贷款、援助资金的项目。

3. projects using loans or aid funds from international organizations or foreign governments.

前款所列项目的具体范围和规模标准，由国务院发展计划部门会同国务院有关部门制订，报国务院批准。

The specific scope and standards on the scale of the projects listed in the preceding paragraph shall be worked out by the department of the State Council for development planning, jointly with relevant departments of the State Council, and be reported to the State Council for approval.

法律或者国务院对必须进行招标的其他项目的范围有规定的，依照其规定。

If laws or the State Council have the provisions on the scope of other projects which must be subject to tenders, such provisions shall govern.

第四条 任何单位和个人不得将依法必须进行招标的项目化整为零或者以其他任何方式规避招标。

Article 4 No unit or person may break a project subject to tender into parts or resort to any other manner to dodge tender.

第五条 招标投标活动应当遵循公开、公平、公正和诚实信用的原则。

Article 5 Tender and bid activities shall conform to the principles of openness, fairness, impartiality and good faith.

第六条 依法必须进行招标的项目，其招标投标活动不受地区或者部门的限制。

Article 6 Tender and bid activities for a project subject to tender according to law shall not be restricted by areas or departments.

任何单位和个人不得违法限制或者排斥本地区、本系统以外的法人或者其他组织参加投标，不得以任何方式非法干涉招标投标活动。

No unit or person may illegally restrict or exclude legal persons or other organizations from other areas or systems to take part in bidding or interfere in tender and bid activities in any form.

第七条 招标投标活动及其当事人应当接受依法实施的监督。

Article 7 Tender and bid activities and the parties thereto shall be subject to supervision imposed according to law.

有关行政监督部门依法对招标投标活动实施监督，依法查处招标投标活动中的违法行为。

Relevant departments for administrative supervision shall impose supervision on tender and bid activities according to law and investigate into and deal with any illegal act therein.

对招标投标活动的行政监督及有关部门的具体职权划分，由国务院规定。

Administrative supervision on tender and bid activities and the specific duties and powers of relevant departments shall be laid down by the State Council.

## 第二章 招 标

### Chapter II Tenders

第八条 招标人是依照本法规定提出招标项目、进行招标的法人或者其他组织。

Article 8 A tenderer is a legal person or any other organization that, in accordance with the provisions of this Law, puts forth a project subject to tender and carries out the tender.

第九条 招标项目按照国家有关规定需要履行项目审批手续的，应当先履行审批手续，取得批准。

Article 9 If a project subject to tender, in accordance with the relevant regulations of the State, is required to accomplish examination and approval procedures, it shall do so and obtain approval in advance.

招标人应当有进行招标项目的相应资金或者资金来源已经落实，并应当在招标文件中如实载明。

A tenderer shall have necessary funds or sources of funds for the project subject to tender and shall state it truthfully in his tender documents.

第十条 招标分为公开招标和邀请招标。

Article 10 Tenders include public tenders and invitational tenders.

公开招标，是指招标人以招标公告的方式邀请不特定的法人或者其他组织投标。

A public tender means that a tenderer, in the form of tender announcement, invites unspecified legal persons or other unspecified organizations to submit their bids.

邀请招标，是指招标人以投标邀请书的方式邀请特定的法人或者其他组织投标。

An invitational tender means that a tenderer, in the form of invitation for submission of bid, invites specified legal persons or other specified organizations to submit their bids.

第十一条 国务院发展计划部门确定的国家重点项目和省、自治区、直辖市人民政府确定的地方重点项目不适宜公开招标的，经国务院发展计划部门或者省、自治区、直辖市人民政府批准，可以进行邀请招标。

Article 11 If a national key project determined by the department of the State Council for development planning or a local key project determined by the people's government of a province, an autonomous region or a municipality directly under the Central Government is not suitable for carrying out public tender, it may be subject to invitational tender with approval of the department of the State Council for development planning or the people's government of the province, autonomous region or municipality under the Central Government.

第十二条 招标人有权自行选择招标代理机构，委托其办理招标事宜。

Article 12 A tenderer shall have the right to choose, on his own, a procuratorial agency and authorize it to carry out the tender.

任何单位和个人不得以任何方式为招标人指定招标代理机构。

No unit or person may designate a procuratorial agency for the tenderer in any form.

招标人具有编制招标文件和组织评标能力的，可以自行办理招标事宜。

A tenderer who has the capability of preparing his tender documents and organizing bid assessments may carry out the tender by himself.

任何单位和个人不得强制其委托招标代理机构办理招标事宜。

No unit or person may compel the tenderer to authorize a procuratorial agency to carry out the tender.

依法必须进行招标的项目，招标人自行办理招标事宜的，应当向有关行政监督部门备案。

If a tenderer carries out the tender by himself for a project subject to tender according to law, the matter shall be reported to the relevant department for administrative supervision for the record.

第十三条 招标代理机构是依法设立、从事招标代理业务并提供相关服务的社会中介组织。

Article 13 A procuratorial agency is a social intermediary organization which is established according to law to engage in the procuratorial tender business and to provide related services.

招标代理机构应当具备下列条件：

A procuratorial agency shall satisfy the following conditions:

(一) 有从事招标代理业务的营业场所和相应资金；

1. Having a business site and necessary amount of capital for carrying out the procuratorial tender

business;

(二) 有能够编制招标文件和组织评标的相应专业力量;

2. Having a qualified technical and academic force capable of preparing the tender documents and organizing bid assessments; and

(三) 有符合本法第三十七条第三款规定条件、可以作为评标委员会成员人选的技术、经济等方面的专家库。

3. Having a bank of experts in such fields as technology and economics who satisfy the conditions laid down in Paragraph 3 of Article 37 of this Law and can serve as candidates of members of the bid assessment committees.

