

## People's Republic of China

### Legal and institutional framework

P.R. China has passed two laws that regulate public procurement: the Government Procurement Law (GPL), which took effect in January 2003, and the Law on Bid Invitation and Bidding (LBIB), which came into force in January 2000. Other legal instruments that may apply include the Contract Law, the Law against Unfair Competition, and various regulations concerning the financing of government procurement, the supervision of government procurement agents, and the registration of suppliers. In September 2004, the Government passed regulations "on bidding of goods and services in government procurement", "on information disclosure in public procurement," and "on handling suppliers' complaints in government procurement." The GPL applies to procurement by state organs at all levels, but not by state-owned and state-controlled enterprises. It also applies only to the procurement of specified items and to contracts above a threshold set by a procuring agency. The GPL specifically prohibits procuring agencies from breaking a contract into smaller parts to circumvent this requirement. The GPL does not apply in the following situations: urgent circumstances caused by a serious natural disaster or an unavoidable emergency; procurement involving national security and secrets; and military procurement.

The Chinese procurement system involves several types of institutions and, notably, intermediaries—essentially consultants who manage procurement on behalf of a procuring agency. The GPL regulates when and what type of intermediaries should be used. For certain types of contracts, procuring agencies must use "institutions for centralized government procurement" (ICGPs) as intermediaries for dealing with suppliers. ICGPs are nonprofit legal entities that exist at both the central and local levels. For the remaining types of contracts, a procuring agency has discretion to use an ICGP. Alternatively, it may conduct the procurement itself or use a commercial procuring intermediary that is certified by the relevant central or local authority. Finally, the finance departments of governments at various levels, known as procurement regulatory authorities (PRAs), are responsible for supervising the procurement process. Intermediaries must be independent of the relevant PRA.

## Procurement methods and procedures

Public tendering is the standard procurement method under the GPL, and the LBIB requires public tendering for major construction projects. In 2003, procurement through public tendering was estimated at more than half of the value of total government procurement. The following methods are also available under stipulated circumstances: restricted tendering, competitive negotiation, single-source procurement, request for quotations, and other methods permitted by the PRA of the State Council. Competitive negotiation is conducted by a committee, which is responsible for setting the evaluation criteria and the procedure and scope of negotiations, choosing three or more qualified suppliers for negotiations, and selecting the successful supplier. Single-source procurement may be used, for instance, if procurement from other suppliers is not feasible because of an unexpected emergency, though what constitutes an emergency is not defined in the GPL. A PRA must approve the use of a method other than public tendering, and the disqualification of a bidder.

Standard documents, most of which include anti-corruption provisions, are used. Prequalification is possible through lists of suppliers maintained by the intermediaries of the central Government. A supplier will be removed from the list if he or she violates government regulations on qualifications of suppliers. In a public tender, the minimum bidding period is 20 days. All standards for procurement must be published.

The publication of procurement opportunities promotes wide participation, which in turn reduces the risk of collusion or failure of tendering. In P.R. China, information pertaining to a specific procurement that does not involve commercial secrets must be published in a timely fashion in designated media outlets. These outlets include the *China Financial and Economic News*, the *China Government Procurement Net*, and the *China Government Procurement Journal*.

Clear and predetermined criteria for selecting a bid can reduce opportunities for corruption. The LBIB prescribes the handling and evaluation of bids. The procuring entity or intermediary forms a committee. After bidding is closed, the committee reads out the bids in public before evaluating the technical and financial aspects of the bids in private. The committee must choose the bid with the best value. In addition, the GPL requires ICGPs to choose a bid on the basis of a lower-than-average market price, high efficiency, and good quality. As soon as a bid is selected, all bidders (including unsuccessful ones) are notified. The procuring agency must publish the decision in the designated media

outlets. It must also report to the relevant PRA within 15 days. Post-award negotiations on substantive matters are not allowed. A failure of tendering under the GPL arises if one of the following occurs: fewer than three suppliers meet the selection criteria; there have been breaches of laws or rules; the bid offers exceed the government's budget; or the procurement project is canceled because of extraordinary circumstances. In these cases, competitive negotiation may be used upon the approval of a superior authority. This could give rise to possible corruption when coupled with the possibility that failure of tendering can be created.

### Safeguarding and enforcing integrity

To prevent corruption, P.R. China has enacted measures that promote integrity among procurement staff. The GPL prohibits procurement officials from receiving illegal benefits and requires those who have a conflict of interest to withdraw from the process. It also prohibits the staff of a procuring entity from accepting bribes, gifts, and hospitality. Intermediaries and government procuring agencies are expected to train their personnel. In addition, local governments and PRAs are expected to establish performance review systems for procurement personnel. Finally, procurement officials are rotated regularly to prevent them from fostering relations with suppliers that could result in favoritism.

Measures to promote integrity among suppliers also contribute to reducing corruption in public procurement. To this end, the GPL expressly prohibits bidders from bribing procurement officials and from damaging the interests of the public and the state. Bidders must declare that they, their contractors, and their representatives will abstain from unduly influencing the procurement process or outcome.

P.R. China provides a range of sanctions for corruption in public procurement. A bidder will be prosecuted if he or she bribes or provides an improper interest or benefit to an official and the conduct amounts to a criminal offense. If the conduct falls short of being a criminal offense but nevertheless constitutes a misdemeanor, then the bidder is fined 0.5–1 percent of the bid. Guilty parties may also be liable for damages. The contract in question is annulled and any illegal gains are confiscated. Since May 2004, a pilot scheme for the debarment of bidders convicted of bribery in the procurement of construction works has been implemented in five provinces. Those convicted for bribery are placed on a blacklist that is made available to authorities responsible for construction projects, and are barred from access to the construction market temporarily or permanently. Debarments are announced in the

designated media outlets. If the circumstances are serious, the bidder's business license is revoked. The official involved is subject to similar sanctions and may be given a disciplinary warning, which is circulated.

Administrative and judicial review of the procurement process is available. Anyone may complain to a procuring agency or an intermediary and then to the relevant PRA. The initial complaint must be made within seven days after the complainant comes to know or should have known of the basis of the complaint. Decisions on complaints are published. Complainants who are not satisfied with the outcome may seek further administrative or judicial review. In 2006, some cities have been implementing programs to widen public access to information about procurement.

Auditing can also strengthen the detection of corruption and serve as a deterrent. The GPL requires auditing authorities to audit procurement activities. The parties to procurement and related government authorities must submit to the audits. Audit reports are available to the public.

Procuring intermediaries and entities are required to maintain records of procurements for 15 years. These records include a description of the procurement method, the evaluation criteria, and the reasons for inviting and selecting a supplier. Agencies supervising and managing the procurement process can access the records.

### A way forward

P.R. China is encouraged to pursue its efforts to consolidate the regulatory framework for public procurement and notably to clarify the applicability of the various laws and regulations that govern public procurement. Also, P.R. China is encouraged to pass implementing regulations to give full effect to this legislation.

Once this framework is in place, P.R. China is invited to take the necessary steps to provide extensive training to staff involved in procurement procedures at all levels of government to ensure the proper implementation of the procurement legislation.