

## Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement Self-assessment report China

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Identifying reform needs, assessing progress and evaluating the effectiveness of anti-corruption policies and practices are central principles enshrined in the ADB/OECD Initiative and its Action Plan. In this context, the present self-assessment report from China was prepared as background to the Initiative's thematic review exercise on measures to curb corruption in public procurement in the Asia-Pacific region.

This thematic review on public procurement was initiated in reaction to the findings of the Initiative's 2003-2004 in-depth analysis of the legal and institutional anti-corruption frameworks of the Action Plan's then 21 endorsing countries against the standards of this Plan ("Anti-Corruption Policies in Asia and the Pacific – the legal and institutional frameworks", November 2004). In this study, public procurement was identified as one of the areas requiring particular attention in the Asia and Pacific region and where consequently the Initiative's Steering Group had a vital interest to promote reform.

With this aim, the group agreed to pursue analytical work on corruption in public procurement through a thorough review of relevant existing policies, practices and rules so as to assist participating governments in better understanding the corruption risks inherent in their countries' institutional settings and procurement practices. This thematic review further seeks to assess how countries translate into practice their commitment made under the Action Plan to curb corruption in public procurement. Eventually, the review's findings will provide governments with an analytical framework to design policies and procedures that ensure greater transparency and integrity in public procurement and to identify priorities for reform in this respect.

In line with the Action Plan's principle of self-assessment, the review is conducted on the basis of information provided by participating countries in reply to a questionnaire specifically prepared for this purpose by the ADB/OECD Initiative. The present document represents the replies submitted by China in this framework.

Further information on the exercise, on other participating countries and on the analysis' outcome is available at the Initiative's website at <http://www1.oecd.org/daf/asiacom/stocktaking.htm#trpp>.



## A. General framework

### *Legal and organizational framework:*

1. Please list and briefly describe laws and regulations related to government procurement, including those that give exemption to the standard government procurement rules. Where available, please attach a copy or indicate an internet-site for download of these regulations, if possible in English language. Ensure to include secondary legislation, rules and procedures. Also, please indicate relevant international or regional agreements<sup>1</sup> that your country is committed under, including its level of involvement (e.g. signature, ratification, implementation).

与政府采购有关的法律法规有：《中华人民共和国政府采购法》、《政府采购资金财政直接拨付管理暂行办法》、《中央国家机关政府采购中心供应商询问、质疑处理暂行办法》、《集中采购机构监督考核管理办法》、《中华人民共和国招标投标法》、《中华人民共和国合同法》、《中华人民共和国反不正当竞争法》、《工程建设项目勘察设计招标投标办法》、《中央国家机关政府采购中心评审专家管理暂行办法》、《政府采购评审专家管理办法》、《中央国家机关政府采购供应商资格登记管理暂行办法》等等。

In China, there are a number of laws in the field of government procurement: Government Procurement Law, Contract Law, Public Bidding Law, Law against Unfair Competition, etc. There are also a number of regulations regarding the financing of government procurement, supervision of government procurement agents, registration of suppliers, etc.

2. Please explain the repartition of tasks and responsibilities in the procurement process among centralized, decentralized and specialized authorities (in particular: design of policies and standards; capacity building; definition of needs and terms of individual tenders; execution of different procurement stages from advertising to contract awarding; dispute resolution; control of the fulfillment of the terms and conditions by the contractor).

1、采购纳入政府集中采购目录范围的货物、工程和服务项目、必须委托政府采购中心采购。

1. Goods, projects and services included in the category of government procurement must be procured by government procurement centres.

2、政府采购中心与各单位分别签订政府采购委托代理协议，明确委托事项，约定双方的权力和义务。

2. Government procurement centres should sign contracts with government agents which ask the centres to conduct procurement on their behalf, specifying the issues and the rights and obligations of the two parties.

3、需要招投标的，在国家指定的媒体上发布信息，由政府采购中心组织招投标。

3. If a procurement project requires public bidding, the government should publish relevant information through state-specified media, and let the government procurement centres organize the bidding.