第十四条 从事工程建设项目招标代理业务的招标代理机构，其资格由国务院或者省、自治区、直辖市人民政府的建设行政主管部门认定。

Article 14 Qualifications of procuratorial agencies engaging in the procuratorial tender business of construction projects shall be determined by the competent administrative departments for construction of the State Council or of the people's governments of provinces, autonomous regions or municipalities directly under the Central Government.

具体办法由国务院建设行政主管部门会同国务院有关部门制定。

Concrete measures therefor shall be formulated by the competent administrative department of the State Council for construction, jointly with relevant departments of the State Council.

从事其他招标代理业务的招标代理机构，其资格认定的主管部门由国务院规定。

The competent departments for determination of qualifications of procuratorial agencies engaging in other procuratorial tender businesses shall be laid down by the State Council.

招标代理机构与行政机关和其他国家机关不得存在隶属关系或者其他利益关系。

Procuratorial agencies may not have any subordination relations or other interest relations with administrative organs and other State organs.

第十五条 招标代理机构应当在招标人委托的范围内办理招标事宜，并遵守本法关于招标人的规定。

Article 15 A procuratorial agency shall carry out the tender within the scope authorized by the tenderer and shall comply with the provisions of this Law on tenderers.

第十六条 招标人采用公开招标方式的，应当发布招标公告。

Article 16 A tenderer who adopts the public tender method shall issue a tender announcement.

依法必须进行招标的项目的招标公告，应当通过国家指定的报刊、信息网络或者其他媒介发布。

The tender announcements of projects subject to tender according to law must be issued in newspapers, periodicals, information networks or other media designated by the State.

招标公告应当载明招标人的名称和地址、招标项目的性质、数量、实施地点和时间以及获取招标文件的办法等事项。

A tender announcement shall clearly contain such particulars as the name and address of the tenderer, nature of the project subject to tender, quantity, place and time of implementation and methods to acquire the tender documents.

第十七条 招标人采用邀请招标方式的，应当向三个以上具备承担招标项目的能力、资信良好的特定的法人或者其他组织发出投标邀请书。

Article 17 A tenderer who adopts the invitational tender method shall issue invitations for submission of bids to three or more specified legal persons or other specified organizations capable of undertaking the project subject to tender and having a good reputation and creditworthiness.

投标邀请书应当载明本法第十六条第二款规定的事项。

An invitation for submission of bid shall clearly contain the particulars set forth in Paragraph 2 of Article 16 of this Law.

第十八条 招标人可以根据招标项目本身的要求，在招标公告或者投标邀请书中，要求潜在投标人提供有关资质证明文件和业绩情况，并对潜在投标人进行资格审查；国家对投标人的资格条件有规定的，依照其规定。

Article 18 A tenderer may, in accordance with the need of a project subject to tender, demand the intended bidders to provide documentary evidences related to their qualifications and information on their business performance in his tender announcement or invitations for submission of bids, and shall examine the qualifications of the intended bidders; and if the State has the provisions on the qualifications of bidders, such provisions shall govern.

招标人不得以不合理的条件限制或者排斥潜在投标人，不得对潜在投标人实行歧视待遇。

A tenderer may not restrict or exclude any intended bidder with unreasonable requirements and may not apply discrimination treatment to any intended bidder.

第十九条 招标人应当根据招标项目的特点和需要编制招标文件。

Article 19 A tenderer shall prepare the tender documents in accordance with the features and needs of the project subject to tender.

招标文件应当包括招标项目的技术要求、对投标人资格审查的标准、投标报价要求和评标标准等所有实质性要求和条件以及拟签订合同的主要条款。

The tender documents shall contain all substantial requirements and terms as technical requirements of the project subject to tender, standards on examination of bidders' qualifications, requirements on bid price quotation and bid assessment standards as well as main clauses of the contract to be signed.

国家对招标项目的技术、标准有规定的，招标人应当按照其规定在招标文件中提出相应要求。

If the State has the provisions on technologies and standards of projects subject to tender, a tenderer shall, in accordance with these provisions, put forward corresponding requirements in his tender documents.

招标项目需要划分标段、确定工期的，招标人应当合理划分标段、确定工期，并在招标文件中载明。

If a project subject to tender needs to be divided into bid lots or to determine the construction period, the tenderer shall reasonably make such division or decision and shall state it in his tender documents clearly.

第二十条 招标文件不得要求或者标明特定的生产供应者以及含有倾向或者排斥潜在投标人的其他内容。

Article 20 No tender document may require or specify any specified producer or supplier or contain any other contents favoring or excluding intended bidders.

第二十一条 招标人根据招标项目的具体情况，可以组织潜在投标人踏勘项目现场。

Article 21 A tenderer may, in accordance with the actual conditions of a project subject to tender, organize intended bidders to inspect and survey the site of the project.

第二十二条 招标人不得向他人透露已获取招标文件的潜在投标人的名称、数量以及可能影响公平竞争的有关招标投标的其他情况。

Article 22 A tenderer may not disclose to another person the names and number of intended bidders already acquired his tender documents or other information that might affect fair competition related to tender and bid activities.

招标人设有标底的，标底必须保密。

If a tenderer has a base bid price, it must be kept secret and confidential.

