

Implementation Rules for Government Procurement Law of the People's Republic of China
(Draft for Comments)

Chapter 1 General Provisions

Article 1 These Rules are formulated pursuant to the Government Procurement Law of the People's Republic of China (hereinafter referred to as the GPL).

Article 2 Fiscal funds as specified in Article 2 of the GPL include fiscal budgetary capitals and other capitals incorporated within the scope of fiscal management.

Loans that have fiscal funds as the source of repayment and loans that are guaranteed against the state-owned assets occupied or used by public institutions, groups and organizations shall be deemed as fiscal funds.

Procurement with fiscal funds as specified in Article 2 of the GPL refers to the purchaser's full or partial use of fiscal funds for the purpose of procurement.

Article 3 Centralized procurement catalog as specified in Article 2 of the GPL refers to the catalog of goods, projects and services that shall be collectively purchased. Procurement threshold refers to the lowest value standards that require the government procurement of goods, projects and services not included within the foregoing catalog.

Article 4 Goods as specified in Article 2 of the GPL refer to various types and forms of articles, including tangibles and intangibles. Trademark exclusive use rights, copyrights, patent rights and other intellectual property rights shall be deemed as goods.

Projects as specified in Article 2 of the GPL refer to the construction projects of buildings and structures, including new constructions, reconstructions, expansions, decorations, dismantling, refitting and the survey, design, construction and supervision relating to the construction project.

Services as specified in Article 2 of the GPL refer to the objects of government procurement other than goods and projects, including various types of professional services, information network development services, financial and insurance services, transportation services as well as repair and maintenance services, etc.

For any purchasing program that includes different purchasing objects, the object with the highest proportion of capital expenditures shall be used to determine the nature of the program.

Article 5 Tendering and Bidding Law of the People's Republic of China shall be applied where the government procurement program is conducted through bids. However, the Government Procurement Law shall be applied in the absence of relevant provisions in the Tendering and Bidding Law.

Any government procurement that is not subject to tendering and bidding process shall be governed by the GPL and these Rules.

Article 6 No specific suppliers or brand names shall be designated; no reference to the technical specifications of a particular product shall be made; and no unreasonable limitation shall be imposed when the purchaser is determining the purchase demands and when the purchaser or procurement agent is making the tender documents, negotiation documents, inquiry documents and relevant other documents.

No organ and individual is allowed to violate the GPL and these Rules by designating any supplier for the purchaser or intervening with government procurement activities in any other means.

Article 7 Centralized procurement as specified in Article 7 of the GPL refers to the purchaser's entrustment to a procurement agent for centralized purchasing of goods, projects and services within the catalog, the purchaser's centralized procurement based on organs or the purchaser's independent purchasing according to law. Distributed purchasing refers to the purchaser's independent procurement of goods, projects and services not included in the catalog but exceeding the purchasing limit value standards or its entrustment to a procurement agent for procurement thereof.

Article 8 People's governments of various provinces may authorize their local people's governments of a county or higher level to make their respective centralized procurement catalog and purchasing limit value standards according to the centralized procurement catalog and purchasing limit value standards as promulgated by the provincial government and based on their respective local conditions. However, the local governments of a county or higher level

shall not narrow the scope of the centralized procurement catalog.

Article 9 Relevant fiscal authority of the State Council shall formulate relevant government procurement policies and lists of products for government procurement together with relevant other authorities of the State Council according to the goals of national economic and social development. It shall support energy-efficient, environment-friendly and innovative proprietary products, small and medium-size enterprises and enterprises in underdeveloped regions and ethnic minority regions through preferential or compulsory purchasing and other measures.

Article 10 Domestic goods as specified in Article 10 of the GPL refer to the finished products that are manufactured within the jurisdiction of China with the domestic manufacturing costs exceeding a prescribed ratio. Domestic manufacturing cost ratio = (product ex-works price – import price)/product ex-works price.

Domestic projects and services as specified in Article 10 of the GPL refer to the projects and services that are furnished by a Chinese citizen, legal person or any other organization.

The standards for the identification of domestic goods, projects and services shall be formulated by relevant authorities of the State Council together with the fiscal authority of the State Council. The policies and measures for the procurement of domestic goods, projects and services shall be formulated by the fiscal authority of the State Council together with relevant authorities of the State Council.

Inability to acquire upon reasonable commercial conditions as specified in Article 10 of the GPL refers to the situation where the domestic goods, projects and services that satisfy the procurement requirements have a minimum quotation that is more than 20% above the minimum quotation of non-domestic goods, projects and services.

Article 11 If the purchaser intends to purchase imported products, it shall report to the fiscal authority of the people's government of the same level (county or higher level) for approval before procurement activity is started.

Imported products as mentioned above refer to the products that are

manufactured overseas and must undergo inspection and release procedures of the Customs of China before entry into China.

Article 12 Such governmental procurement information as items to be purchased, procurement procedural documents and procurement results shall be publicized except those relating to national secrets or trade secrets.

Government procurement information shall be publicized on the media designated by the fiscal authority of relevant people's government of a provincial or higher level. Information of items of government procurement with a purchasing value higher than RMB 5 million shall be publicized on the media designated by the fiscal authority of the State Council.

Article 13 Interests between purchasing and relevant personnel and the supplier as specified in Article 12 of the GPL refer to the following relationships:

(I) The purchasing and relevant personnel have employment relationships with the supplier now or within three years before the procurement activity takes place.

(II) The purchasing and relevant personnel act as the financial counselor, legal counselor or technical counselor of the supplier now or within three years before the procurement activity takes place.

(III) The purchasing and relevant personnel are the majority shareholder or actual controller of the supplier now or within three years before the procurement activity takes place.

(IV) The purchasing and relevant personnel have direct blood tie or kinship within three generations or marriage relationships with the legal representative or principal of the supplier.

(V) The purchasing and relevant personnel have any other interest relationships with the supplier that have affected or may affect the legal process of the government procurement.

Any supplier that believes any purchasing and relevant personnel have any interest relationships with any other supplier may apply to the purchaser or its entrusted agent to withdraw from the procurement program provided that the supplier shall provide relevant justifications.

Article 14 Government procurement may be executed fully or partially through an

electronic system in order to guarantee the openness, standardization, security, smoothness, efficiency and convenience of the government procurement activity.

