

Circular of the Ministry of Finance on Issuing the Administrative Measures for Government Procurement under Public-private Partnership Projects

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Note: English version for reference only, Chinese version shall prevail.

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Relevant departments of the Central Committee of the Communist Party of China, all ministries and commissions of the State Council and all institutions directly under the State Council, the General Office of the Standing Committee of the National People's Congress, the General Office of the National Committee of the Chinese People's Political Consultative Conference, the Supreme People's Court, the Supreme People's Procuratorate, relevant people's groups, the financial departments (bureaus) of all provinces, autonomous regions, municipalities directly under the Central Government and cities specifically designated in the state plan, the Financial Bureau of Xinjiang Production and Construction Corps and all centralized procurement institutions,

In order to implement the Guiding Opinions of the State Council on Innovating the Investment and Financing Mechanisms in Key Areas and Encouraging Social Investment (Guo Fa [2014] No.60), promote the model of public-private partnership (hereinafter referred to as the "PPP"), and standardize the behavior of the government procurement under PPP projects, the Ministry of Finance has formulated the Administrative Measures for Government Procurement under Public-private Partnership Projects for your compliance in accordance with the Government Procurement Law of the People's Republic of China and other relevant laws and regulations.

Appendix: Administrative Measures for Government Procurement under Public-private Partnership Projects

Appendix

Administrative Measures for Government Procurement under Public-private Partnership Projects

Chapter 1 General Provisions

Article 1 In order to regulate the behavior of government procurement under public-private partnership projects (hereinafter referred to as the "Procurement under PPP Projects"), and safeguard the interests of the State, the social public interests and the legitimate rights and interests of the parties to government procurement, the Administrative Measures for Government Procurement under Public-private Partnership Projects (hereinafter referred to as the "Measures") are hereby formulated in accordance with the Government Procurement Law of the People's Republic of China (hereinafter referred to as the "Government Procurement Law") and the relevant laws, administrative regulations and departmental rules.

Article 2 For the purpose of the Measures, the term "Procurement under PPP Projects" refers to the process in which the government selects the corporate partners in accordance with the law and in the principles of openness, fairness, justice and good faith so as to conclude a worthy contract on PPP projects achieving a balance between rights and obligations, after the completion of the preliminary work such as the identification and preparation of the PPP Projects as required by the relevant regulations. The Measures apply to the selection of corporate partners (or suppliers) by the implementing organizations (or purchasers) of PPP projects during the process of project implementation.

Article 3 The PPP project implementing organizations may delegate the government procurement agencies to handle the procurement under the PPP projects. The consultancy agency for PPP projects engaging in the procurement under PPP projects shall go through the registration formalities on the Internet promptly in accordance with the relevant requirements for the management of government procurement agencies.

Chapter II Procurement Procedures

Article 4 The methods for Procurement under PPP Projects include open tendering, invited tendering, competitive negotiations, competitive consultations and single source procurement. According to features of PPP project procurement demands, a project implementing organization shall choose a proper procurement method. Open tendering mainly applies to projects with core boundary conditions and technical and economic parameters, which are clear and complete and conform to the state laws and regulations and government procurement policies and do not change during procurement.

Article 5 The pre-qualification for the Procurement under PPP Projects shall be implemented. A project implementing organization shall, according to project needs, prepare prequalification document, issue a prequalification announcement, invite nongovernmental investors and any financial institution cooperating with it to participate in prequalification to verify whether a project obtains the response of nongovernmental investors and realizes full competition.

Article 6 An announcement on prequalification shall be released on the media for government procurement information distribution designated by relevant finance department under a people's government at the provincial level or above. If the nongovernmental investors passing the prequalification change in terms of its qualification before concluding a project contract, the project implementing organization concerned shall be informed in time.

An announcement on prequalification includes project authorization subject, project implementing organization and project name, procurement demand, qualification requirements for nongovernmental investors, whether to allow any consortium to participate in procurement activities, the number of entities of qualified social capital to be determined to participate in competition and determination methods, as well as the time and place for the social capital to submit application documents for prequalification. The time for submitting application documents for prequalification shall be not less than 15 working days as from the date of issue of the announcement.

