

# China's New Regulations on Government Procurement Seek to Promote Greater Transparency

March 2015

Anti-Corruption

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Implementing regulations for the PRC Government Procurement Law came into effect in March 2015. The new regulations attempt to improve information disclosure and public oversight of the government procurement process, and increase accountability for violations. The new regulations also aim to both control government expenses and lower corruption risks, given that cases in recent years have shown the system to be corrupt and wasteful.

The new regulations, titled [Implementing Regulations of the Government Procurement Law of the People's Republic of China](#) (the "Regulations"), came into effect on March 1, 2015. The Regulations are divided into nine chapters: (1) General Provisions; (2) Parties to Government Procurement Activities; (3) Government Procurement Methods; (4) Government Procurement Procedures; (5) Government Procurement Contracts; (6) Query and Complaint; (7) Supervision and Inspection; (8) Legal Liabilities; and (9) Supplementary Provisions.

Before the Regulations were promulgated, the laws that governed government procurement activities in China were principally the Government Procurement Law and the Law on Bid Invitation and Bidding. Departmental rules and local legislation also bear on government procurement, but these rank lower on the legislative hierarchy and consequently have less binding force. The purpose for establishing a government procurement system was to both control government expenses and lower corruption risks. However, cases in recent years have revealed the system to be corrupt and wasteful.<sup>1</sup> Corruption in procurement is often an institutionalized problem.<sup>2</sup>

The Regulations specify several rules based on the existing provisions in the Government Procurement Law, aiming to strengthen the information disclosure mechanism and public supervision. They are also aimed at increasing the accountability for violations. The Regulations are an important supplement to the Government Procurement Law. Through

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<sup>1</sup> For example, the Party's Central Commission for Discipline Inspection (the "CCDI") publicized the case of the Education Bureau of Dejiang County, Guizhou Province in November 2013, which involved three senior officials, including both the director and vice director of the bureau. They were found to have divulged confidential information of a project to procure ping pong tables, tailored the standards for winning a campus security project, and pulled strings to affect the procurement process. See [http://www.ccdi.gov.cn/xcyj/vajs/201311/t20131108\\_43549.html](http://www.ccdi.gov.cn/xcyj/vajs/201311/t20131108_43549.html).

<sup>2</sup> In another case published by the CCDI, 46 officials of a local healthcare sector in Fujian Province were involved. See [http://www.ccdi.gov.cn/xcyj/vajs/201307/t20130718\\_43528.html](http://www.ccdi.gov.cn/xcyj/vajs/201307/t20130718_43528.html).

increasing the transparency and fairness of government procurement activities, they seek to prevent manipulation and rent-seeking by actors in the government procurement process.

Four aspects of the Regulations are particularly relevant to anti-corruption compliance.

### **Increased Transparency and Public Participation**

The Government Procurement Law requires public disclosure of information via designated media sources without specifying which institution has the authority to do so. The Regulations clarify that information shall be published in media sources designated either by the finance departments of people's governments at and above the provincial level, or the finance department of the State Council, depending on the budget of the government procurement project.

The Regulations specify who has the authority to designate media sources, thereby providing the public with a narrower and clearer scope of source to look for information. The Regulations also invite the public to participate in the final acceptance and inspection process for certain projects, which could effectively strengthen public supervision over these projects. The Regulations further specify that the following information be announced via designated media sources, potentially increasing the transparency of government procurement activities, strengthening public supervision, and ensuring fair competition.

#### **1. Disclosure of sole-supplier procurement**

The Regulations require that for a project that can be procured only from a sole supplier (under circumstances prescribed in Article 31 of the Government Procurement Law), the name of the sole supplier, in addition to project information, shall be disclosed via designated media sources.

#### **2. Disclosure of pre-qualification examination of suppliers**

According to the Regulations, in circumstances where the purchaser or procurement agency conducts a pre-qualification review of suppliers, an announcement shall be published via designated media sources disclosing (1) the names of the purchaser and the procurement project concerned; (2) procurement requirements; (3) qualification requirements for suppliers; and (4) the time and place for suppliers to submit application documents.

#### **3. Disclosure of results of award of bid or deal closing**

The Regulations require the announcement in designated media sources of the results of award of bid or deal closing, disclosing (1) the names, addresses and contact information of the purchaser and the procurement agency; (2) the name and serial number of the procurement project; (3) the name and address of the supplier who wins the bid or with whom the deal shall be closed; (4) the amount of the winning bid or closed deal; (5) the name, specifications and model, quantity, unit price, and service requirements of the main subject matter of the winning bid or deal; and (6) the list of evaluation experts.

#### **4. Disclosure of procurement documents**

Together with the announcement of the results of the award of bid or deal closing, the Regulations also require the purchaser or procurement agency to disclose the procurement documents, including bidding documents, competitive negotiation documents, or price inquiry notices.

