

Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation

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The Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation, which were deliberated and adopted at the third executive meeting of the Ministry of Land and Resources on September 21, 2007, are hereby promulgated and shall come into force as of November 1, 2007.

Director-General: Xu Shaoshi
September 28, 2007

Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation

(Adopted at the fourth executive meeting of the Ministry of Land and Resources on April 3, 2002, and revised at the third executive meeting of the Ministry of Land and Resources on September 21, 2007)

Article 1 These Provisions are enacted according to the Real Right Law of the People's Republic of China, the Land Administration Law of the People's Republic of China, the Law of the People's Republic of China on Urban Real Estate Administration, and the Regulation on the Implementation of the Land Administration Law of the People's Republic of China for the purpose of regulating the assignment of state-owned construction land use right, optimizing the allocation of land resources and establishing an open, fair and impartial land use system.

Article 2 The establishment of state-owned construction land use right on the land surface, on the ground or beneath the ground by the assignment through bid invitation, auction and quotation within the territory of the People's Republic of China shall be governed by these Provisions.

The "assignment of state-owned construction land use right through bid invitation" as mentioned in these Provisions refers to such an act in which the department of land and resources under the people's government of the city or county (hereinafter referred to as the assigner) releases the bid invitation notice, invites specific or non-specific natural persons, legal persons and other organizations to participate in the bidding of the state-owned construction land use right, and determines the holder of state-owned construction land use right according to the bidding results.

The "assignment of state-owned construction land use right through auction" as mentioned in these Provisions refers to such an act in which the assigner releases the auction notice, and the competitive buyers conduct open price competition at a designated time and place, and the holder of state-owned

construction land use right will be determined according to the results of price competition.

The “assignment of state-owned construction land use right through quotation” as mentioned in these Provisions refers to such an act in which the assigner releases the quotation notice, list and announce the trading terms about the land for assignment at a designated land exchange within the term specified in the notice, accepts the quotations of competitive buyers and updates the quotation, and determines the holder of state-owned construction land use right according to the quotation results at the expiry time for quotation or the onsite quotation results.

Article 3 The assignment of state-owned construction land use right through bid invitation, auction or quotation shall comply with the principle of openness, fairness, impartiality and integrity.

Article 4 With respect to the land for industry, commerce, tourism, entertainment, commercial housing or other business operations, or on which there are two or more intending land users, the assignment thereof shall be conducted through bid invitation, auction or quotation.

The land for industrial use as prescribed in the preceding paragraph includes the land for storage but excludes the land for mining.

Article 5 The bid invitation, auction or quotation for the state-owned construction land use right shall be conducted as planned.

The department of land and resources under the people’s government of the city or county shall formulate its annual plan for assignment of state-owned construction land use right according to economic and social development plans, industrial policies, land use plans, annual land use plans, urban planning and land market situation, report its plan to the people’s government at the same level for approval, and then make it public.

Article 6 The department of land and resources under the people’s government of the city or county shall, according to its annual assignment plan, draft the plan for the land for the assignment through bid invitation, auction and quotation jointly with the urban planning department, etc., and organize the implementation of the said plan after having reported it to the people’s government of the city or county for approval.

The assignment plan as prescribed in the preceding paragraph shall contain the spatial limit, uses, term for use, as well as the method, time and other conditions for the assignment of the land.

Article 7 The assigner shall formulate the documents for assignment through bid invitation, auction or quotation according to the conditions about the land for the assignment through bid invitation, auction or quotation.

The documents for assignment through bid invitation, auction or quotation shall include the assignment notice, instructions for bidding or price competition, conditions for land use, bid documents or written applications for price competition, quotations, bid-winning notice or transaction confirmation letter, as well as the text of the contract on the assignment of state-owned construction land use right.

Article 8 The consigner shall, at least 20 days before bid invitation, auction or quotation, release the announcement on bid invitation, auction or quotation at the tangible land market or at the designated place or mass media, and announce the basic conditions about the land for the assignment through bid invitation, auction or quotation as well as the time and place for bid invitation, auction or quotation.

Article 9 An announcement on bid invitation, auction or quotation shall contain:

1. The name and address of the assigner;
2. The acreage, boundary, spatial limit, status quo, term for use, purposes, and requirements of planning indicators, etc. of the land for assignment;
3. The qualification requirements for bidders and competitive buyers, and the measures for applying for the bidding or competitive purchase qualification;
4. The time, place and method for obtaining the documents on the assignment through bid invitation, auction or quotation;
5. The time and place for bid invitation, auction or quotation, term for bidding or quotation, bidding or price competition method;
6. The standards and methods for determining the winner of bidding, auction or quotation;
7. The deposit for bidding or competitive purchase; and
8. Other matters required to be announced.

