

China - Provisions on Bidding for Export of Machinery and Electronic Products, 1996

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(Promulgated by Ministry of Foreign Trade and Economic Cooperation on July 2,1996)**

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1 **Provisions on Bidding for Export of Machinery and
Electronic Products
(Promulgated by Ministry of Foreign Trade and
Economic Cooperation on July 2,1996)**

2 **Chapter I - General Provisions**

3 **Article 1**

4 For the purpose of encouraging export of machinery and electronic products, safeguarding the normal order of foreign trade, establishing the mechanism of competition on equal footing, and ensuring the overall interests of the state and the legitimate benefits of foreign trade enterprises, the present Provisions on Bidding for Export of Machinery and Electronic Products is formulated pursuant to the Foreign Trade Law of the People's Republic of China and the Interim Provisions on the Administration of Export Commodities approved by the State Council.

5 **Article 2**

6 The bidding for the export of machinery and electronic products defined in the present Provisions refers to the voluntary bidding activities of the enterprises exporting commodities subject to bidding and the obtaining of export quantity according to stipulated procedures.

7 **Article 3**

8 The present provisions shall be applied to the export of machinery and electronic products subject to bidding announced by the Ministry of Foreign Trade and Economic Cooperation (hereinafter referred to as MOFTEC).

Article 4

The work of bidding for the export of machinery and electronic products shall be conducted according to the principles of "Fairness, Openness, Competition and Efficiency".

Chapter II - Organization and Responsibility

Article 5

The bidding committee for the export of machinery and electronic products shall be established by MOFTEC, the State Office for the Import and Export of Machinery and Electronic Products, the Chambers of Commerce for Importers and Exporters of Machinery and Electronic Products (hereinafter referred to as the Chamber of Machinery and Electronic Products) and the Association of Foreign-Funded Enterprises (hereinafter referred to as " the Association"). The Bidding Committee shall consist of one chairman, several vice-chairmen and a number of committee members. The chairmanship shall be held by persons in charge of the Administration of Foreign Trade of MOFTEC.

The Bidding Committee shall set up quota bidding office (hereinafter referred to as the Bidding Office) in relevant branches of the Chamber of Machinery and Electronic Products. The Bidding Office shall consist of a director, several deputy directors and a number of staff. The chairmanship of the Bidding Office shall held by persons in charge of the secretariat of relevant branches of the Chamber of Machinery and Electronic Products who shall be responsible for the daily work of the Bidding Committee.

Article 6

MOFTEC shall formulate and publish the provisions on the bidding

for the export of machinery and electronic products, determine the varieties of export commodities which shall be subject to bidding and be responsible for the supervision and guidance of the bidding work.

Article 7

The responsibility of the Bidding Committee is to administrate the bidding work for the export of machinery and electronic products according to the present Provisions:

1. To examine and formulate the work plans for bidding;
2. To examine and publish various notices, bulletins and regulations concerning the bidding;
3. To determine the total tender quantity according to the actual export performance and the demands in international markets;
4. To give instructions to the Bidding Office, review and verify the preliminary opinions of the Bidding Office on bidding documents and determine the bid-winning enterprises and the bid-winning quantity which shall be reported to MOFTEC.
5. To announce the bid-winning results;
6. to study and handle other issues concerning the work of bidding for export.

Article 8

The responsibility of the Bidding Office is to do the specific jobs of implementation according to the present Provisions and the decision of the Bidding Committee:

1. To study the market situations of the bidding commodities, to

draft work plans for bidding and to submit them to the Bidding Committee for implementation after examination and verification;

2. To print in the uniform format and issue various documents and materials for the bidding commodities;

3. To check and determine the export performance of the bidding enterprises according to the statistics released by the customs, conduct the preliminary examination on the qualification of the bidding enterprises and submit the results to the Bidding Committee for examination and verification;

4. To be responsible for the opening and evaluation of bidding, calculate the bid-winning quantity of the tenders and submit the results to the Bidding Committee for examination and verification;

5. To examine and supervise the use of bid-winning quantity of the bid-winning enterprises and the implementation of the coordinated prices set forth by the profession;

6. To handle affairs concerning the transfer and assignment of bid-winning quantity.

Chapter III - Calling for Tender

Article 9

The scope of the bidding shall include the varieties and quantities of the exports subject to bidding by all modes of trade. The detailed contents of the bidding shall be decided by the bidding bulletins.