Article 7 The project implementing organizations and the procurement agencies shall establish a review group responsible for the prequalification and assessment on the Procurement under PPP Projects. The review group shall be composed of representatives of a project implementing organization and review experts of an odd number bigger than 5. In particular, review experts shall not be less than 2/3 of total members of the review group. Review experts may be independently selected by a project implementing organization, but review experts shall at least include 1 financial expert and 1 legal expert. The representatives of the project implementing organizations shall not participate in the project assessment as the review experts.

Article 8 If not less than 3 nongovernmental investors pass the prequalification, the project implementing organization may continually make preparations for procurement document; if less than 3 ones pass the prequalification, the project implementing organization shall re-organize the prequalification after adjusting the implementation program; if still less than 3 ones pass the prequalification, the project implementing organization may adjust the procurement method according to the law.

The prequalification results shall be informed to all corporate partners participating in the prequalification, and the review report shall be submitted to the relevant finance department (PPP center) for filing.

Article 9 Project procurement documents shall include procurement invitation, instructions for competitors (including requirements for sealing, signature and stamping), certifications on qualifications, credibility and

performance to be duly provided by competitors, procurement methods, authorization by government for a project implementing organization, reply to implementation programs and relevant examination and approval of a project, procurement procedures, requirements for preparation of response document, deadline for submission of the response document, starting time and place, payment amount and method of deposits, review method, review standards, policy requirements for government procurement, draft of PPP project contract and other legal instruments, the details available for changes in the project contract during the negotiation of the confirmation on the procurement results, and the contents such as whether to allow the suppliers not participating in the pre-qualification to participate in the competition and post-qualification. The project procurement documents shall also make it clear that the project contract shall be submitted to the people's governments at the corresponding level for examination and approval and may not take effect prior to the approval.

In the event of procurement method of competitive negotiation or competitive consultation, project procurement documents shall, in addition to contents specified in the preceding paragraph, specify substantive changes made by review group according to negotiations with the corporate partners, including requirements for technologies and services during procurement demands and terms in relevant contract draft.

Article 10 A project implementing organization shall set out the policies and requirements for the procurement of commodities and services of their home country, technology introduction and transfer and the guarantee requirements for the corporate partners participating in the procurement and performance bond in the prequalification announcement, announcement on procurement, procurement documents and project contract.

Article 11 A project implementing organization shall organize corporate partners to conduct on-site observations or hold a question answering meeting. However, it shall not independently or respectively organize on-site observations or a question answering meeting in which only one social capital partner participates. According to concrete conditions of a project, the project implementing organization may organize the investigation and review of qualification conditions of the corporate partners meeting conditions.

Article 12 The members of the review group shall make pre-qualification and independent assessment in the principles of objectivity, impartiality and discretion and in accordance with the procedures, measures and standards stipulated by the prequalification announcement and procurement documents. For the corporate partner which has received the prequalification, the review group shall no longer examine the qualifications of the corporate partners at the stage of review. If postqualification is allowed, the review group shall make the qualification examination of the corporate partners at the review link of response documents.

The members of the review group shall sign on the prequalification report and the assessment report and assume legal responsibilities for their review comments. For any objection to the prequalification report or

assessment report, the member concerned shall sign a different opinion on the report with explanations stated; otherwise, the members shall be deemed to have approved the prequalification report and assessment report.

If the review group finds that any content of the procurement document is in violation of the relevant mandatory provisions of the State, it shall stop assessment and explain the situation to the project implementing organizations.

Article 13 The review experts shall abide by the discipline of assessment work and shall not leak the assessment status and the state secrets and commercial secrets informed during the assessment.

If the review group finds any illegal behavior such as the social capital offering bribes, providing false materials or colluding during the assessment process, the review group shall report such illegal behavior to the finance departments promptly.

If the review experts are illegally interfered during the assessment process, such issues shall be reported to the finance departments, supervision departments and other relevant departments promptly.

Article 14 After the conclusion of the assessment on the Procurement under PPP Projects, the project implementing organizations shall establish a special work group of negotiation about confirmation of procurement results responsible for the negotiation prior to the confirmation of the procurement results and the confirmation of the final procurement results.