Article 10 The department of land and resources under the people's government of the city or county shall determine the base bid price or base price according to the land valuation results and the government industrial policy.

No base bid price or base price may be lower than the minimum price prescribed by the state.

The base bid price, starting price, initial price or base price for auction and quotation, deposit for bidding or competitive purchase shall be determined through collective decision-making.

The base bid price, base price for auction or quotation shall be kept confidential before the opening of bids or before the completion of the assignment through auction or quotation.

Article 11 Unless it is otherwise prescribed by any law or regulation, all the natural persons, legal persons and other organizations inside and outside the territory of the People's Republic of China may apply for the participation in the assignment of state-owned construction land use right through bid invitation, auction or quotation.

No assigner may set restrictions that may affect fair and impartial competition in the announcement on the assignment through bid invitation, auction or quotation. For the assignment through quotation, the expiry date for applications in the announcement shall be two days after completion of the assignment through quotation. For the applicants complying with the requirements as set down in the announcement on the assignment through bid invitation, auction or quotation, the assigner shall notify them to participate in the bid invitation, auction or quotation.

Article 12 The department of land and resources under the people's government of the city or county shall provide convenience to the bidders and competitive buyers to consult relevant conditions about the land for assignment.

Article 13 The bidding and opening of bids shall be carried out according to the following procedures:

1. The bidders put its bid documents into the bid box before the expiry time for bidding. Where it is allowed to submit bid documents by mail, a bidder may post them provided that those documents are received before the expiry time for bidding.

After the bid documents are put into a bid box, they can not be withdrawn anymore. The bidder shall be responsible for its bid documents as well as relevant written commitments.

2. The assigner opens bids at the time and place as set down in the bid invitation notice, and invites all the bidders to participate in the opening of bids. The bidders or the representatives they elect check the seal-up status of the bid box, open it at the presence of all parties and count the bid documents. If there are less than three bidders, the assigner shall terminate the bid invitation. If there are three bidders or more, the presider of bid invitation shall announce the names of bidders one by one, announce the prices and the main contents in the bid documents.

3. The bid evaluation evaluates bids. The bid evaluation group shall be composed of the assigner's representative and the relevant experts in the odd number of five or more.

The bid evaluation group may request bidders to make necessary clarifications or explanations about their bid documents, while such clarifications or explanations can not exceed the scope of bid documents or change the substantial contents of bid documents.

The bid evaluation group shall evaluate the bid documents according to the bid evaluation standards and methods as set down in the bid invitation documents.

4. The assigner determines a bid winner according to the bid evaluation results.

Where a bid winner is determined according to the principle that "one who offers the highest price wins", it is not so required to establish a bid evaluation group, and the presider of bid invitation may determine the bid winner according the bid opening results.

Article 14 The bidder which can satisfy all the comprehensive evaluation standards set down in the bid invitation documents to the utmost or can satisfy the substantial requirements set down in the bid invitation documents and offers the highest price shall be determined as the bid winner.

Article 15 The auction shall be held according to the following procedures:

1. The presider counts competitive buyers;
2. The presider introduces the acreage, boundary, spatial limit, status quo, purposes, term for use, requirements of planning indicators, time for start and completion of the engineering and other relevant matters about the land for auction;
3. The presider announces the starting price, rules for price rise, and margin of price rise. Where there is no base price, it should be made clear;
4. The presider calls out the starting price;
5. The competitive buyers raise their plates to offer prices or quotations;
6. The presider continues the price competition upon confirming the prices or quotations as offered;
7. Where the presider announces a same price or quotation for consecutive three times whereas nobody else makes a response thereto or offers any higher price, the presider let fall the pestle and the auction is done; and
8. The presider announces the competitive buyer that offers the highest price or quotation as the winner.

Article 16 Where the highest price or quotation offered by a competitive buyer is lower than the base price, the presider shall terminate the auction.

The auction presider may, during the course of auction, adjust the margin of price rise on the basis of the prices offered by competitive buyers.