4、采购活动结束后，各单位直接与中标供应商按有关规定签订政府集中采购合同。

4. After the procurement decision is made, government agencies will sign contracts with suppliers who have won the bid according to related regulations.

<sup>1</sup> e.g. APEC Non-Binding Principles on Government Procurement; WTO Agreement on Government Procurement; etc.

5、政府采购资金的支付，由财政部门或各单位按采购合同直接拨付。

5. Public Finance departments or government agencies will directly pay for the procurement according to the contracts.

6、政府采购监督管理部门负责对政府采购活动及集中采购机构的监督检查。

6. Agencies of the supervision and management of government procurement is responsible for supervising and inspecting both government procurement activities and government procurement centres.

3. Is procurement of goods governed by the same procedures as procurement of services?

购买产品的监管程序与购买服务的监管程序是一样的。

The supervisory and management procedure for procuring commodities is the same as procuring services.

4. Does the procurement law establish a Public Procurement Office (PPO)? Is the PPO appropriately staffed against its mandate? In this context, please state the total number of staff involved in public procurement country-wide. Are the procurement entities/PPO provided with adequate financial resources for the execution of their tasks?

有公共的采购办公室：中央国家机关政府采购中心和地方政府采购中心，政府采购中心是政府集中采购的执行机构，是经注册的独立事业法人，按规定招收员工。

China does have PPOs at both central and local levels. Government Procurement Centres, which are responsible for conducting centralized procurement, are independent legal persons with formal registration. These organizations hire employees according to relevant regulations.

目前，全国各地专职从事政府采购工作的人员有上万人。

At present, there are about ten thousands employees who are wholly committed to conducting government procurement.

为了让政府采购中心开展工作，国家对采购中心实行全额拨款。

The operational budget of government procuring centres is provided by the state.

5. Please name the sectors, areas or conditions subject to particular procurement rules (if applicable, e.g. military; local governments; state owned enterprises; urgency).

1、使用国际组织和外国政府贷款进行的政府采购，贷款方、资金提供方与中方达成的协议对采购的具体条件,另有规定的，可以适用其规定，但不得损害国家利益和社会利益。

1. If certain government procurement projects are financed with loans of international organizations and foreign governments and agreements between lenders and the Chinese side have made other requirements, then procurement can be conducted in other ways not against national and social interests.

2、对因严重自然灾害和其他不可抗力事件所实施的紧急采购和涉及国家安全和秘密的采购。

2. Urgent procurements because of serious natural disasters and irresistible emergencies and those involving national security and secrets.

3、军事采购。

3. Military procurement

*Procurement policies and practices:*

6. Do model tender documents exist (e.g. handbooks, model forms, model contracts, etc)? If yes, is their use mandatory, and do they contain a specific anti-corruption clause?

存在标书文件的范本。一般来说，该范本必须使用。多数范本有预防腐败的条款。

There are standard documents. Generally speaking, these documents must be used. Most of them include special provisions regarding the prevention of corruption.

7. Please provide the latest available economy-wide annual total numbers and values of purchases, with breakdown a) by sector and b) by type of procurement. In this context, please describe the procurement types foreseen by law (e.g. sealed tender, direct purchase; limited tendering) and the policy of your Government towards these types.

2004年全国实施政府采购预算2406.9亿元，实际支付（采购规模）2135.7亿元。

In 2004, China's budget for government procurement was 240.69 billion Yuan. Actual expenditure for government procurement was 213.57 billion Yuan.

政府采购主要采用以下方式：1、公开招标。2、邀请招标。3、竞争性谈判。4、单一来源采购。5、询价。6、国务院政府采购部门认定的其他采购方式。其中，公开招标是政府采购的主要采购方式。

Most procurements are conducted in the following ways:

1. public invitation;
2. Invited bidding.
3. Competitive Negotiation
4. Single-source procurement.
5. Inquire about quotation; and
6. Other methods confirmed by the department of government procurement under the State Council. Public invitation shall be the principal method of government procurement.

有关采购形式的政策主要有：《中华人民共和国政府采购法》。

China's Government Procurement Law has specified the ways of conducting government procurements.