The members and quantity of the negotiation team on the confirmation of procurement results shall be determined by the project implementing organizations, but they shall at least include the representatives of budgetary management departments and the competent departments of industries and the experts in finance, law and other relevant aspects. For the PPP projects related to price management and environment protection, the negotiation team shall also include the representatives of the administration and law enforcement agencies in price management and environment protection. The members of the review group may participate in the negotiation on the confirmation of the procurement results as the members of the negotiation team on the confirmation of the procurement results.

Article 15 As per rankings of social capital candidates stated in the review report, the negotiation team on the confirmation of procurement results shall conduct negotiations about confirmation with social capital candidates and financial institutions cooperating with them concerning variable details in a contract before signature of the contract. The candidates for the social capital taking lead to reach an agreement shall be the social capital expected to win the tender and make a deal.

Article 16 Negotiations about confirmation shall not involve in any non-negotiable core terms in the contract. Moreover, the social capital at the top of the list which has been pulled out of the negotiation may not participate in the negotiation again.

Article 17 A project implementing organization shall, within 10 working days after determining the pre-bid winners, sign the confirmation negotiation memorandum with the pre-bid winners and transaction social capital, and shall publicize the pre-bid winners, transaction results and the project contract drafted in accordance with the procurement document, response document, the relevant supplementary document and confirmation negotiation memorandum on the government procurement information release media specified by the people's governments above the provincial level, and the publicity period shall be no less than five working days. Important undertakings, technical documents and so on in the response documents of the selected social capital and so on shall be attached as appendixes to the contract text. Contents concerning national secrets or business secrets in the contract text may be not published.

Article 18 Within two working days after the unanimous expiration of the publicity, the project implementing organizations shall publicize the bid-winning and transaction results on the government procurement information release media specified by the finance department under the people's government above the provincial level, and shall issue the notice of bid-winning and transaction at the same time.

The contents of the publicized bid-winning and transaction results shall include: names, addresses and contact information of the project implementing agency and procurement agency; project name and project number; name, address and legal representative of the bid winner or transaction social capital; name of the bid winning or transaction bidding, main bid winning or transaction conditions (including but not limited to the cooperation period, service requirements, project estimate, and return mechanism); list of the members of the review group and negotiation team on the confirmation of procurement results.

Article 19 Within 30 days after the issuance of the notice of bid-winning and transaction, the project implementing organization shall sign with the bid-winner and transaction social capital the PPP project contract approved by the people's government of the same level.

If a special project company needs to be established for the PPP project, the project company shall, after being established, sign a PPP project contract again with the project implementing organization, or sign a supplementary contract on succeeding the PPP project contract.

Article 20 Within 2 working days after the date of conclusion of the PPP project contract, the project implementing organization shall publish the project contract on the media designated by the finance department under the people's government above the provincial level, unless the PPP project contract concerns any national secret or business secret.

Article 21 The social capital shall pay the security deposit for participation in procurement activities and performance bond as required by the project implementing organizations in the procurement documents. The social capital shall pay deposits in non-cash forms such as cheques, bills of exchange, promissory notes or the letter of guarantee issued by a financial institution or a guarantee institution. The amount of deposits for participation in procurement activities shall not be less than 2% of project budget amount. The

performance bond shall not be greater than 10% of the total initial investment or assessment value of assets of the PPP project; for the PPP project with no fixed asset investment or with small amount of investment, the performance bond shall be no greater than the service income of six months in average.

Chapter III Dispute Settlement and Supervision and Inspection

Article 22 The inquiry, questioning and complaints made by the nongovernmental investors participating in the Procurement under PPP Projects shall be handled in accordance with the relevant legal system concerning the government procurement.

Pursuant to the project contract, the project implementing organization, and the bid-winning and transaction social capital may apply for arbitration or file a civil lawsuit in accordance with the law if any dispute during the performance of the PPP project contract cannot be settled based on negotiation.

Article 23 The finance departments under the people's governments at different levels shall strengthen the supervision and examination of procurement activities of PPP projects, and settle illegalities and irregularities during procurement activities in accordance with the law.

Article 24 The units and personnel related to the Procurement under PPP Projects involving illegal behaviors during procurement activities shall be prosecuted for legal liabilities in accordance with the Government Procurement Law and the relevant laws and regulations.

Chapter IV Supplementary Provisions

Article 25 The Measures will take effect as of the date of promulgation.

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