Chapter 2 Relevant Parties of Government Procurement

Article 15 Relevant parties of government procurement enjoy relevant rights and shoulder relevant obligations according to law during government procurement activities and they shall voluntarily accept the administration and supervision by relevant fiscal authority.

Article 16 General government procurement items as specified in Paragraph 2 of Article 18 of the GPL refers to the standard products that are used by the purchaser on a general basis and may be purchased on a large-scale. Item on which any authority or system has special requirements as specified in Paragraph 2 of Article 18 of the GPL refers to the products that are included in the centralized procurement catalog but not used on a general basis and are only applicable for a particular authority or system. Item on which the organ has special requirements as specified in Paragraph 2 of Article 18 of the GPL refers to the products that are already included in the centralized procurement catalog but are unsuitable for centralized purchasing and difficult for large-scale purchasing as the purchaser requires customized services according to its professional requirements.

For any general-purpose item of government procurement that is included in the centralized procurement catalog, the purchaser shall entrust an agent for centralized procurement except that approval from the fiscal authority of the same level shall be obtained in special cases. The agent shall not re-entrust the item to any other subagent. Items on which any authority or system has special requirements shall be procured collectively by the purchaser. Any general-purpose item of government procurement, among the items to be collectively procured, shall be entrusted to an agent for centralized procurement. Any item on which any organ has any special requirement may be independently procured by the organ according to law.

Article 17 Procurement agent as specified herein refers to any centralized purchasing organ established by the government and any other certified purchasing

organ.

The certified purchasing organ as specified above refers to the nongovernmental agent that is certified by the fiscal authority of any people's government of a provincial or higher level to conduct agency services for government procurement of goods, projects and services.

The fiscal authority of any people's government of a provincial or higher level shall publicize the list of procurement agents on the designated media and issue a qualification certificate thereto.

The measures for certification of government procurement agents shall be formulated by the fiscal authority of the State Council.

Article 18 Main duties of the centralized procurement agent include:

- (I) Organize and execute the procurement of the items included in the centralized procurement catalog upon the purchaser's entrustment.
- (II) Discuss with the purchaser on the purchasing needs, technical specifications, supplier qualifications and other commercial conditions.
- (III) Participate in contract acceptance upon the purchaser's entrustment.
- (IV) Follow up on the progress of any government procurement program executed;
- (V) Formulate relevant internal supervision system and operating regulations;
- (VI) Accept the purchaser's entrustment to execute any distributed procurement.

Article 19 Local people's governments of a county or higher level may establish a centralized procurement organ according to its needs for centralized procurement and report to the people's government of a higher level for filing purpose.

Such centralized procurement organ shall be set up independently according to law and affiliated to the people's government of the same level. It shall not have any affiliation or other interest relationships with any governmental organ, legal person or organization.

Article 20 Such centralized procurement organ shall satisfy the following conditions:

- (I) Can bear civil liabilities independently;
- (II) Have a certain quantity of qualified professionals to conduct governmental procurement;
- (III) Have a fixed office premise and other facilities and office conditions

necessary to conduct governmental procurement and bidding activities.

- (IV) Have a well-established internal management system, operating procedures and procurement databases.

Article 21 Where the purchaser entrusts the procurement agent to conduct the procurement activity, it shall sign a written agency agreement with the agent.

Such agency agreement shall specify the scope, authority and period of the agency services and also the rights and obligations of the purchaser and the procurement agent.

The procurement agent shall carry out procurement activities within the scope of entrustment and safeguard the legitimate rights and interests of the purchaser.

The procurement agent shall not organize any visit to the supplier and various other activities in any form during centralized procurement on behalf of the government.

Article 22 People's governments of a provincial and higher level may approve any authority or system to set up a dedicated unit for centralized procurement according to the actual needs of government procurement.

The authority or system that is not approved to set up a dedicated unit for centralized procurement shall designate an internal organ to handle issues relating to centralized procurement.

Article 23 The purchaser or its procurement agent shall check if the supplier satisfies the conditions as specified in Paragraph 1 of Article 22 of the GPL and the supplier shall provide the following documentary evidences:

- (I) The business license of a legal person or any other organization or the ID certificate of a natural person.
- (II) Audit report issued by a CPA firm to prove its financial conditions as well as other documents that prove its taxpaying conditions and payment of various social insurance charges.
- (III) A written statement that no major violation of law has occurred in the process of businesses.
- (IV) Any other documentary evidences as required by the fiscal authority of the

State Council.

Where the purchaser has any special requirement on any product to be purchased, it shall request the supplier to provide relevant documents and statements to prove its satisfaction of relevant special requirements and also conduct specific reviews of the supplier.

Article 24 The purchaser or the procurement agent shall specify the qualifications conditions, the qualification documents to be submitted and the measures and standards for qualification reviews in the tender documents, negotiation documents and other purchasing documents, except that any preliminary qualification review has been carried out according to Article 25 of these Rules.

Article 25 Where the purchaser or procurement agent carries out a preliminary qualification review on the supplier according to these Rules or the actual needs of the purchasing program, the preliminary qualification review notice shall be publicized on the media designated by people's governments of a provincial or higher level for at least five working days.

The notice shall specify the purchaser, name and scope of the purchasing program, demands of the purchasing program, scope, standards and measures of the preliminary qualification review as well as the date and place for the supplier to submit its qualification documents.

The supplier shall submit relevant qualification documents according to the requirements of the notice within the period specified on the notice.

The purchaser or the procurement agent shall organize a review committee for a preliminary qualification review of the supplier.

Article 26 Major violation record as specified in Item (5) of Paragraph 1 of Article 22 of the GPL includes:

- (I) Administrative penalties as imposed by any administration of a county or higher level on the supplier or its legal representative, director, supervisor or senior management personnel for his/her violating behaviors in the normal process of businesses, except warnings and administrative fines with a value below RMB 10,000.
- (II) Criminal judgment as made by judicial organs of various levels on the

supplier or its legal representative, director, supervisor or senior management personnel for his/her violating behaviors in the normal process of businesses.