8. Please explain under which conditions pre-selection procedures are conducted.

在招标采购中，废标后应启动预选程序，废标后，除采购任务取消情形外，应当重新组织招标；需要采取其他方式采购的，应当在采购活动开始前获得所在地区的市、自治州以上人民政府采购监督管理部门或者政府有关部门的批准。

In bidding procuring, after annulment, the bid proceedings shall be rearranged unless the procurement project is cancelled. Where it is necessary to adopt other methods of procurement, the matter shall, before procurement starts, be subject to approval by the department for supervision over procurement under the people's government at or above the level of a city divided into districts or of an autonomous prefecture, or by a relevant government department.

9. If your country is currently engaged in or planning a major reform of its procurement system, please briefly state the scope and objectives of this reform.

2004年政府采购制度改革范围扩大到中央国家机关二级预算单位，改革的目的是进一步规范采购行为，提高采购效率。2005年政府采购工作要全面贯《政府采购法》和2004年全国政府采购工作会议精神，按照“五个目标、四项原则和六大任务的改革思路，继续围绕”“上规模，上机制、抓规范”深化各项改革工作，切实提高采购质量、服务水平和工作效率。

In 2004, the government procurement reform extended to second-level budgetary units of the central government. The goal of the reform was to further regulate procurement activities and improve their efficiency. In 2005, the focus is to fully implement the Government Procurement Law and the principles set by the 2004 National Meeting on Government Procurement. The goal is to improve the quality, and efficiency of government procurements.

## B. Transparency and Fairness

### *Transparency of general procurement policies and regulations:*

10. Are the existing laws, regulations and policy guidelines on public procurement publicly available and, if yes, where/how?

存在。如《中华人民共和国政府采购法》第一章总则中第一条规定：为了规范政府采购行为，提高政府采购资金的使用效益，维护国家利益和社会公益，保护政府采购当事人的合法权益，促进廉政建设，制定本法。第二条规定：政府采购应当遵循公开透明原则、公平竞争原则、公正原则和诚实信用原则。

There are such guidelines. Chapter One of the Government Procurement Law reads: this law is enacted for purposes of regulating government procurement activities, improving efficiency in the use of government funds, safeguarding the interests of the State and the public, protecting the legitimate rights and interests of the parties to government procurements and promotion honest and clean government.

The Law also set the principles of government procurement, including openness and transparency, fair competition, impartiality, honesty and good faith.

11. In your country, do certain territorial entities or institutions establish lists of eligible contractors (sometimes called “white-lists”)? If yes, please explain the criteria for a company to be included in or excluded from this list, and what use is made of such lists.

有。比如说，供应商向中央国家机关政府采购中心提出申请，经审核合格，办理有关手续后，进入供应商库。进入供应商库的供应商必须具备《中央国家机关政府采购中心供应商资格登记管理暂行办法》的有关规定。供应商违反了《中央国家机关政府采购中心供应商资格登记管理暂行办法》第十六条的规定，将被取消资格。做这个名单可以更好地规范供应商的行为。

There are such lists. For example, in order to be listed, suppliers should submit an application to the government procurement centres of the Central Government. If their applications are approved, based on related government regulations, then these suppliers will be included in the list after registering. These companies will be removed from the list if they violated government regulations on qualifications of suppliers. These lists will help regulate the behaviour of suppliers.

12. Is a bid security and/or a performance guarantee required from the bidder? What are the procedures for advertisement of procurement opportunities?

《中华人民共和国招标投标法》第二十六条规定：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 of the Law of the People’s Republic of China on Bid Invitation and Bidding reads: A bidder shall have capability of undertaking the projects that are subject to bidding invitation. Where in relevant State regulations or bid invitation documents there are provision governing qualifications of bidders, a bidder shall meet such qualifications.

《中华人民共和国招标投标法》第五十三条、五十四条对违法、违规和弄虚作假投标的，规定了处罚措施。

Article 53 and 54 of the Law on Bid Invitation and Bidding’ specify the penalties against cheatings and other activities in violation of laws and regulations.