5. Disclosure of results of final acceptance inspection

The Regulations prescribe that for a project where the government provides public services, recipients of those services must be invited to participate in the final acceptance and inspection process and to issue their opinions. In addition, the results of the inspection shall be publicly announced.

6. Disclosure of procurement contract

The Regulations require the disclosure of the government procurement contract within two working days from the date of signing the contract (except for content in the contract involving state secrets or trade secrets).

7. Disclosure of decisions made on complaints

Regarding complaints, the Regulations prescribe that the decision made by a finance department in response to a complaint shall be announced via designated media sources.

**The Fairness of an Expert's Evaluation**

The Regulations require a random selection of evaluation experts, potentially preventing fraudulent activities and bribery. The Regulations further specify the obligations and standards of the experts, and require the strengthening of the supervisory mechanism over expert evaluation.

1. Random selection of evaluation experts

Except for circumstances prescribed by the finance department, selection is to be made randomly from a government database. In addition, finance departments of people's governments at and above the provincial level are required by the Regulations to manage the expert database closely and timely.

2. Obligations of evaluation experts

The Regulations prescribe that the experts' conduct shall comply standards for evaluation and keep confidential their work. They shall also report improper conduct and evaluate independently according to the procedures, methods, and criteria prescribed in the procurement documents.

3. Strengthen the supervision of evaluation experts

Finance and other relevant departments are required to strengthen the supervision and administration of evaluation experts. They shall keep a record of improper conduct by experts and file it with the unified credit information platform.

4. Penalties for illegal conduct

Depending on the nature of the improper conduct, the Regulations provide various levels of legal liability for the evaluation experts, including: (1) invalidation of evaluation opinion; (2) withdrawal of compensation; (3) ban from participating in future government procurement evaluations; (4) warnings or fines; (5) confiscation of illegal gains; (6) civil liability, and (7) criminal liability. By exposing violators to administrative, civil, or criminal liabilities, the Regulations potentially deter the evaluation experts from engaging in illicit conduct.

### **Prohibition of Accepting Bribery or Other Improper Benefits**

Based on the Government Procurement Law's prohibition on accepting bribery and other improper benefits, the Regulations specify what constitutes improper conduct, and imposes obligations on members of bid evaluation committee, competitive negotiation team, or price inquiry team to report such behavior. The specification and the obligation to report could potentially deter improper conduct and prevent corruption.

The Regulations prohibit a purchaser from soliciting or accepting gifts, kickbacks, or other goods and services irrelevant to the procurement. The Regulations also prohibit a procurement agency from collusion to manipulate the procurement process. It prescribes that the staffers of a procurement agency shall not accept dining, travelling, and entertainment activities organized by purchasers or suppliers, shall not accept gifts, cash, marketable securities, etc., and shall not ask purchasers or suppliers to reimburse expenses that should be borne by individuals.

Moreover, the Regulations require members of the bid evaluation committee, competitive negotiation team or price inquiry team of a procurement project to report promptly if they discover that a supplier was offering bribes, providing false materials, or colluding with others during bidding.

### **Additional Circumstances as Offering Bribes**

The Government Procurement Law prohibits a supplier from bribing the purchaser or procurement agency, and provided penalties for such behavior. Based on this provision, the Regulations add that bribery of members of the bid evaluation committee, competitive negotiation team or price inquiry is also punishable under the same provision of the Government Procurement Law.

### **Other Items of Note**

In addition to the four aspects mentioned above that are relevant to anti-corruption compliance, the Regulations also provides detailed explanation for several provisions in the Government Procurement Law. For example, the Law prescribes that a procuring entity may specify special requirements for suppliers provided that they are reasonable and are not discriminatory. The Regulations further specify the circumstances where the requirements would be seen as "unreasonable":

- (1) Where for the same procurement project, different information was provided to different suppliers;
- (2) Where qualifications, technical, or commercial requirements prescribed did not suit the specific characteristics and actual needs of the procurement project, or were irrelevant to the performance of the contracts;
- (3) Where technical, service, and other requirements prescribed in procurement needs pointed to a specific supplier or product;
- (4) Where certain performance or rewards in a specific administrative region or a specific industry is required as the condition for adding points for a supplier, or for winning a bid or closing a deal;

- (5) Where the standards applied for qualification examination or evaluation varied for different suppliers;
- (6) Where the purchaser or procurement agency designated a particular patent, trademark, brand, or supplier;
- (7) Where the purchaser or procurement agency illegally limited the ownership structure, organizational form or location of a supplier; and
- (8) Where other unreasonable conditions were used to restrict or exclude potential suppliers.

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If you have any questions concerning the material discussed in this client alert, please contact the following China-focused members of our Global Anti-Corruption practice group:

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