Article 27 Fiscal authorities of people's governments of a provincial or higher level shall establish a government procurement supplier database to make it convenient for the purchaser and procurement agent's execution of government procurement activities. The concrete measures shall be formulated by the fiscal authority of the State Council.

No unit or individual is allowed to utilize the supplier database to impose any regional and industrial barrier with an aim to obstruct and restrict the supplier's entry into the government procurement market.

Article 28 Fiscal authorities of people's governments of a county or higher level shall publicize on the designated media the names of the suppliers that are included in the list of suppliers with bad conducts and also the period during which the suppliers are forbidden to take part in government procurement activities.

The purchaser or the procurement agent shall not allow or invite the forbidden supplier to participate in any government procurement activities.

Article 29 Where the supplier participates in government procurement as a joint venture, the purchaser shall prescribe specific conditions for the supplier according to the special requirements of the procurement program. At least one party of the joint venture shall satisfy the specific conditions that the purchaser specifies. The qualification class of a joint venture shall be determined according to the constituent supplier of the lowest qualification level.

No constituent party of the joint venture is allowed to take part in the same governmental procurement activity independently or as a constituent party of another joint venture.

The purchaser or the procurement agent shall not force any supplier to form a joint venture in order to take part in the government procurement, nor shall it limit the competitions among suppliers.

Chapter 3 Government Procurement Methods

Article 30 The standards on the values of procurement programs to be conducted through open bidding of people's governments of a county or higher level

may be established by the people's governments of the same level upon the authorization of relevant people's government of a provincial level.

Article 31 Even if the purchaser intends to procure goods or services above the value standard for open bidding, the procurement may also be conducted in a method other than open bidding upon approval by the fiscal authority of the people's government of a county or higher level in any of the following cases:

- (I) Public bidding is invalid; the tender documents contain no unreasonable provisions; bidding procedures satisfy relevant rules; conduction of a new open bidding would affect the implementation of the procurement program;
- (II) The procurement program has some special requirements and fewer than three suppliers can satisfy such special requirements.
- (III) Open bidding can hardly satisfy working needs as the procurement has a tight schedule.

The fiscal authority shall make the decision to approve or disapprove the application within seven working days after receipt thereof. The approval period may be prolonged accordingly but not by seven working days at the maximum if the procurement program is complicated. The fiscal authority shall notify the applicant of the reasons for such delay.

Article 32 A contracted or designated supplier may be adopted for small-value procurements of general-use products included in the centralized procurement catalog. The centralized procurement agent shall collectively determine such contracted or designated suppliers through open bidding, to determine the products that win the bid and the service conditions and sign a contract with the supplier. The purchaser shall select the products or services of the winning supplier within the scope of the supply.

Article 33 Various government procurement modes can be realized electronically. Online bidding and electronic counter-auctions are applicable for the procurement mode of inquiry.

Article 34 The fiscal authority of the State Council shall strengthen collective leadership and organization of the IT system of government procurement and establish a generic nationwide electronic government procurement management and

trading platform.

Article 35 The purchaser may purchase goods, works or services beyond the value standard of opening bidding through open bidding or any other method. Where the procurement is conducted in a mode other than open bidding, a procurement mode as specified in Articles 29, 30, 31, and 32 of the GPL shall be adopted.

Article 36 Where only one supplier (including distributor and agent) responds substantively to the procurement program notice or preliminary qualification review notice as publicized on the media designated by the fiscal authority of the people's government of a provincial or higher level, it shall be deemed as the only supplier as specified in Item 1 of Article 31 of the GPL.

Article 37 The purchaser shall be deemed to evade open bidding if it repeatedly purchases, through any method other than open bidding, the same category or type of goods or services in a total value exceeding the value standard for open bidding within the same fiscal year, except that the budget of the procurement program is adjusted before procurement activity is started or such procurement method is approved according to law.

Chapter 4 Government Procurement Procedures

Article 38 The purchaser shall compile a government procurement implementation plan according to the centralized procurement catalog, purchasing value limits and the approved government procurement program and capital budget and submit it to the fiscal authority of the people's government of the same level.

Article 39 Where goods or services are purchased through open bidding, a reasonable period of time shall be given to the bidders for compilation of the bidding documents and such a period shall not be less than 20 days from the issuing date of the tender documents till the closing date for submission of bidding documents. However, the period may be shortened in any of the following cases provided that the final period shall not be less than 10 days:

(I) The purchaser or the procurement agent has publicized a full package of the annual procurement programs of the government on the media designated by the fiscal authority for a period of over 20 days before the notice to bidders of

the procurement program is issued.

- (II) The purchaser or the procurement agent has publicized the preliminary notice to bidders of a specific procurement program on the media designated by the fiscal authority for a period of over 20 days before the formal notice to bidders of the procurement program is issued.
- (III) The purchaser or the procurement agent has publicized a notice to bidders on the media designated by the fiscal authority in advance where the procurement program involves the second batch of products of the same purchasing standards that have been procured previously.
- (IV) A new open bidding needs to be conducted when the first open bidding becomes invalid.

Article 40 Where goods or services are purchased through invited open bidding and the purchaser reaches a written agreement with the invited supplier on shortening of bidding document submission period, the period from issuing date of tender documents to the closing date for submission of bidding documents may be shortened accordingly but shall be 10 days at the minimum.

Article 41 The purchaser shall determine the suppliers to be invited in any of the following methods where invited open bidding is adopted:

- (I) Carry out a preliminary qualification review on the suppliers according to Article 25 of the Rules and select more than three suppliers randomly from those qualified.
- (II) Select more than three suppliers randomly from the qualified suppliers in the supplier database as established by the fiscal authority of the people's government of a provincial or higher level.

Article 42 The tender documents shall clearly specify the requirements that must be substantively satisfied in the bidding documents. Bidding documents that fail to satisfy these requirements substantively shall be deemed to be invalid. The foregoing provision shall be applicable where competitive negotiation-based procurement or inquiry-based procurement documents contain any requirements to be substantively satisfied.

Article 43 The tender documents may require the bidders to render a bid bond. The

bidding documents shall be invalid if the bidder fails to render such a bid bond as required.

The bid bond may be in the form of a check, draft, and cashier's check or guarantee bond in a value not exceeding 1% of the budget of the procurement program or RMB 100,000, whichever higher shall prevail.