政府采购信息在政府采购监督管理部门指定的媒体上及时向社会公开发布，但涉及商业秘密的除外。目前，财政部门已经分别指定《中国财经报》、“中国政府采购网”、以及《中国政府采购》杂志为全国政府采购的信息发布媒体，在这些媒体上刊登法定的政府采购信息，全部免费。

Government procurement information not involving commercial secrets should be published through medias selected by agencies supervising and managing government procurement. At present, Public Finance agencies have selected China Financial and Economic News, China Government Procurement Net and China Government Procurement Journal to publish government procurement information of the whole country. These medias publish such information for free.

#### *Transparency of procurement opportunities:*

13. Describe where and how tender opportunities are published, including if their publication is mandatory or depends on certain criteria (if so, please list)? Please state if a fee has to be paid to receive tendering documents and – if yes – how this fee is fixed and whether other processing fees apply. Please briefly explain whether your country allows adequate and reasonable time for interested suppliers to prepare and submit responsive bids.

政府采购实施公开招标的，必须在有关部门指定的媒体上公布招标信息，随机确定评标专家，按程序进行评标，签定合同。

If government procurement is carried out through public bidding, relevant information should be published by media selected by related government agencies. Experts who evaluate the bids should be selected randomly, and they need to make evaluations according to pre-set procedures. Contracts need to be signed between buyers and suppliers.

招标人、招标代理机构发放招标文件时，只能向投标人收取工本费，不得以标书文件作为谋取经济利益的手段。

Bidders should only be charged the basic cost of bidding documents. No agency is allowed to make a profit from bidding documents.

《中华人民共和国招标投标法》第二十四条规定：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20日。

Article 24 of the Law on Bid Invitation and Bidding reads: a bid inviter shall set a reasonable period of time for bidders to prepare their bid documents; but for a project for which bid invitation is required by law, the minimum period from the date of issuing the bid invitation documents to the deadline for submission of bid documents by bidders shall be less than 20 days.

14. Are selection and award criteria prescribed by law? If yes, are they prescribed in an exclusive manner? Please name these criteria a) for procurement of goods, and b) for procurement of services (e.g. technical requirements, qualification of the bidder, evaluated price, expertise/experience, etc.) and those that are explicitly excluded (e.g. nationality of the bidder or other affinity, etc.). Is the description of these criteria in the tender documentation mandatory?

投标的选择和投标标准的颁布必须符合国家的有关规定和招标文件要求。比如《中华人民共和国政府采购法》、《中华人民共和国招标投标法》。

The selection criteria of public bidding must conform to relevant legal requirements, such as Government Procurement Law and Law on Bid Invitation and Bidding.

《中华人民共和国招标投标法》第三条规定，在中华人民共和国境内进行下列建设工程项目的勘察、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：1、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；2、全部或部分使用国有资金投资或者融资的项目；3、使用国际组织或者外国政府贷款、援助资金的项目。

Article 3 of the Law on Bid Invitation and Bidding reads: within the territory of the People's Republic of China, procurement of design, construction, inspection relevant equipments and materials of the following construction projects is subject to bidding: 1. Large infrastructure and public utilities projects that influence public interests and security; 2. projects fully or partially financed with public funds; 3. Projects using loans and assistance of international organizations and foreign governments.

*Transparency of contract evaluation and award procedures:*

15. What is the procedure if none of the bids or too few – relative to a prescribed limit – fulfill the technical requirements as defined in the call for tender (e.g. reopening of the bid, negotiations, etc.)? Do you keep a register of all bids received?

如果没有投标者或者投标者非常少，可采用竞争性谈判方式采购。采用竞争性谈判方式采购的，应当遵循下列程序：（一）成立谈判小组；（二）制定谈判文件；（三）确定邀请参加谈判的供应商名单；（四）谈判；（五）确定成交供应商。

Competitive Negotiation can be adopted to solve this problem. And the following procedure shall be followed:

- a) Setting up of a negotiation team;
- b) Drafting of documents for negotiation;
- c) Deciding on the name list of the suppliers to be invited to participate in the negotiation;
- d) Negotiating;
- e) Deciding on the successful supplier.

16. Where and how are actions and decisions in the procurement process recorded? How long and where are these records preserved, and who can access this information?