Article 10

The Bidding Committee shall, in light of the actual export situations

of the specific commodities, determine the quantities and frequencies of bidding. The detailed affairs of the bidding shall be published by the Bidding Committee one month prior to every bidding in International Business and other news media. In the third quarter of every year, bidding shall be undertaken for commodities subject to bidding in the next year.

38 **Article 11**

39 The Bidding Committee may, in light of the actual situations in the international markets, set restrictions on the countries (regions) to which the bidding commodities will be exported.

40 **Chapter IV - Bidding**

41 **Article 12**

42 A Enterprises which satisfy the following criteria shall be qualified for bidding:

- 43 1. To be accredited by MOFTEC with the right to export;
- 44 2. Having registered in the industrial and commercial authorities;
- 45 3. To be a member of relevant branches of bidding commodities under the Chapter of Machinery and Electronic Products or a member of the Association of Foreign-Funded Enterprises.

46 **Article 13**

47 All the bidding enterprises shall conduct bidding according to the specifications of the products and their actual abilities of export. No false bidding shall be made. The bidding prices shall be no less than the coordinated prices set forth by the profession.

Article 14

48

The enterprises participating in the bidding shall fill in and report the bidding documents and materials as required by the "Tender Notice".

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Article 15

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The bidding documents and materials shall be sealed and be sent to the Bidding Offices by post or other channels before the opening date of tenders stipulated in the "Tender Notice" (The date shall be regarded as the arrival date of the documents and the faxed ones are not valid).

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Each enterprise shall be allowed to send only one bidding document which shall not be changed after having been sent out.

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The bidding documents and materials shall include:

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- 54 1. Bidding application;
- 55 2. Bidding guarantee;
- 56 3. (Copies of) the certificates of membership of a branch of the Chamber of Machinery and Electronic Products or membership of the Association of Foreign-Funded Enterprises;
- 57 4. (Copies of) documents approving them the right of export issued by MOFTEC or other competent authorities authorized by MOFTEC, or the Certificate of Verification on Foreign Trade Enterprises, or the Approving Certificates for Foreign-Funded Enterprises;
- 58 5. (Copies of) the business license of legal persons issued by the industrial and commercial authorities of the state;
- 59 6. (Copies of) license on the quality of export products issued by the commodities inspection departments;

60	7. Other documents as required by the Bidding Committee.	A=-----	75
		The total national export value	76
61	Chapter V - Opening and Evaluation of Bidding	(quantity) of the said commodity	77
62	Article 16	2. To determine the national average exchange earning of unit bidding commodity ("B") and the average exchange earning of unit bidding commodity of the bid-winning enterprise ("X").	78
63	The Bidding Office shall immediately seal and keep for file the bidding documents as soon as they receive them.	Total national export value	79
64	Article 17	of the specific commodity	80
65	Under the supervision of the Bidding Committee, the Bidding Office shall, within the designated time period, open the bid publicly and conduct the preliminary evaluation of the bidding documents. The evaluation shall cover the following aspects:	B=-----	81
66	1. The validity of the bidding materials;	Total national export quantity	82
67	2. Bidding qualification;	of the said commodity	83
68	3. Bidding prices (unit export price).	The total export value of specific commodity exported by the bid-winning enterprise in the previous year	84
69	Article 18	X=-----	85
70	Under the supervision of the Bidding Committee, the Bidding Office shall, according to valid bidding materials, calculate the bid-winning quantities which shall be worked out according to the following formula.	The total export quantity of the said commodity by the said enterprise in the previous year	86
71	1. To determine the share ("A") of the bid-winning enterprises in the total tender quantity:	3. To determine the bid-winning quantity of the said bid-winning enterprise ("C"). X	87
72	The total export value (quantity) of	C= Total bidding quantity*A*---	88
73	specific commodity exported by the	B	89
74	enterprise in the previous year	Article 19	90
		In order to promote the scale efficiency of export, the Bidding Committee may set and announce the minimum bidding quantity to	91
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the bidding enterprises in advance. The enterprise whose export quantity was below the minimum bidding quantity in the previous year shall be disqualified. The bid-winning quantity of foreign-funded enterprises shall not exceed the export scale as approved by MOFTEC.