The purchaser or the procurement agent shall offer to refund the bid bond to the bidders other than the bid winner within five working days after the notice to bid winner is issued. It shall offer to refund the bid bond to the bid winner within five working days after the purchasing contract is signed.

Where the suppliers who participate in competitive negotiations or response to inquiries are required to render a bid bond, the provisions on bid bond as specified herein shall be applicable.

Article 45 The tender documents shall be available for sales for at least five working days.

Article 46 Where there are fewer than three suppliers who have submitted valid bidding documents before the closing date of the bid or satisfied relevant qualification documents after bid opening and also respond substantively to the tender documents, the bidding shall be cancelled and the purchaser or the procurement agent shall report to the fiscal authority of the people's government of a county or higher level that shall settle the case in the following ways:

(I) Where the tender documents do not contain unreasonable provisions and the bidding procedure satisfies relevant rules, competitive negotiations, inquiry or single bidder may be approved and adopted for the procurement program. Where competitive negotiations and inquiry are adopted, the purchaser or the procurement agent shall organize the procurement activities according to the prescribed procedures.

(II) Where the tender documents contain any unreasonable provisions or the bidding procedures do not satisfy the GPL, the purchaser or the procurement agent shall be urged to correct the tender documents and organize the bidding again according to the prescribed procedures.

Article 47 Bidders' average quotation is higher than the budget as specified in Item (3),

Paragraph 1 of Article 36 of the GPL refers to the fact that the average of all bidders' quotations is higher than the budget of the procurement program. If some suppliers' quotations exceed the budget so that there are fewer than three suppliers offering a quotation lower than the budget, it shall be deemed that the bidders' average quotation is higher than the budget.

Article 48 The purchaser or the procurement agent shall publicize the budget before bid opening. Otherwise, the bid shall not be declared invalid after bid evaluation on the excuse that the average of the bidders' quotations exceeds the budget and the purchaser can't afford the program.

Article 49 Commensuration of quality and services as specified in Paragraph (5) of Article 38 and Paragraph (4) of Article 40 of the GPL refers to the fact that the supplier's product quality and services both satisfy the minimum requirements of the tender documents.

Article 50 Where there is only one source of procurement, the purchaser or the procurement agent shall obtain the approval of the fiscal authority of the same level in advance.

The purchaser or the procurement agent shall publicize the information of the procurement program and the name of the only supplier on the media as designated by the fiscal authority for at least five working days before the fiscal authority approves the procurement, except the cases as specified in Items (2) and (3) of Article 30 of the GPL and Article 46 of the Rules.

Article 51 The fiscal authority of people's government of a provincial or higher level shall establish a procurement evaluation expert database according to the system of professions as prescribed by the fiscal authority of the State Council.

Article 52 Government procurement evaluation experts shall evaluate the bidding documents in a fair, square, objective and independent manner and bear legal responsibilities for their respective evaluation opinions.

Where any evaluation expert demurs against the procurement documents or evaluation report, he/she shall note down his/her objections on the report together with the justifications. Otherwise, the expert shall be deemed to agree on the report.

The bid evaluation committee or negotiation and inquiry team shall not freely change the evaluation procedure, evaluation method, evaluation factors, evaluation rules and evaluation standards as specified in the procurement documents. Where any provision in the procurement document is against relevant law, regulation and rule, it shall refuse to evaluate the bid and report to the purchaser or procurement agent.

The purchaser or the procurement agent shall assess the professionalism, professional ethics and evaluation work of various evaluation experts.

Article 53 The purchaser, the procurement agent and their staffs shall not make any oriented or misleading explanation or description to the bid evaluation committee, competitive negotiation team or inquiry team before the evaluation work is started or during the evaluation work.

Article 54 The procurement agent shall submit the evaluation report to the purchaser within five working days after the evaluation work is completed. The purchaser shall determine the bid winner from the candidates as recommended in the evaluation report within five working days.

Where the procurement agent finds that the bid evaluation committee or the negotiation or inquiry team does not evaluate according to the evaluation method, factors, rules and standards as specified in the procurement documents before the notice to bid winner is issued, it may require the bid evaluation committee or the negotiation or inquiry team to reevaluate upon written approval of the purchaser and notify the reasons of such reevaluation to all participating bidders in writing. The reevaluation opinions shall be the final evaluation opinions.

Where the purchaser or the supplier demurs against the evaluation results of the bid evaluation committee or the negotiation or inquiry team, the procurement agent shall organ the bid evaluation committee or the negotiation or inquiry team for a recheck. If the bid winner has to be changed after the recheck, a notice of change shall be publicized on the media where the original notice is publicized.

Paragraphs 2 and 3 of this Article shall be applicable where the purchaser organizes and makes the purchases independently.

Chapter 5 Government Procurement Contract

- Article 55** The purchaser and the bid winner shall sign a government procurement contract based on the procurement documents. The objects, specifications, models, values, quantities and quality standards of procurement in the procurement contract shall fit in with those in the procurement documents. The government procurement contract shall specify the government procurement policies relating to energy saving, environment protection, innovation and support to small and medium-size enterprises.
- Article 56** The purchaser shall not collect any performance bond from the supplier, nor shall it transfer the bid bond of the bid winner into performance bond.
- Article 57** Main provisions of the government procurement contract shall include the names of relevant parties, objects, prices, quantities, quality, performance time and place, dispute settlement mode, etc.
- Article 58** The procurement programs that are applicable for preferential or compulsory government procurement policies shall not be subcontracted.
- Article 59** No giveaway or rebate shall be adopted when the value or object is being determined for the government procurement contract or relevant agreement.
- Article 60** The bid winner shall sign a government procurement contract with the purchaser after the notice to bid winner is issued unless any force majeure event takes place. The bid bond of the bid winner shall be confiscated by the purchaser and turned in to the treasury of the same level if the bid winner gives up the procurement program and refuses to sign a contract with the purchaser. The bid winner shall also bear the losses of the purchaser and its conduct shall be noted down in the record of bad conduct. The purchaser may then determine the next candidate as the bid winner and sign a government procurement contract therewith. The purchaser shall bear legal responsibilities if it changes the results of bidding or refuses to sign a government procurement contract with the bid winner for excuses beyond those specified in the procurement documents.
- Article 61** The purchaser or procurement agent shall organize to accept the government procurement program according to the standards and methods as specified in

the procurement documents and government procurement contract.