第二十三条 招标人对已发出的招标文件进行必要的澄清或者修改的，应当在招标文件要求提交投标文件截止时间至少十五日前，以书面形式通知所有招标文件收受人。

Article 23 A tenderer who desires to make necessary clarifications or modifications in his tender documents already issued shall notify all receivers of his tender documents in a written form at least 15 days prior to the deadline for submission of bid documents set in his tender documents.

该澄清或者修改的内容为招标文件的组成部分。

Such clarifications or modifications shall be the constituent of his tender documents.

第二十四条 招标人应当确定投标人编制投标文件所需要的合理时间；但是，依法必须进行招标的项目，自招标文件开始发出之日起至投标人提交投标文件截止之日止，最短不得少于二十日。

Article 24 A tenderer shall set a reasonable period of time for bidders necessary for preparing their bid documents; nevertheless, for a project subject to tender according to law, the minimum period from the issue date of the tender documents to the deadline for submission of bid documents by bidders may not be less than 20 days.

### 第三章 投标

#### Chapter III Bids

第二十五条 投标人是响应招标、参加投标竞争的法人或者其他组织。

Article 25 A bidder means a legal person or any other organization that responds to a tender and participates in bid competition.

依法招标的科研项目允许个人参加投标的，投标的个人适用本法有关投标人的规定。

If a scientific research project subject to tender according to law allows individual persons to participate in bidding, the provisions of this Law on bidders shall apply to individual persons participating in bidding.

第二十六条 投标人应当具备承担招标项目的能力；国家有关规定对投标人资格条件或者招标文件对投标人资格条件有规定的，投标人应当具备规定的资格条件。

Article 26 A bidder shall have the capability to undertake the project subject to tender; and if the State has the provisions on the qualifications of bidders or the tender documents specifies the



qualifications for bidders, a bidder shall have the qualifications provided or specified.

第二十七条 投标人应当按照招标文件的要求编制投标文件。

Article 27 A bidder shall prepare his bid documents as required by the tender documents.

投标文件应当对招标文件提出的实质性要求和条件作出响应。

The bid documents shall respond to the substantial requirements and terms put forward in the tender documents.

招标项目属于建设施工的,投标文件的内容应当包括拟派出的项目负责人与主要技术人员的简历、业绩和拟用于完成招标项目的机械设备等。

If a project subject to tender is a construction project, the contents of the bid documents shall contain the profiles and business performances of the persons-in-charge of the project and major technical personnel to be appointed as well as machinery and equipment to be employed for the project.

第二十八条 投标人应当在招标文件要求提交投标文件的截止时间前,将投标文件送达投标地点。

Article 28 A bidder shall deliver his bid documents to the place of submission prior to the deadline for submission set in the tender documents.

招标人收到投标文件后,应当签收保存,不得开启。

The tenderer shall sign and keep the bid documents when receiving and may not open them.

投标人少于三个的,招标人应当依照本法重新招标。

If the number of bidders is less than three, the tenderer shall issue the tender anew according to this Law.

在招标文件要求提交投标文件的截止时间后送达的投标文件,招标人应当拒收。

The tenderer shall refuse to accept any bid documents delivered after the deadline for submission set in the tender documents.

第二十九条 投标人在招标文件要求提交投标文件的截止时间前,可以补充、修改或者撤回已提交的投标文件,并书面通知招标人。

Article 29 Prior to the deadline for submission of bid documents set in the tender documents, a bidder may supplement, modify or withdraw his bid documents already delivered and shall notify

the tenderer in writing.

补充、修改的内容为投标文件的组成部分。

Such supplements or modifications shall be the constituent of his bid documents.

第三十条 投标人根据招标文件载明的项目实际情况,拟在中标后将中标项目的部分非主体、非关键性工作进行分包的,应当在投标文件中载明。

Article 30 A bidder who, in consideration of the actual conditions of the project stated in the tender documents, intends to subcontract some parts of the project excluding the main structure and critical work after winning the project, shall make clear statements in his bid documents.

第三十一条 两个以上法人或者其他组织可以组成一个联合体,以一个投标人的身份共同投标。

Article 31 Two or more legal persons or other organizations may form a consortium and jointly submit their bids as one bidder.

联合体各方均应当具备承担招标项目的相应能力;国家有关规定或者招标文件对投标人资格条件有规定的,联合体各方均应当具备规定的相应资格条件。

Each party to the consortium shall have corresponding capability to undertake the project subject to tender; if the State or the tender documents have provisions on the qualifications of bidders, all parties to the consortium shall have the corresponding qualifications provided.

由同一专业的单位组成的联合体,按照资质等级较低的单位确定资质等级。

If units of the same profession form a consortium, the grade of qualifications shall be determined according to the unit with lowest qualification level.

联合体各方应当签订共同投标协议,明确约定各方拟承担的工作和责任,并将共同投标协议连同投标文件一并提交招标人。

Parties to a consortium shall enter into an agreement on joint submission of bid to define the work and responsibility to be assumed by each of them, and shall deliver the said agreement to the tenderer together with the bid documents.

联合体中标的,联合体各方应当共同与招标人签订合同,就中标项目向招标人承担连带责任。

If a consortium wins the bid, the parties thereto shall jointly enter into a contract with the tenderer and assume joint and several liability over the winning project to the tenderer.

招标人不得强制投标人组成联合体共同投标,不得限制投标人之间的竞争。

A tenderer may not compel bidders to form a consortium to make joint bidding and may not restrict competition among bidders.