采购过程中的行为和决定通过采购活动被记录下来。采购活动记录包括：1.采购项目类别、名称；2.采购项目预算。资金构成和合同价格；3.采购方式。采用公开招标以外的采购方式的，应当载明原因；4.邀请和选择供应商的条件和原因；5.评标标准和确定中标人的原因；6.废标的原因；7.采用招标以外的采购方式的相应记载。

The actions and decisions of procuring process were recorded, including:

1. The types and names of the items to be procured.
2. The budget for procurement items, composition of funds and price fixed by contract; project;
3. The procurement methods; where a method other than public invitation is adopted, the reasons shall be stated clearly.
4. Qualification requirement and reasons for inviting or selecting suppliers
5. Criteria for bid evaluation and reasons for deciding on the winner of the bid.
6. Reasons for canceling the bid proceeding; and
7. The records relating to adoption of the procurement method other than bid invitation.

这些记录及其他采购文件由采购人和采购代理机构保存。保存期限为从采购结束之日起至少保存十五年。采购监督管理部门可以接触这些信息。

Procuring agencies or their agents keep these records. They should keep these records for at least 15 years, starting from the end of procurement activities. Agencies supervising and managing the procurement process can access such information.

17. How and to whom is the final decision on awarding the tender disclosed? Do reasons for the selection of the winning bidder have to be stated? Are post-awarding negotiations allowed and, if yes, under what conditions?

中标人确定以后，由招标人向中标人发出中标通知书，并同时向所有未中标的投标人，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。同时，招标人应当将中标信息提供给指定媒体公告。

As soon as the bid winner is decided on, the bid inviter shall notify the winner of the fact in writing and, at the same time, inform all the unsuccessful bidders of the result. For a project for which bid invitation is required by law, the bid inviter shall, within 15 days beginning from the date the bid winner is decided on, submit a written report about the bid invitation and bidding to the relevant department for administrative supervision. Meanwhile, bid inviter shall provide information of who win the bid to their appointed medias.

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。招标人和中标人不得再订立背离合同实质性内容的其他协议。因此，授标之后的谈判不被允许。

The bid inviter and the bid winner shall, within 30 days beginning from the date the notification is sent out, sign a written contract on the basis of bid invitation documents and the bid documents of the winner. They may not conclude any other agreement contrary to the substantive matters of the contract. Therefore, after contracts are awarded, related parties are not allowed to conduct further negotiation.

18. Are framework contracts allowed? If yes, what measures are taken to control against corrupt or unnecessary demands?

《中华人民共和国采购法》明确规定：政府采购合同应当采用书面形式。政府采购活动具有很强的公共性质，政府采购合同不完全等同于一般的民事合同，具有一定的特殊性，不宜采用口头形式和其他形式。

China's Government Procurement Law reads: government procurement contracts should be signed in written form. Since these procurement activities are public in nature so that their contracts are different from civil contracts. Thus, they should avoid using oral or other forms.

具体采用何种书面形式，《中华人民共和国采购法》并未明确，有待国务院和财政部门作出具体规定。

Details of the written form have not been set by Government Procurement Law and they need to be specified by future regulations issues by the State Council and the public finance departments.

## C. Integrity

### *Integrity of procurement personnel:*

19. Do codes of ethics or similar instruments exist that explicitly apply to procurement personnel and entities? If yes, do they specifically address corruption risks, and do they contain conflict of interest provisions (e.g. provisions making mandatory the declaration of personal interests by agents and buyers)?

《中华人民共和国政府采购法》第八章 法律责任

第七十一条、第七十二条、第七十四条、第七十五条、第七十六条、第七十九条对采购人员或团体规定了违反规定或违法的给予相应的处罚。

Article 71, 72, 74, 75, 76 and 77 of Chapter Eight of Government Procurement Law specifies the punishment against the activities of procurement officials and organizations that have violated rules or laws.

《中华人民共和国政府采购法》第二十五条规定了政府采购当事人不得相互串通损害国家利益，社会公共利益和其他当事人的合法权益，不得以任何手段排斥其他供应商参与竞争。

Articles 25 of Government Procurement Law reads: no parties to government procurement may act in collusion with each other to harm the interest of the State or the public or the legitimate rights and interest of other parties to government procurement, or exclude, by any mean, other potential suppliers from participating in competition.