Article 62 The purchaser shall pay to the supplier in a timely manner according to the government procurement contract.

The payment shall be made for the government procurement program according to relevant state rules on the payment of fiscal funds. If the purchasing capitals are within the scope of the fiscal budget, relevant rules on treasury's centralized payment system shall be applicable.

Article 63 Procurement documents may be saved electronically in exactly the same content as the original records of the procurement documents.

Chapter 6 Queries and Complaints

Article 64 Any query of the purchaser and the procurement agent to the supplier shall be replied within three working days provided that the reply shall not involve any trade secrets of the procurement program and other suppliers.

Article 65 The supplier may file a written query to the purchaser or the procurement agent according to law if it believes the following issues have caused damages to its rights and interests:

- (I) The procurement documents contain any restrictive and oriented provision;
- (II) The procurement documents are not supplemented, clarified or corrected according to the prescribed procedures;
- (III) The purchasing or relevant other personnel have any interest relationships with the supplier but are still involved in the program when they are not expected so;
- (IV) The procurement procedure violates relevant rules;
- (V) There is conspiracy among relevant parties of the procurement;
- (VI) Any other supplier provides fake data for the purpose of bid winning;
- (VII) Other conditions where the procurement documents, procurement process and bidding results are believed to undermine the supplier's rights and interests.

Article 66 The supplier as specified in Article 52 of the GPL refers to the supplier directly participating in the purchasing activities of the government procurement program being queried.

The procurement documents as specified in Article 52 of the GPL refer to the procurement program notice, tender documents, preliminary qualification

documents, competitive negotiation documents, inquiry documents and any supplements and modifications to and clarifications thereof.

The procurement process as specified in Article 52 of the GPL refers to various stages in the process from the publication of the information of the procurement program until the publication of the bid evaluation results, including procurement document publication, distribution, bid opening, bid evaluation, clarification, negotiation and inquiry.

Article 67 The period during which queries are raised as specified in Article 52 of the GPL shall be calculated in the following manner:

- (I) Any query on the procurement documents shall be raised during the period from the supplier's acquisition of the procurement documents until the closing date of bidding or the closing date to submit the documents responding to the negotiation or inquiry.
- (II) The period for any query on the procurement process to be raised shall start after the ending date of the procurement procedure.
- (III) The period for any query on the bidding results and on the membership of the bid evaluation committee, negotiation team or inquiry team shall be raised after the date of publication of the bidding results.

Article 68 The purchaser or the procurement agent shall sign a return receipt upon receipt of the supplier's written queries and make a written reply containing the corresponding evidences and reasons within seven working days after signing of the return receipt. It shall also notify the querying supplier and other suppliers relating to the query settlement results in writing. However, the reply shall not contain any trade secrets of any other supplier.

Article 69 The purchaser or the procurement agent shall settle the query in the following manner if it deems the query is justified:

- (I) Where the supplier's query relates to Paragraphs (1) and (2) of Article 65 of the Rules, relevant corrective measures shall be taken in a timely manner and all participating suppliers shall not notified through a public notice or written notice.
- (II) Where the supplier's query relates to Paragraphs (3) to (6) of Article 65 of the Rules, the procurement process or results shall be declared invalid and the

procurement activity shall be reorganized and reported to the fiscal authority of the same level for filing purpose.

(III) Where the supplier's query relates to Paragraphs (7) of Article 65 of the Rules, the query shall be settled according to the actual conditions and existing or potential influence on the bid evaluation results and with reference to the provisions in the previous two paragraphs.

Article 70 The procurement agent shall reply to the supplier's question or query within the scope of authorization. Where the question or query is beyond the scope of authorization, the procurement agent shall notify the supplier to raise such question or query directly to the purchaser in a timely manner.

Article 71 The supplier shall raise its query and complaint in its real name and such query and complaint shall be accompanied with relevant facts and data to justify damages to the supplier's rights and interests. Fake and malicious query and complaint is forbidden.

The supplier's complaint shall be filed only after a query has been raised on the issue of complaint.

Article 72 The fiscal authority that has accepted a complaint may terminate its complaint processing procedure if the complaint has been accepted by any other administration of the people's government.

Article 73 The fiscal authority of people's governments of a county or higher level shall accept and process supplier complaints relating to the government procurement programs included in the budget of the same level and accept the supervision and guidance of the fiscal authority of the people's government of a higher level.

Where the complaint relates to any procurement program jointly funded by the central government budget and the local budget, the fiscal authority of the people's government in charge of the purchaser's budget shall be obligated to settle the complaint.

Article 74 The supplier shall submit a written complaint together with the number of copies corresponding to the number of the subjects of complaint and the suppliers involved in the complaint. The complaint shall include the following details:

- (I) Name, address, contact details and relevant certificates of the complainant;
- (II) Name, address and contact details of the subjects of complaints;
- (III) Issues of complaints and the corresponding facts and laws and regulations;
- (IV) Queries, replies to queries and relevant documentary evidences.

Where the complainant is a natural person, the complaint shall be signed by the complainant. Where the complainant is a legal person, the complaint shall be signed by its legal representative and affixed with its official seal. Where the complainant is any other organization, the complaint shall be signed by its principal and affixed with its official seal.

Article 75 After receipt of complaints as specified in Article 56 of the GPL refers to after the fiscal authority's receipt of eligible complaints in writing. Where the complaint documents are incomplete or unclear, the fiscal authority may notify the complainant for supplements in writing within five working days after receipt of the complaints. The notice of supplements shall specify the data to be supplemented and a reasonable period to submit the supplementary data. The complainant's failure to make supplements without justification within the period shall be deemed as the complainant's voluntary abandonment of the complaint. The time for supplements shall not be included in the period of complaint processing.

The fiscal authority shall check the complaints within five working days after receipt thereof. It shall accept the complaints if they satisfy relevant conditions; reject the complaints if they don't satisfy relevant conditions; notify the complainant to file the complaints to another authority having jurisdiction if the complaint is not within the fiscal authority's jurisdiction or if the complaint shall be processed by some other administration.