Article 17 The quotation shall be carried out according to the following procedures:

1. As of the first day of quotation as prescribed in the quotation notice, the assigner shall announce such contents as the acreage, boundary, spatial limit, status quo, purposes, term for use, requirements

of planning indicators, time for start and completion of the engineering, starting price, rules for price rise as well as the margin of price rise about the land for quotation in the land exchange as determined in the quotation notice;

2. Competent competitive buyers fill in quotation forms and offer quotations;
3. After the quotation presider confirms a quotation, it shall update and show the quotation; and
4. The quotation presider determines the winner at the expiry time for quotation as determined in the quotation notice.

Article 18 The quotation term shall be no less than ten working days. The margin of price rise may be adjusted according to the prices offered by competitive buyers during the period of quotation.

Article 19 The termination of quotation shall be decided by the quotation presider. Upon expiry of the quotation term, the quotation presider shall announce the highest quotation and the quoter on the scene, and inquire about whether the competitive buyers would like to continue the price competition. Where there is any competitive buyer who shows any intent to continue the price competition, the assignment through quotation shall be turned into the onsite price competition, and the winner shall be determined through onsite price competition. If the quotation presider calls out a highest price for consecutive three times, and there is no buyer willing to continue the price competition, whether the transaction has been stricken shall be determined according to the following provisions:

1. If there is only one buyer for quotation within the quotation term, its quotation is not lower than the base price and it complies with other requirements, the quotation transaction is stricken;
2. If there are two or more competitive buyers for quotation within the quotation term, the quoter offering the highest price shall be the winner; and if their prices are the same, the quoter offering the quotation at first shall be the winner, unless its quotation is less than the base price; and
3. If there is no respondent within the quotation term, the price offered by competitive buyers is lower than the base price, or no quoter complies with other requirements, the quotation transaction is not stricken.

Article 20 After the winner is determined through bid invitation, auction or quotation, the deposit paid by that winner for bidding or competitive purchase shall be turned into the earnest money for land assignment. The assigner shall send out a bid winning notice to the bid winner or conclude a transaction confirmation letter with the winner of auction or quotation.

The bid winning notice or transaction confirmation letter shall contain the names of the assigner and the winner of bidding, auction or quotation, target for assignment, transaction time, place, price, and the time and place, etc. for concluding the contract on the assignment of state-owned construction land use right.

The bid winning notice or transaction confirmation letter shall have the legal binding force on the assigner and the winner of bidding, auction or quotation. If the assigner changes the competition results or the winner gives up the land it has won, it shall assume legal liabilities.

Article 21 The winner of bidding, auction or quotation shall conclude a contract on the assignment of state-owned construction land use right with the assigner at the time stipulated in the bid winning notice or transaction confirmation letter. The deposit for bidding or competitive purchase as paid by a winner of bidding, auction or quotation shall be taken as the land assignment fee. The deposits as submitted by other bidders or competitive buyers shall be refunded by the assigner within five working days upon conclusion of bid invitation, auction or quotation, with no interest accumulated.

Article 22 Within ten working days upon conclusion of bid invitation, auction or quotation, the assigner shall make public the results about the assignment through bid invitation, auction or

quotation on the tangible land market or at the designated place or mass media.

The assigner shall make public the assignment result without any charge from the assignee.

Article 23 A assignee shall not apply for land registration or get the certificate of state-owned construction land use right until it had paid off the land assignment fee according to the stipulation of the contract on the assignment of state-owned construction land use right.

If the land assignment fee has not be paid off according to the contract, no certificate of state-owned construction land use right may be granted, and the certificate of state-owned construction land use right shall not be granted separately according to the proportion of land assignment fee as paid.

Article 24 If the state-owned construction land use right shall be assigned through bid invitation, auction or quotation but has been assigned through agreement, the directly liable persons in charge and other directly responsible persons shall be punished; and shall be subject to criminal liabilities if a crime is constituted.

Article 25 If the winner of bidding, auction or quotation commits either of the following acts, the winning result shall be invalidated, and the winner shall assume the liability of compensation if any loss is caused:

1. Providing false documents or hiding the truth; or
2. Winning the bid invitation, auction or quotation by bribes, malicious collaboration or any other illegal means.

Article 26 If any functionary in the department of land and resources neglects his duties, abuses his authorities or makes falsehood for private purposes in the assignment through bid invitation, auction or quotation, he shall be punished; and be subject to criminal liabilities if a crime is constituted.

Article 27 The lease of state-owned construction land use right through bid invitation, auction or quotation shall be conducted by referring to these Provisions.

Article 28 These Measures shall come into force as of November 1, 2007.