20. Does your country provide for specific training for procurement personnel that include integrity issues? Please list manuals or policy guidelines that might exist to clarify procurement procedures and principles to procurement personnel (if existing please attach a copy or internet-address for download).

中央国家机关政府采购中心负责集中采购业务人员的培训

China's Procurement Center of the Central Government is responsible for training procurement personnel.

财政部多次下发文件指出：政府采购是一项政策性和专业性较强的工作，建立一支高素质的专业化管理队伍是提高政府采购工作管理化水平的重要保证。地方各级政府和财政部门要制定政府采购执行人员业务考核制度，提高政策水平、法律水平和专业水平。使政府采购管理人员和执行人员全面、准确掌握政府采购制度的各项规定，增强依法行政观念，从而建立一支德才兼备的政府采购管理队伍。集中采购机构对其工作人员应当加强教育和培训，对采购人员的专业水平和工作实绩，职业道德状况定期进行考核。采购人员考核不及格的，不得继续任职。

The Ministry of Public Finance have published a number of verdicts saying that government procurement is a very specialized work so that having a professional management team is the key to improving the level of management of government procurement. Local governments and financial departments at various levels should establish a performance review system for procurement personnel in order to improve their familiarity of policies, legal knowledge and professional skills. These employees should completely and accurately understand government regulations in this field and work according to laws. Government procurement agencies should strengthen the education and training of their employees and examine regularly their speciality, performance and ethic. Employees who fail these reviews are not allowed to maintain their positions.

21. Is procurement personnel required – and if yes by what regulation and to what institution – to report attempts by suppliers to undermine the impartiality and independence of action by offering bribes, benefits or other forms of inducement?

根据国务院办公厅关于印发中央国家机关全面推行政府采购实施方案的通知要求，任何单位和个人都有权检举和控告政府采购活动中的违法违纪行为。既包括采购人员，也包括供货商。

According to State Council Office's verdict, any entity or individual, including both procuring entities and suppliers, has the right to report government procurement activities that have violated rules or laws.

22. Which penal and/or administrative sanctions are applicable to procurement personnel for accepting or soliciting bribes? Are public officials liable for the economic damage that the procuring entity suffers? What is the policy that applies to procurement personnel for accepting or soliciting small facilitation payments such as gifts, benefits, hospitality (e.g. outright forbidden, accepted under certain circumstances, etc.; please explain).

《中华人民共和国政府采购法》第七十二条规定：采购人、采购代理机构及其工作人员在采购过程中接受贿赂或者获取其他不正当利益的，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，处以罚款，有违法所得的，并处没收违法所得，属于国家机关工作人员的，依法给予行政处分。

Article 72 of Government procurement Law reads: where a procuring entity or procuring agency or its staff member in the course of procurement, accepting bribes or obtaining other illegitimate interests, constitutes a crime, it/he shall be investigated for criminal responsibility in accordance with law; if the offence is not serious enough to constitute a crime, it/he shall be fined, and the illegal gains, if any, shall be confiscated, if the person involved is a State functionary, he shall be given an administrative sanction in accordance with law.

《中华人民共和国政府采购法》，明确规定采购人或采购代理机构不得在采购过程中接受贿赂或者获取不正当利益的，所以，对采购人员接受馈赠和宴请，政策上都是严格禁止的。

Government Procurement Law indicates: a procuring entity or procuring agency or its staff member are not allowed accepting bribes or obtaining other illegitimate interests in the course of procurement, Therefore, policy strictly inhibit accepting presents and treats.

*Integrity of bidders and suppliers:*

23. Which penal sanctions are applied to a bidding company as a legal person and to its employees if it is found guilty of corruption related to the bidding procedure? Is the company liable for the economic damage that the procuring entity suffers?