Article 76 The fiscal authority shall deliver the copies of the complaints to the subjects of complaints and other suppliers relating to the complaints within three working days after acceptance thereof.

The subjects of complaints shall make explanations to the fiscal authority in writing and provide relevant evidences, criteria and other documents within five working days after receipt of the copies of the complaints. The subjects of complaints shall be deemed to agree on the complaints if they fail to make

any explanations.

Article 77 The fiscal authority shall process the complaints through reviews of relevant written documents. The fiscal authority may investigate and collect evidences by itself and organize a cross examination of the evidences between the complainant and the subjects of complaints if it deems necessary.

When the fiscal authority is making investigations, the complainant, the subjects of complaints and relevant units or personnel in connection with the complaints shall report relevant facts and provide relevant documents.

Where the complaints relate to or may relate to major clues of criminal activities, the fiscal authority shall transfer the case to relevant judicial organ according to relevant rules and notify the complainant in writing of such transfer and the documents transferred.

Article 78 Where the complainant withdraws its complaints that have been accepted by the fiscal authority, the fiscal authority shall terminate the investigation procedure except that it finds any major violations of the GPL.

Article 79 The complaints shall be refuted in any of the following cases:

- (I) The complaints are found not to satisfy the conditions of acceptance as specified in the GPL and these Rules after they are accepted;
- (II) The replies to queries are based on clear facts and accurate quotations of laws and regulations;
- (III) The complaints relate to any confidential information of the state or any non-disclosed information of the procurement and the complainant fails to provide a justified source of information or any other valid evidence.

Article 80 Where the fiscal authority checks and determines the procurement documents and procurement process to have violated the GPL or these Rules so that the bid evaluation results have been or may be affected, it shall handle the case in any of the following ways:

- (I) Where the bid winner hasn't been determined, the previous procurement activity shall be declared illegal and the procurement activity shall be carried out again according to the prescribed procedure;
- (II) Where the bid winner has been determined but hasn't signed a government

procurement contract, or the government procurement contract has been signed but not yet performed, the bid evaluation results shall be declared invalid or the contract shall be cancelled and the procurement activity shall be carried out again according to the prescribed procedure. The parties held responsible shall also cover the losses of the purchaser and the complainant arising therefrom.

- (III) Where the government procurement contract has been performed, the procurement activity shall be declared illegal. The parties held responsible shall also cover the losses of the purchaser and the complainant arising therefrom.

Article 81 The fiscal authority shall process the complaint, make a decision thereon and notify the complainant, the subjects of complaints and other parties relating to the complaints within thirty working days after receipt of the complaints. It shall also publicize the complaint processing results on the media as designated by the fiscal authority of the people's government of a provincial or higher level.

Where the fiscal authority needs to carry out relevant certifications, inspections, tests, quarantines, appraisals and expert reviews during processing of the complaints, the period necessary for them shall not be included in the period of complaint processing. The fiscal authority shall notify the complaint of the time needed in writing.

Article 82 The fiscal authority may notify the purchaser to stop the purchasing activities temporarily in any of the following cases during the processing of complaints:

- (I) The purchaser or the procurement agent deems it necessary;
- (II) Pause of the purchasing activities is good for the processing of complaints;
- (III) The complainant asks for a pause of the purchasing activities and the fiscal authority deems it to be justified and hence decides to stop the purchasing activities temporarily.

Article 83 Any conducts of the parties involved in the government procurement program that are discovered by the fiscal authority to have violated the GPL during its processing of complaints shall be settled otherwise according to law.

Chapter 7 Supervisions and Inspections

Article 84 The fiscal authority of the people's governments of a county or higher level shall supervise and inspect the procurement activities conducted by the government of the same level. The scope of supervisions and inspections covers:

- (I) The government's observance of relevant laws, regulations and policies during procurement;
- (II) Implementations of government procurement program, capital budget, procurement implementation plan, procurement procedures and procurement contracts;
- (III) Structure and operation of the centralized procurement organ;
- (IV) Publications of information of government procurement program, procurement standards, procurement results and other governmental procurement issues;
- (V) Qualifications of personnel involved in government procurement;
- (VI) Operating conditions of certified government procurement agents;
- (VII) Establishment of procurement files and storage of procurement documents;
- (VIII) Other issues as specified by relevant laws and regulations.

Article 85 The fiscal authority of the people's government of a higher level shall supervise and guide the fiscal authority's supervision and administration of relevant government procurement activities.

Article 86 The fiscal authority shall strengthen its evaluation of the centralized procurement organ and the scope of evaluation covers:

- (I) The centralized procurement organ's observance of laws and regulations and if it has any violating conduct;
- (II) Execution of the procurement methods and procedures;
- (III) The centralized procurement organ's establishment of and improvement on its internal management system;
- (IV) The centralized procurement organ's management of the bid bonds;
- (V) The professionalism, professional skills, probity and self-discipline of the centralized procurement organ's personnel;
- (VI) Saving of purchasing prices and other expenditures;

- (VII) The centralized procurement organ's settlement of queries;
- (VIII) The centralized procurement organ's service quality;
- (IX) Other issues as specified by the fiscal authority of the people's government of a provincial or higher level.

The fiscal authority shall make an evaluation plan, evaluate the centralized procurement organ regularly, report the evaluation results to the people's government of the same level and publicize them on the media designated by the fiscal authority of the people's government of a provincial or higher level.

Article 87 The central government has established a qualification system for government procurement personnel who shall be certified and evaluated according to the qualification standards. The government procurement personnel shall be certified before they are allowed to conduct government procurement activities.

The fiscal authority of the State Council shall compile the Rules on Management of Qualification Certifications of Government Procurement Personnel together with relevant other authorities of the State council.

Article 88 The procurement standards of government procurement programs as specified in Article 63 of the GPL refer to the specifications, performances and other basic requirements of the procurement objects as determined by the purchaser according to relevant national standards, industrial standards and the actual needs of the procurement program.

The purchaser shall publicize the procurement standards on the media designated by the fiscal authority of the people's government of a provincial or higher level. Such procurement standards shall not be utilized to limit potential suppliers from participating in government procurement activities.