95 **Article 20**

96 The Bidding Committee shall, according to the valid bidding documents and materials, examine and verify the qualification and bid-winning quantities of the bid-winning enterprises, and publish the list of the bid-winning enterprises in International Business and other news media. In the meantime, the Bidding Office shall distribute the Bid-Winning Registration Handbook.

97 **Chapter VI - Export License**

98 **Article 21**

99 MOFTEC shall send the list of the bid-winning enterprises and the bid-winning quantities to the authorized license-issuing departments.

100 **Article 22**

101 The authorized license-issuing departments shall issue export license according to the following documents:

- 102 1. The result of the bidding transferred by MOFTEC;
- 103 2. The Bid-winning Registration Handbook distributed by the Bidding Committee;
- 104 3. The valid export contract of the bid-winning enterprise.

Chapter VII - Administration 105

Article 23 106

107 For the purpose of monitoring the utilization of the bid-winning quantity, the Bidding Office will trace, examine and report at regular intervals the implementation to the Bidding Committee.

Article 24 108

109 The bid-winning quantity may be transferred. The assigned enterprises shall be qualified bidding enterprises. The transfer and assignment shall be checked and verified by the Bidding Office and formalities shall be gone through accordingly. The bid-winning fees shall be turned in to the Bidding Office.

Article 25 110

111 The bid-winning enterprises shall, by September 30 of the current year, report the unused bid-winning quantities to the Bidding Office and the unused quantity shall be returned to the Bidding Office by December 15 of the current year. The Bidding Office may transfer and assign the unused bid-winning quantities reported for registration and turned back by the enterprises.

Article 26 112

113 Within one month after the bid-winning enterprises receive the Bid-Winning Registration Handbook, they shall pay the bidding fees to the Bidding Committee which shall be calculated in three per ten thousands of the total bid-winning value (bid-winning quantity X average bid-winning prices). The fees shall be paid in RMB con-

verted in the exchange rate of the date on which the Bid-Winning Registration Handbook was issued. 124

114 **Article 27**

115 The fees shall be collected by the Bidding Office and shall be deposited to the special account in separate subject and under separate management. The fees shall be utilized for the bidding work and shall not be used for other purposes. The Bidding Office shall report the revenue and expenditure of the fees to the Bidding Committee every year.

116 **Chapter VIII - Penalties**

117 **Article 28**

118 In case of violation of the present Provisions, the Bidding Committee shall impose the following penalties:

119 1. If any violation of the following is found, the bid-winning quantity in the current year shall be revoked and a notice of warning shall be given:

120 (i) False bidding documents were reported;

121 (ii) To transfer or trade bid-winning quantity without permission.

122 2. If any violation of the following is found, the bid-winning quantity in the current year shall be revoked and the enterprises committing the violation shall not be allowed to bid for the tender in the following year:

123 (i) Being accused of, but not responding to the anti-dumping accusations raised by foreign countries;

(ii) The actual export prices are lower than the coordinated prices of the profession or be lowered in disguised form;

(iii) Being ascertained by relevant departments on the infringement of trade marks; 125

(iv) The bid-winning fees have not been paid in due course. 126

3. With regard to the bid-winning enterprises which do not report or return the unused bid-winning quantity as stipulated in Article 25, if the unused quantity does not reach 30% of its total bid-winning quantity, their bid-winning quantity in the next year will be deducted accordingly. In case the said quantity exceeds 30% of their total bid-winning quantity, their right of bidding in the next year will be revoked. 127

4. The revoked quantity shall be reported to the Bidding Committee and copied to MOFTEC for record. The Bidding Committee shall, in the same time, inform the license-issuing departments to stop issue license for the above-mentioned quantity. The revoked bid-winning quantity may be carried over to the next round of bidding or be utilized for transfer and assignment. 128

Chapter IX - Supplementary provisions 129

Article 29 130

The bidding shall be undertaken in witness of registered lawyers and certificates shall be issued by registered lawyers. 131

Article 30 132

MOFTEC shall be responsible for the interpretation of the present Provisions and they shall enter 133

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