第三十二条 投标人不得相互串通投标报价，不得排挤其他投标人的公平竞争，损害招标人或者其他投标人的合法权益。

Article 32 A bidder may not collude with other bidders in submitting their bid price quotations or discriminate fair competition by other bidders to prejudice the legitimate rights and interests of the tenderer or other bidders.

投标人不得与招标人串通投标，损害国家利益、社会公共利益或者他人的合法权益。

A bidder may not collude with the tenderer in submitting his bid to prejudice the State's interests, the social and public interests or the legitimate rights and interests of any other person.

禁止投标人以向招标人或者评标委员会成员行贿的手段谋取中标。

It is forbidden for bidders to offer bribes to the tenderers or members of the bid assessment committees for winning.

第三十三条 投标人不得以低于成本的报价竞标，也不得以他人名义投标或者以其他方式弄虚作假，骗取中标。

Article 33 A bidder may not submit his bid price quotation below cost for competition, and may not submit his bid in the name of another person or resort to any other false and deceptive method for winning.

#### 第四章 开标、评标和中标

#### Chapter IV Bid Opening, Assessment and Winning

第三十四条 开标应当在招标文件确定的提交投标文件截止时间的同一时间公开进行；开标地点应当为招标文件中预先确定的地点。

Article 34 Bid opening shall be started openly at the same time of the deadline for submission of bid documents set in the tender documents; and the place of opening bids shall be the place predetermined in the tender documents.

第三十五条 开标由招标人主持，邀请所有投标人参加。

Article 35 Bid opening shall be presided over by the tenderer, and all bidders shall be invited to join.

第三十六条 开标时，由投标人或者其推选的代表检查投标文件的密封情况，也可以由招标人委托的公证机构检查并公证；经确认无误后，由工作人员当众拆封，宣读投标人名称、投标价格和投标文件的其他主要内容。

Article 36 When opening bids, the bidders or the representatives selected by them shall check the sealing of bid documents, and the sealing may also be checked and notarized by the notary organization commissioned by the tenderer; after being checked and verified, the working personnel shall open them in public, announce the names of bidders, bid price quotations and other main contents of bid documents.

招标人在招标文件要求提交投标文件的截止时间前收到的所有投标文件，开标时都应当当众予以拆封、宣读。

All bid documents received by the tenderer prior to the deadline for submission set in the tender documents shall be opened and announced in public when opening bids.

开标过程应当记录，并存档备查。

Records on the bid opening shall be made and shall be placed on files for future reference.

第三十七条 评标由招标人依法组建的评标委员会负责。

Article 37 Bid assessment shall be the responsibility of the bid assessment committee established according to law by the tenderer.

依法必须进行招标的项目，其评标委员会由招标人的代表和有关技术、经济等方面的专家组成，成员人数为五人以上单数，其中技术、经济等方面的专家不得少于成员总数的三分之二。

If a project must be subject to tender according to law, the bid assessment committee shall be composed of the representative of the tenderer and experts in the related technological and economic fields, and the number of committee members shall be an odd number at or above five, of the members, experts in technological and economic fields may not be less than two-thirds of the total members.

前款专家应当从事相关领域工作满八年并具有高级职称或者具有同等专业水平，由招标人从国务院有关部门或者省、自治区、直辖市人民政府有关部门提供的专家名册或者招标代理机构的专家库内的相关专业的专家名单中确定；

Experts mentioned in the preceding paragraph shall have worked in the related fields for eight years or longer, have senior academic titles or the same professional level, and they shall be chosen from the name lists of experts provided by relevant departments of the State Council or relevant departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government, or from the name list of experts in related fields in the expert bank of the procuratorial agency;

一般招标项目可以采取随机抽取方式，特殊招标项目可以由招标人直接确定。

for an ordinary project subject to tender, the experts may be chosen randomly, and for a special project subject to tender, the experts may be directly chosen by the tenderer.

与投标人有利害关系的人不得进入相关项目的评标委员会；已经进入的应当更换。

A person having an interest with a bidder may not join the bid assessment committee of the related project and; if already joined, shall be replaced.

评标委员会成员的名单在中标结果确定前应当保密。

The name list of members of the bid assessment committee shall be kept secret and confidential before the bidding result is made.

第三十八条 招标人应当采取必要的措施，保证评标在严格保密的情况下进行。

Article 38 A tenderer shall take necessary measures to guarantee that bid assessment is carried out in a strictly secret and confidential situation.

任何单位和个人不得非法干预、影响评标的过程和结果。

No unit or person may illegally interfere or affect the bid assessment procedure or result.

第三十九条 评标委员会可以要求投标人对投标文件中含义不明确的内容作必要的澄清或者说明，但是澄清或者说明不得超出投标文件的范围或者改变投标文件的实质性内容。

Article 39 The bid assessment committee may demand a bidder to make necessary clarifications or explanations on the contents with ambiguous denotation of his bid documents, however, such clarifications or explanations may not exceed the scope of his bid documents or alter any substantial contents of his bid documents.

第四十条 评标委员会应当按照招标文件确定的评标标准和方法，对投标文件进行评审和比较；设有标底的，应当参考标底。

Article 40 The bid assessment committee shall assess and compare all bid documents in accordance with the bid assessment standards and methods set in the tender documents and; if there is a base bid price, shall take it as reference.

评标委员会完成评标后，应当向招标人提出书面评标报告，并推荐合格的中标候选人。

After finishing the assessment, the bid assessment committee shall give a written report thereon to the tenderer and recommend the qualified candidate winning bidders.