《中华人民共和国招标投标法》第五十三条规定：投标人以向招标人或者评标委员会成员行贿手段谋取中标的，中标无效，处中标项目千分之五以上，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；有违法所得的并处没收违法所得；情节严重的，取消其一年至两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，依法追究其刑事责任；给他人造成损失的，依法承担赔偿责任。

Article 53 of the Public Bidding Law reads: where a bidder wins a bid through colluding with other bidders or with the bid inviter in matters of bidding, or through bribing the bid inviter or members of the bid evaluation committee, the bid won shall be nullified and the bidder shall be fined not less than 0.5 percent but not more than 1 percent of the value of the bid won. The persons who are directly in charge and the other person who are directly responsible shall be fined not less than 5 percent but not more than 10 per cent of the fine imposed on the bidder. The illegal gains, if any, shall be confiscated. If the circumstances are serious, the bidder shall be disqualified for one to two years from taking part in bidding for projects for which bid invitation is required by law and the matter shall be made known to the general public, or its business license shall be revoked by the administrative department of industry and commerce. If a crime is constituted, criminal responsibility shall be pursued in accordance with law. If any losses are caused to others, liability for compensation shall be imposed in accordance with law.

24. Do your country's laws and regulations permit authorities to suspend, temporarily or permanently, from competition for public contracts and/or from other commercial activities an enterprise determined to have bribed a public official? If yes, is such disqualification mandatory or optional and which body decides on the disqualification and its exact terms? Which means are employed to implement the disqualification (e.g. publicly available list, declaration in the bidding process...)?

《中华人民共和国招标投标法》及《中华人民共和国政府采购法》对这一问题都有明确规定：向采购人，采购代理机构行贿或者提供其他不正当利益的，处以采购金额千分之五以上，千分之十以下的罚款，列入不良行为记录名单，在一至三年内禁止参加政府采购活动，有违法所得的，并处没收违法所得，情节严重的，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。

宣布资格的取消在国家指定的媒体上以信息公告的形式发布。

China's Public Bidding Law and Government Procurement Law indicate: Bribing or providing illegitimate benefits to the procuring entity or agency, shall be fined not less that 0.5 percent but not more than 1percent of the total procurement value, be prohibited in the list of those with records of misconduct and be prohibited, within one to there years, from participating in government procurement activities the illegal gains, if any shall be confiscated buy the administrative department for industry and commerce, and if the circumstances are serious, its business license shall be revoked by the administrative department for industry and commerce; if a crime is constituted, it shall be investigated for criminal responsibility in accordance with law.

The state will publish information regarding annulment through the appointed medias.

25. Do bidders have to explicitly declare their abstention from any means that could improperly influence the procurement process or decision and, if yes, do such declarations also cover such unlawful practices by subcontractors or other third parties?

一般来说，竞标者会发表杜绝任何形式影响采购程序和决定的声明。做这样的声明也包括承包商及其他第三方的私下行为。

Generally speaking, bidder will publicly announce that they will not influence procedures and decisions of procurement. These announcements apply to activities of both sub-contractors and other third parties.

26. Do bidders have to disclose commissions, gratuities, or fees that have been or have to be legally paid to individuals or sub-contractors for their services provided for instance in the preparation of a bid or the execution of the contract?

竞标者在某些私人的场合可能会透露这些情况。

Bidders may expose these issues at some private occasions.

## D. Accountability

### *Separation of responsibilities and independent scrutiny:*

27. Which means are employed to avoid insulation of procurement staff and to ensure mutual control? (e.g. rotation of officers, decisions taken/validated by more than one actor, etc.)?

中央国家机关政府采购中心和各部门通过加强内部规章制度建设和工作队伍建设，实行项目责任制度，人员轮岗制度和回避制度，建立健全内部监督制约机制，来确保对采购人员的监督。

China's Procurement Center of the Central Government and other departments achieve these goals through institution-building, establishing project responsibility and rotation systems. They strengthen the supervision of procurement personnel through establishing effective internal monitoring mechanisms.

28. Are there regular and systematic internal and external audits of procuring entities/PPOs? If yes, are they mandatory; which bodies are in charge of this audit; are the audit reports publicly available? Are independent actors/NGOs invited to monitor the procurement procedures and what is the setting prescribed by law?