Article 89 The purchaser shall stop any violating conduct of the procurement agent during its procurement activities in a timely manner and request it to take corrective measures. Where the procurement agent refuses to take corrective measures, the purchaser shall report to the fiscal authority of the people's government of the same level for settlement according to law. Where any certified procurement agent refuses to take corrective measures, the purchaser shall terminate the agency agreement with the procurement agent.

The procurement agent shall recommend the purchaser to make corrections in a timely manner if it finds the purchaser to have any illegal conduct during government procurement. If the purchaser refuses to make corrections, the procurement agent shall report to the fiscal authority of the people's government of the same level as the purchaser for settlement according to law. The purchaser shall not change or terminate the agency agreement signed with the procurement agent as a result of such reporting.

Article 90 Where the purchaser believes the procurement activity may undermine its rights and interests, it may report to the fiscal authority of the people's government of the same level in a timely manner for settlement according to law.

Article 91 The fiscal authority of the people's governments of various levels and relevant other supervisory and administrative organs of government procurement activities shall strengthen supervision and management of government procurement evaluation experts and establish a sound system for evaluation of the experts' professionalism, professional skills and performance of duties.

The purchaser and the procurement agent shall keep a proper record of the evaluation experts' participation in the government procurement activities according to the evaluation system as specified above and give feedbacks to the fiscal authority or relevant other authority in a timely manner.

Article 92 The fiscal authority of the people's governments of various levels and relevant other supervisory and administrative organs of government procurement activities shall strengthen supervision and inspection of suppliers. The bad conducts of suppliers during government procurement activities shall be kept in a credit record and efforts shall be made to gradually establish a nationwide generic credit system for government suppliers.

Article 93 Parties involved in government procurement shall accept the inspections by the fiscal authority and relevant other supervisory and administrative organs of government procurement activities. They shall report actual facts and provide relevant documents in a voluntary and complete manner.

The conditions and documents relating to the inspections may be recorded, tape-recorded, videotaped, photographed and duplicated.

Article 94 Other organs of the people's governments of various levels that supervise and administer government procurement activities according to laws and regulations shall strengthen supervision and administration of government procurement activities based on their respective division of labor. They shall also cooperate with the fiscal authority and report relevant conditions in a timely manner.

The auditing authority shall strengthen auditing and supervision of government procurement activities. Government procurement supervisory and administrative organ and parties involved in government procurement activities shall accept the auditing authority's supervisions during government procurement activities.

The supervisory organ shall strengthen supervision of the national organs, civil servants and other personnel as nominated by relevant administrations who participate in government procurement activities. It shall process the cases transferred by the fiscal authority and relevant supervisory and administrative organs of government procurement activities in a timely manner.

Chapter 8 Legal Responsibilities

Article 95 The finds imposed on the purchaser and the procurement agent as specified in Article 71 of the GPL is above RMB 20,000 and below RMB 100,000.

The finds imposed on the purchaser and the procurement agent as specified in Article 72 of the GPL is above RMB 20,000 and below RMB 100,000. The fines imposed on the staffs of the purchaser and the procurement agent is above RMB 2,000 and below RMB 20,000.

Article 96 The purchaser shall be urged to take corrective measures within the prescribed period of time in any of the following cases. Warnings shall be given and a fine above RMB 5,000 and below RMB 50,000 may be collected simultaneously in severe cases. The person in charge who bears direct responsibilities and those held directly responsible shall be punished by their respective administrations having jurisdiction or relevant other

administrative organs and be publicized accordingly:

- (I) Does not compile a government procurement implementation plan as required;
- (II) Does not conduct procurement activities according to the methods and procedures as specified in the GPL when such activities are conducted by it independently;
- (III) Does not entrust the centralized procurement agent for purchasing according to law when the items to be purchased are for general use and included in the centralized procurement catalog;
- (IV) Does not select the bid winner from the candidates as recommended by the bid evaluation committee or the negotiation or inquiry team as required;
- (V) The government procurement contract does not fit in with the procurement documents substantively;
- (VI) Collects any performance bond;
- (VII) Modifies, cancels or terminates the government procurement contract at liberty or increases the value of the same goods, projects and services by more than 10% of the original contract value.
- (VIII) Purchases imported products without approval by the fiscal authority.
Payment of budgetary capitals will be stopped if the purchaser refuses to make corrections in case of Items (2) to (7) as specified above.

Article 97 The purchaser and the procurement agent shall be urged to take corrective measures within the prescribed period of time in any of the following cases. Warnings shall be given and a fine above RMB 5,000 and below RMB 50,000 may be collected simultaneously in severe cases. The person in charge who bears direct responsibilities and those held directly responsible shall be punished by their respective employers, administrations having jurisdiction or relevant other administrative organs and be publicized accordingly:

- (I) Does not publicize the information of government procurement on the designated media according to law;
- (II) Does not implement the preferential or compulsory government procurement policies;

- (III) Does not select experts from the government procurement evaluation expert database according to law;
- (IV) Does not carry out preliminary qualification reviews on or select the supplier according to the prescribed procedures during invited bidding, competitive negotiation-based procurement and inquiry-based procurement;
- (V) Does not submit the copies of the government procurement contract to the supervisory and administrative organ and relevant other organs of the same level within the prescribed period of time;
- (VI) Does not organize to check and accept the supplier's performance of the contract as required;
- (VII) Does not settle the supplier's queries within the prescribed period.

Article 98 Where the purchaser, the procurement agent and their staffs intentionally make oriented or false statements to mislead the government procurement experts in the bid evaluation committee, competitive negotiation team or inquiry team, a warning shall be given; the purchaser and procurement agent shall be imposed a fine above RMB 20,000 and below RMB 200,000; and the staffs of the purchaser and procurement agent shall be imposed a fine above RMB 2,000 and below RMB 20,000, punished by their respective administrations having jurisdiction or relevant other administrative organs and be publicized accordingly

Article 99 Where the centralized procurement agent engages in any profit-making activity, it shall be requested to make corrections within a prescribed period of time and a warning shall be given. All illegal profits shall be confiscated. The person in charge who bears direct responsibilities and those held directly responsible shall be punished by the people's government establishing the agent or any other organ having jurisdiction:

Article 100 In any of the following cases, the agent shall be requested to make corrections within a prescribed period of time and a warning shall be given in severe cases. If the agent refuses to make corrections, the person in charge who bears direct responsibilities and those held directly responsible shall be punished by the people's government establishing the agent or any other organ having jurisdiction:

- (I) The internal supervision and management system is incomplete or the agent fails to independently establish any position when it is so required according to law.
- (II) The centralized procurement program is entrusted to any other agent;
- (III) The purchasing prices are apparently higher than the market average or the quality fails to satisfy the purchasing needs without justifications.
- (IV) The agent fails to establish an internal management system and database for government procurement so that the management is in a confused state.