招标人根据评标委员会提出的书面评标报告和推荐的中标候选人确定中标人。

The tenderer shall, pursuant to the written report on bid assessment given by the bid assessment committee, determine the winning bidder from among the candidate winning bidders recommended by the bid assessment committee.

招标人也可以授权评标委员会直接确定中标人。

The tenderer may also authorize the bid assessment committee to directly determine the winning bidder.

国务院对特定招标项目的评标有特别规定的，从其规定。

If the State Council has the special provisions on bid assessment of specified projects subject to tender, such provisions shall govern.

第四十一条 中标人的投标应当符合下列条件之一：

Article 41 The bid of a winning bidder shall satisfy any of the following requirements:

(一) 能够最大限度地满足招标文件中规定的各项综合评价标准；

1. to be able to satisfy the maximum various comprehensive assessment standards set in the tender documents; or

(二) 能够满足招标文件的实质性要求，并且经评审的投标价格最低；但是投标价格低于成本的除外。

2. to be able to satisfy the substantial requirements set in the tender documents and to have the lowest bid price quotation upon assessment, with the exception of the bid price quotation which is below cost.

第四十二条 评标委员会经评审，认为所有投标都不符合招标文件要求的，可以否决所有投标。

Article 42 The bid assessment committee may deny all the bids if, after the assessment, believes that they fail to satisfy the requirements set forth in the tender documents.

依法必须进行招标的项目的所有投标被否决的，招标人应当依照本法重新招标。

If all the bids on a project subject to tender according to law are denied, the tenderer shall start the tender anew in accordance with this Law.

第四十三条 在确定中标人前，招标人不得与投标人就投标价格、投标方案等实质性内容进行谈判。

Article 43 Before the winning bidder is determined, the tenderer may not negotiate with any bidder on such substantial contents as bid price or bidding plan.

第四十四条 评标委员会成员应当客观、公正地履行职务，遵守职业道德，对所提出的评审意见承担个人责任。

Article 44 Members of the bid assessment committees shall objectively and impartially perform their duties, comply with the code of ethics and be personally liable for their assessment opinions.

评标委员会成员不得私下接触投标人，不得收受投标人的财物或者其他好处。

A member of a bid assessment committee may not contact any bidder privately and may not accept property or other benefits from any bidder.

评标委员会成员和参与评标的有关工作人员不得透露对投标文件的评审和比较、中标候选人的推荐情况以及与评标有关的其他情况。

Members of the bid assessment committees and working personnel taking part in bid assessment may not disclose their bid assessment and comparison of bid documents, recommendation information about candidate winning bidders and other information related to bid assessment.

第四十五条 中标人确定后，招标人应当向中标人发出中标通知书，并同时将中标结果通知所有未中标的投标人。

Article 45 When the winning bidder is determined, the tenderer shall issue a bid-winning notice to the former and concurrently, notify all bidders who do not win the bid about the result.

中标通知书对招标人和中标人具有法律效力。

The bid-winning notice is legally binding on both the tenderer and the winning bidder.

中标通知书发出后，招标人改变中标结果的，或者中标人放弃中标项目的，应当依法承担法律责任。

If, after the bid-winning notice is issued, the tenderer alters the bidding result or the winning bidder waives the winning project, the said tenderer or the said winning bidder shall bear legal liabilities according to law.

第四十六条 招标人和中标人应当自中标通知书发出之日起三十日内，按照招标文件和中标人的投标文件订立书面合同。

Article 46 Within 30 days following the date of issuance of the bid-winning notice, the tenderer and the winning bidder shall enter into a written contract in accordance with the tender documents and the bid documents of the winning bidder.

招标人和中标人不得再行订立背离合同实质性内容的其他协议。

The tenderer and the winning bidder may not conclude any other agreement contrary to the substantial contents of the contract.

招标文件要求中标人提交履约保证金的，中标人应当提交。

If the tender documents require the winning bidder to provide an earnest for performance of contract, the winning bidder shall provide it.

第四十七条 依法必须进行招标的项目，招标人应当自确定中标人之日起十五日内，向有关行政监督部门提交招标投标情况的书面报告。

Article 47 If a project must be subject to tender according to law, the tenderer shall, within 15 days following the date of determining the winning bidder, submit a written report about the tender and bid to the relevant department for administrative supervision.

第四十八条 中标人应当按照合同约定履行义务，完成中标项目。

Article 48 A winning bidder shall fulfil his obligations as contracted and complete the winning project.

中标人不得向他人转让中标项目，也不得将中标项目肢解后分别向他人转让。

A winning bidder may not transfer the winning project to another person and may not break the winning project into parts for transferring them separately to other persons.

中标人按照合同约定或者经招标人同意，可以将中标项目的部分非主体、非关键性工作分包给他人完成。

A winning bidder may, as contracted or upon consent of the tenderer, subcontract parts of the winning project excluding the main structure and critical work to other persons to complete them.

接受分包的人应当具备相应的资格条件，并不得再次分包。

The persons accepting the subcontracts shall have corresponding qualifications and may not subcontract it again to other persons.

中标人应当就分包项目向招标人负责，接受分包的人就分包项目承担连带责任。



A winning bidder shall be accountable to the tenderer for the subcontracted projects, and the persons accepting the subcontracts shall jointly and severally be liable for the subcontracted parts.