审计部门负责对政府采购活动的真实、合法、效益情况进行审计监督。《中华人民共和国政府采购法》第六十八条规定：审计机关应当对政府采购进行审计监督。政府采购监督管理部门、政府采购各当事人有关政府采购活动，应当接受审计机关的审计监督。

Auditing agencies are responsible for checking the truthfulness, legality and utilities of government procurement activities. Article 68 of Government procurement Law reads: auditing authorities shall exercise supervision over the government procurement. The department for supervision over government procurement and the parties to government procurement shall subject themselves to supervision by the auditing authorities.

法律只是规定了任何单位和个人有权对政府采购过程中的违法违规行为以书面形式向同级财政部门投诉。各级监督部门和审计部门依法对政府采购活动进行监督。其中，监察部门应当参与数额巨大或重大采购项目活动的监督。

The law indicates that any entity or individual has the right to report illegal behaviors in written form to finance department at their level. Supervision and audit agencies at all levels supervise government procurement activities according to laws. Supervision agencies supervise important procurement projects or those involving great amounts of public funds.

审计报告按要求都应该公开。

Audit report is requested to be made public.

*Review and complaint mechanisms:*

29. Do your laws and regulations provide for review and complaints procedures? If yes, are they at administrative and/or judicial levels; what is the time limit for complaint/appeal, if any? How many complaint cases related to procurement are handled per year?

《中华人民共和国招标投标法》第六十五条规定：投标人和其他利害关系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 of the Public Bidding Law reads: any bidder or any other interested person who believes that the bid invitation and bidding activities do not comply with the relevant provisions of this Law shall have the right to raise objections to the bid inviter or to file a complaint with the relevant department of administrative supervision.

财政部门负责对中央国家机关政府采购活动中心和采购当事人执行政府采购的法律、法规和规章的情况进行监督检查，并按法律规定受理政府采购中心的投诉。政府采购监督管理部门应当在收到投诉后三十个工作日内，对投诉事项作出处理决定，并以书面形式通知投诉人和与投诉事项有关的当事人。

Public Finance departments should ensure if Government Procurement Centers and procurement employees are following laws, regulations and rules, and they are also responsible for receiving complaints toward the procurement centers.

The department for supervision over government procurement shall, within 30 working days after receiving the complaint, make a decision after handling the complaint and inform in writing the complainant and the parties related to the complaint of its decision.

30. Who is entitled to initiate a complaint procedure (e.g. competing bidders, any citizen, etc.) and how are potential informants protected against retaliation (e.g. confidentiality, anonymity)? Are the decisions of the body handling complaints binding? What are the consequences if a complaint is proven valid (e.g. reopening of the bidding, liquidation of damages, etc.)?

任何单位和个人对政府采购中的违法行为，都有权控告和检举。根据我国法律规定，对举报人要给予保密。申诉处理决定当然具有约束力。根据《政府采购信息公告管理办法》的规定，申诉处理信息要在财政部门指定的媒体上进行公告。

Any entity or individual has the right to report and sue the illegal behaviors in government procurement. According to law, investigators should keep identity of whistleblowers confidential. According to Regulation on Information Disclosure of Government Procurement, investigators should make public their decisions regarding complaints and reports they have received and handled through medias selected by public finance agencies.

财政部规定：经审查，法定采购文件、采购过程影响或者可能影响中标、成交结果的，或者中标、成交结果的产生过程存在违法行为的，要按下列情况分别处理：

Ministry of Public Finance requires that, if, the state, through inspection, found procurement documents or procedures have influenced or probably will influence the result of public bidding, or there are illegal activities in the procurement process, it should take the following actions.

一、政府采购合同尚未签定的，责令重新开展采购活动。

二、政府采购合同已经履行的，撤消合同，责令重新开展采购活动。

三、政府采购合同已经履行的，决定采购合同违法，给采购人、投诉人造成损失的，由相关责任人承担赔偿责任。

1. If the contracts has not been signed, procurement need to be conducted again

2. If the contract has been performed, the state will cancel the contract and order related parties to conduct the procurement again.

If the contract has been performed, and the state has decided that the contract is illegal and has caused losses to procuring entity and complainants, people who are responsible should compensate for these losses.