Article 101 Any certified procurement agent that obtains the certification from the purchaser through bribery or any other illegal means shall be imposed a fine above RMB 20,000 and below RMB 200,000 and the illegal profits shall be confiscated. Any criminal activity involved shall be transferred to relevant judicial organ for investigation and punishment of those held criminally responsible.

Article 102 Any certified procurement agent that commits any severe illegal conducts violating the GPL and these Rules during government procurement activities shall be temporarily or permanently deprived of its qualification as a government procurement agent. Any criminal activity involved shall be transferred to relevant judicial organ for investigation and punishment of those held criminally responsible.

Article 103 Any procurement personnel and relevant other personnel who have interest relationships with the supplier but intentionally fails to evade any procurement program shall be given a warning and may be imposed a fine above RMB 2,000 and below RMB 20,000 and punished by their employer, administration of a higher level or any other organ having jurisdiction. They shall be deprived of their qualifications for government procurement activities in severe cases.

Article 104 Where the purchaser and the procurement agent's staffs engage in government procurement activities before they are qualified for the same purpose, the purchaser and the procurement agent shall be requested to make corrections within a prescribed period of time and a warning shall be given. The staffs who illegally engage in government procurement activities shall

be imposed a fine above RMB 2,000 and below RMB 20,000.

Article 105 Any supplier shall be included in the list of suppliers with bad conducts and forbidden to take part in government procurement activities for one to three years in any of the following cases. The illegal profits shall be confiscated and a fine equivalent to 0.5% to 1% of the purchasing value may be imposed. In severe cases, the supplier's business license shall be cancelled by relevant administration of industry and commerce. Any criminal activity involved shall be transferred to relevant judicial organ for investigation and punishment of those held criminally responsible.

- (I) Offer bribes or any other illegal interests to any member of the bid evaluation committee, competitive negotiation team or inquiry team;
- (II) Refuse to sign a government procurement contract with the purchaser without justification after bid winning;
- (III) The government procurement contract signed does not fit in with the procurement documents substantively;
- (IV) Subcontract the government procurement contract to others without the purchaser's prior approval;
- (V) Subcontract the government procurement contract that enjoys preferential or compulsory government procurement policies to others without approval;
- (VI) Do not perform the obligations of the government procurement contract and provide fake and poor-quality products;
- (VII) Modify and cancel the government procurement contract at liberty.

The bid results shall become invalid in the case of Item (1) above.

Article 106 Malicious conspiracy as specified in Item (3) of Paragraph 1 of Article 77 of the GPL includes the following conducts:

- (I) Any supplier obtains the bid information of other suppliers from the purchaser or the procurement agent and modify its bidding documents according to such information;
- (II) Any supplier obtains the information of members of the bid evaluation committee, competitive negotiation team or inquiry team from the purchaser or the procurement agent;
- (III) Suppliers reach an agreement to jointly decrease or increase the quotations so

that a particular supplier wins the bid in the end; or suppliers reach an agreement according to which a particular supplier wins the bid and then makes compensations to other suppliers;

- (IV) There are multiple identical substantive clauses in the bidding documents or responding documents submitted by more than two suppliers and the suppliers can't provide any justification;
- (V) Any other conducts of conspiracy as specified in laws, regulations and rules of the fiscal authority of the State Council.

Article 107 The supplier who intentionally files queries or complaints based on fake materials and facts shall be imposed a fine equivalent to 0.5% to 1% of the purchasing value, included in the list of suppliers of bad conducts and forbidden to take part in government procurement activities within one to three years in severe cases.

Article 108 Any government procurement evaluation expert shall be given a warning and imposed a fine above RMB 2,000 and below RMB 20,000 in any of the followings during government procurement activities. He/she shall be deprived of the qualification as an expert in severe cases and held criminally responsible if any criminal activity is involved.

- (I) Does not fulfill due diligence obligation according to the procurement documents during bid evaluation, competitive negotiation or inquiry so that the results of procurement undermine the interests of the purchaser;
- (II) Receives and accepts bribes or any other illegal interests from the purchaser, procurement agent or supplier;
- (III) Intentionally fails to evade relevant procurement program when he/she has any interest relationships with the supplier;
- (IV) Discloses the evaluation documents and results and the state secrets and trade secrets obtained during evaluation;
- (V) Does not evaluate according to the procurement documents and has a clear orientation during evaluation.

Article 109 The fiscal authority of the same level (county or higher) as the purchaser shall be in charge of the implementation of the administrative penalties on any conduct violating the GPL and these Rules, unless otherwise specified in the

GPL and these Rules.

Article 110 Any party involved in government procurement shall cover the losses of others and bear relevant civil responsibilities according to the Civil Code if it violates Articles 96, 97, 98, 105 and 108 of these Rules.

Article 111 Any staff of the supervisory organ of government procurement shall be punished administratively if he/she commits any malpractices, derelictions or embezzlements against the GPL and these Rules during supervisions and inspections. He/she shall be held criminally responsible if any criminal activity is involved.

Chapter 9 Supplementary Provisions

Article 112 Where purchases of imported electric and mechanical products are approved by the fiscal authority, the bidding process thereof shall be carried out according to relevant state rules.

Article 113 The GPL and these Rules shall not be applicable for emergency purchases in case of severe natural disasters and other force majeure events. The fiscal authority of the State Council shall make other measures for this purpose.

Article 114 Procurements relating to national security and secrecy as specified in Article 85 of the GPL refer to the government procurement programs for which a certificate of secret-related program is issued by the national confidential organ of the same level.

Article 115 People's governments of a provincial level may promulgate concrete implementation rules according to these Rules.

Article 116 The Rules shall take effect from the date of _____.