## 第五章 法律责任

### Chapter V Legal Liabilities

第四十九条 违反本法规定，必须进行招标的项目而不招标的，将必须进行招标的项目化整为零或者以其他任何方式规避招标的，责令限期改正，可以处项目合同金额千分之五以上千分之十以下的罚款；

Article 49 If a unit, in violation of the provisions of this Law, fails to carry out a tender for a project subject to tender or breaks a project subject to tender into parts or resorts to any other form to dodge tender, the unit shall be ordered to make corrections within a given period of time and may be imposed a fine exceeding 0.5 per cent and not exceeding 1 per cent of the contracted sum of the winning project;

对全部或者部分使用国有资金的项目，可以暂停项目执行或者暂停资金拨付；对单位直接负责的主管人员和其他直接责任人员依法给予处分。

if the project uses, completely or partly, the State-owned fund, the project may be suspended or the allocation of fund may be suspended; and the person-in-charge directly responsible and other persons directly responsible of the unit shall be given sanctions according to law.

第五十条 招标代理机构违反本法规定，泄露应当保密的与招标投标活动有关的情况和资料的，或者与招标人、投标人串通损害国家利益、社会公共利益或者他人合法权益的，处五万元以上二十五万元以下的罚款，对单位直接负责的主管人员和其他直接责任人员处单位罚款数额百分之五以上百分之十以下的罚款；

Article 50 If a procuratorial agency, in violation of the provisions of this Law, divulges confidential information and materials related to the tender and bid activity or colludes with a tender or bidder to prejudice the State's interests, the social and public interests or the legitimate rights and interests of other persons, the agency shall be imposed a fine exceeding 50,000 yuan and not exceeding 250,000 yuan and the person-in-charge directly responsible and other persons directly responsible of the agency shall be imposed a fine exceeding 5 per cent and not exceeding 10 per cent of the fine imposed on the agency; the illegal gains therefrom, if any, shall be confiscated of; if the circumstance is serious, its qualifications for procuratorial agency shall be suspended or revoked; and if a crime is constituted, criminal responsibility shall be demanded for according to law.

有违法所得的，并处没收违法所得；情节严重的，暂停直至取消招标代理资格；构成犯罪的，依法追究刑事责任。给他人造成损失的，依法承担赔偿责任。

If any loss is caused to other persons, the agency shall be liable therefor according to law.

前款所列行为影响中标结果的，中标无效。

If an act set forth in the preceding paragraph affects the bidding result, the result shall be void and invalid.

第五十一条 招标人以不合理的条件限制或者排斥潜在投标人的，对潜在投标人实行歧视待遇的，强制要求投标人组成联合体共同投标的，或者限制投标人之间竞争的，责令改正，可以处一万元以上五万元以下的罚款。

Article 51 A tenderer who restricts or excludes an intended bidder with unreasonable requirements, applies discriminate treatment to an intended bidder, compels bidders to form a consortium to jointly submit their bids, or restricts competition among the bidders, shall be ordered to make corrections and may be imposed a fine exceeding 10,000 yuan and not exceeding 50,000 yuan.

第五十二条 依法必须进行招标的项目的招标人向他人透露已获取招标文件的潜在投标人的名称、数量或者可能影响公平竞争的有关招标投标的其他情况的，或者泄露标底的，给予警告，可以并处一万元以上十万元以下的罚款；

Article 52 If a tenderer for a project subject to tender according to law discloses to another person the names and numbers of intended bidders who have already acquired his tender documents or any other information related to the tender and bid which likely affects fair competition, or leaks the base bid price, the tenderer shall be given a warning and concurrently, may be imposed a fine exceeding 10,000 yuan and not exceeding 100,000 yuan; the person-in-charge directly responsible and other persons directly responsible of the tenderer shall be given sanctions according to law; and if a crime is constituted, criminal responsibility shall be demanded for according to law.

对单位直接负责的主管人员和其他直接责任人员依法给予处分；构成犯罪的，依法追究刑事责任。

If an act set forth in the preceding paragraph affects the bidding result, the result shall be void and invalid.

前款所列行为影响中标结果的，中标无效。

Article 53 If a bidder colludes with another bidder in submitting their bids or colludes with the tenderer in submitting his bid, or if a bidder resorts to the manner of offering bribes to the tenderer or members of the bid assessment committee to win the bid, his winning of the bid shall be void and invalid, the said bidder shall be imposed a fine exceeding 0.

第五十三条 投标人相互串通投标或者与招标人串通投标的，投标人以向招标人或者评标委员会成员行贿的手段谋取中标的，中标无效，处中标项目金额千分之五以上千分之十以下的罚款，对单位直接负责的主管人员和其他直接责任人员处单位罚款数额百分之五以上百分之十以下的罚款；

5 per cent and not exceeding 1 per cent of the sum of the winning project, the person-in-charge directly responsible and other persons directly responsible of the bidder shall be imposed a fine exceeding 5 per cent and not exceeding 10 per cent of the fine imposed on the bidder;

有违法所得的，并处没收违法所得；情节严重的，取消其一年至二年内参加依法必须进行招标的项目的投标资格并予以公告，直至由工商行政管理机关吊销营业执照；构成犯罪的，依法追究刑事责任。

the illegal gains therefrom, if any, shall be confiscated of concurrently; if the circumstance is serious, his qualifications to take part in bidding of projects subject to tender shall be cancelled for one to two years and the cancellation shall be announced or even his business license shall be revoked by the administrative department for industry and commerce; and if a crime is constituted, criminal responsibility shall be demanded for according to law.

给他人造成损失的，依法承担赔偿责任。

If any loss is caused to other persons, the said bidder shall be liable therefor according to law.

第五十四条 投标人以他人名义投标或者以其他方式弄虚作假，骗取中标的，中标无效，给招标人造成损失的，依法承担赔偿责任；构成犯罪的，依法追究刑事责任。

Article 54 If a bidder submits his bid in the name of another person or resorts to deception to win the bid, his winning of the bid shall be void and invalid, if a loss is caused to the tenderer, the said bidder shall be liable therefor according to law; and if a crime is constituted, criminal responsibility shall be demanded for according to law.

依法必须进行招标的项目的投标人有前款所列行为尚未构成犯罪的，处中标项目金额千分之五以上千分之十以下的罚款，对单位直接负责的主管人员和其他直接责任人员处单位罚款数额百分之五以上百分之十以下的罚款；

If a bidder of a project subject to tender according to law commits an act set forth in the preceding paragraph and does not commits a crime, the said bidder shall be imposed a fine exceeding 0.5 per cent and not exceeding 1 per cent of the sum of the winning project, the person-in-charge directly responsible and other persons directly responsible of the bidder shall be imposed a fine exceeding 5 per cent and not exceeding 10 per cent of the fine imposed on the bidder;

有违法所得的，并处没收违法所得；情节严重的，取消其一年至三年内参加依法必须进行招标的项目的投标资格并予以公告，直至由工商行政管理机关吊销营业执照。

the illegal gains therefrom, if any, shall be confiscated of concurrently; and if the circumstance is serious, his qualifications for taking part in bidding for projects subject to tender according to law for one to three years shall be cancelled and the cancellation shall be announced, or even his business license shall be revoked by the administrative department for industry and commerce.

第五十五条 依法必须进行招标的项目，招标人违反本法规定，与投标人就投标价格、投标方案等实质性内容进行谈判的，给予警告，对单位直接负责的主管人员和其他直接责任人员依法给予处分。

Article 55 If a tenderer for a project subject to tender according to law, in violation of the provisions of this Law, negotiates with a bidder on such substantial contents as the bid price or bidding plan, the said tenderer shall be given a warning and the person-in-charge directly responsible and other persons directly responsible of the said tenderer shall be given sanctions according to law.

前款所列行为影响中标结果的，中标无效。

If an act set forth in the preceding paragraph affects the bidding result, the result shall be void and invalid.

第五十六条 评标委员会成员收受投标人的财物或者其他好处的，评标委员会成员或者参加评标的有关工作人员向他人透露对投标文件的评审和比较、中标候选人的推荐以及与评标有关的其他情况的，给予警告，没收收受的财物，可以并处三千元以上五万元以下的罚款，对有所列违法行为的评标委员会成员取消担任评标委员会成员的资格，不得再参加任何依法必须进行招标的项目的评标；构成犯罪的，依法追究刑事责任。

Article 56 If a member of a bid assessment committee accepts property or other benefits from a bidder or if a member of a bid assessment committee or a working personnel taking part in the bid assessment discloses to another person the assessment and comparison of bid documents, recommendation of candidate winning bidders or any other information related to bid assessment, the member or the personnel shall be given a warning, be confiscated of the property accepted and may concurrently be imposed a fine exceeding 3,000 yuan and not exceeding 50,000 yuan, the member of the bid assessment committee committing any of the illegal acts set forth shall be revoked his qualifications as a member of the committee and may no longer take part in bid assessment of projects subject to tender according to law; and if a crime is constituted, criminal responsibility shall be demanded for according to law.

第五十七条 招标人在评标委员会依法推荐的中标候选人以外确定中标人的，依法必须进行招标的项目在所有投标被评标委员会否决后自行确定中标人的，中标无效。

Article 57 If a tenderer determines the winning bidder outside the candidate winning bidders recommended according to law by the bid assessment committee or determines on his own the winning bidder after all the bids for the project subject to tender according to law were denied by the bid assessment committee, the determination shall be void and invalid.

责令改正，可以处中标项目金额千分之五以上千分之十以下的罚款；

The said tenderer shall be ordered to make corrections and may be imposed a fine exceeding 0.5

per cent and not exceeding 1 per cent of the sum of the winning project and;

对单位直接负责的主管人员和其他直接责任人员依法给予处分。

the person-in-charge directly responsible and other persons directly responsible of the said tenderer shall be given sanctions according to law.

第五十八条 中标人将中标项目转让给他人的，将中标项目肢解后分别转让给他人的，违反本法规定将中标项目的部分主体、关键性工作分包给他人的，

Article 58 If a winning bidder transfers his winning project to another person, breaks the winning project into parts and subcontracts them separately to other persons or, in violation of the provisions of this Law, subcontracts the main structure or critical work of the winning project to other persons,

或者分包人再次分包的，转让、分包无效，处转让、分包项目金额千分之五以上千分之十以下的罚款；

or if a subcontractor subcontracts his project again, the transfer or subcontract shall be void and invalid, the winning bidder or the subcontractor shall be imposed a fine exceeding 0.5 per cent and not exceeding 1 per cent of the sum of the transferred or subcontracted project and concurrently;

有违法所得的，并处没收违法所得；可以责令停业整顿；情节严重的，由工商行政管理机关吊销营业执照。

be confiscated of the illegal gains therefrom, if any; and may be ordered to stop his business for rectification; and if the circumstance is serious, the administrative department for industry and commerce shall revoke his business license.

第五十九条 招标人与中标人不按照招标文件和中标人的投标文件订立合同的，或者招标人、中标人订立背离合同实质性内容的协议的，责令改正；可以处中标项目金额千分之五以上千分之十以下的罚款。

Article 59 If a tenderer and a winning bidder fail to enter into a contract in accordance with the tender documents and the bid documents of the winning bidder, or a tenderer and a winning bidder conclude an agreement contrary to the substantial contents of the contract, they shall be ordered to make corrections; and may be imposed a fine exceeding 0.5 per cent and not exceeding 1 per cent of the sum of the winning project.

第六十条 中标人不履行与招标人订立的合同的，履约保证金不予退还，给招标人造成的损失超过履约保证金数额的，还应当对超过部分予以赔偿；没有提交履约保证金的，应当对招标人的损失承担赔偿责任。

Article 60 If a winning bidder fails to perform the contract signed with the tenderer, his earnest for

performance of contract shall not be refunded, if a loss caused to the tenderer is larger than the amount of earnest, the winning bidder shall compensate the part in excess of the earnest; and if no earnest for performance of contract is provided, the winning bidder shall be liable for any loss of the tenderer.

中标人不按照与招标人订立的合同履行义务，情节严重的，取消其二年至五年内参加依法必须进行招标的项目的投标资格并予以公告，直至由工商行政管理机关吊销营业执照。

If a winning bidder fails to fulfil his obligations according to the contract signed with the tenderer and the circumstance is serious, his qualifications to take part in bidding for projects subject to tender according to law shall be cancelled for two to five years and the cancellation shall be announced, or even the administrative department for industry and commerce shall revoke his business license.

因不可抗力不能履行合同的，不适用前两款规定。

If a contract is unable to be performed due to force majeure, the provisions of the preceding two paragraphs shall not apply.

第六十一条 本章规定的行政处罚，由国务院规定的有关行政监督部门决定。本法已对实施行政处罚的机关作出规定的除外。

Article 61 Administrative sanctions set forth in this Chapter shall be decided by the relevant departments for administrative supervision designated by the State Council, excluding those laid down by this Law to execute administrative sanctions.

第六十二条 任何单位违反本法规定，限制或者排斥本地区、本系统以外的法人或者其他组织参加投标的，为招标人指定招标代理机构的，强制招标人委托招标代理机构办理招标事宜的，或者以其他方式干涉招标投标活动的，责令改正；

Article 62 If any unit, in violation of the provisions of this Law, restricts or excludes a legal person or any other organization from another place or system to take part in bidding, designates a procuratorial agency for a tenderer, compels a tenderer to authorize a procuratorial agency to carry out the tender, or interferes the tender and bid activity in any other form, the unit shall be ordered to make corrections;

对单位直接负责的主管人员和其他直接责任人员依法给予警告、记过、记大过的处分，情节较重的，依法给予降级、撤职、开除的处分。

the person-in-charge directly responsible and other persons directly responsible of the unit shall be given such sanctions as warning, recording of demerit or recording of serious demerit according to law, and if the circumstance is fairly serious, be given such sanctions as demotion, removal from office or expulsion according to law.

个人利用职权进行前款违法行为的，依照前款规定追究责任。

A person who commits any of the acts set forth in the preceding paragraph by taking advantage of his power shall be demanded for his responsibility in accordance with the provisions of the preceding paragraph.

第六十三条 对招标投标活动依法负有行政监督职责的国家机关工作人员徇私舞弊、滥用职权或者玩忽职守，构成犯罪的，依法追究刑事责任；不构成犯罪的，依法给予行政处分。

Article 63 A public servant of a State organ obligated for exercising administrative supervision according to law over tender and bid activities, who practices favoritism or irregularity, abuses his power or neglects his duty of office, shall be demanded for criminal responsibility according to law if a crime is constituted and; if no crime is constituted, be given administrative sanctions according to law.

第六十四条 依法必须进行招标的项目违反本法规定，中标无效的，应当依照本法规定的中标条件从其余投标人中重新确定中标人或者依照本法重新进行招标。

Article 64 If the bidding result of a project subject to tender according to law is void and invalid due to violation of the provisions of this Law, a new winning bidder shall be determined from among other bidders according to the bidding terms laid down in this Law or a new tender shall be carried out according to this Law.

## 第六章 附 则

### Chapter VI Supplementary Provisions

第六十五条 投标人和其他利害关系人认为招标投标活动不符合本法有关规定的，有权向招标人提出异议或者依法向有关行政监督部门投诉。

Article 65 A bidder or any other interested person who believes that a tender and bid activity does not conform to the provisions of this Law shall be entitled to raise his objection to the tenderer or to file a complaint with the relevant department for administrative supervision according to law.

第六十六条 涉及国家安全、国家秘密、抢险救灾或者属于利用扶贫资金实行以工代赈、需要使用农民工等特殊情况，不适宜进行招标的项目，按照国家有关规定可以不进行招标。

Article 66 Projects not suitable for carrying out tenders because of involving in State security, State secrets, emergency rescue and disaster relief or other special circumstances involving the use of relief fund for providing work as a form of relief or requiring to employ farmers as workers, may not be subject to tender in accordance with the relevant regulations of the State.

第六十七条 使用国际组织或者外国政府贷款、援助资金的项目进行招标，贷款方、资金提供方对招标投标的具体条件和程序有不同规定的，可以适用其规定，但违背中华人民共和国

的社会公共利益的除外。

Article 67 If the loan or fund provider of a project subject to tender using a loan or aid fund from an international organization or a foreign government has different provisions on specific requirements and procedures for the tender and bid, his provisions may apply, with the exception of those contrary to the social and public interests of the People's Republic of China.

第六十八条 本法自2000年1月1日起施行。

Article 68 This Law shall enter into force on January 1, 2000.