

招标采购挂牌出让国有建设用地使用权规定（2007 修订）

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国土资源部令第 39 号

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Provisions on the Grant of Use Right of State-owned Land for Construction Purposes through Bidding, Auction or Quotation (Revised in 2007)

Ministry of Land and Resources Order No. 39

(adopted on the 4th executive meeting of the Ministry of Land and Resources on April 3, 2002, revised on the 3rd executive meeting of the Ministry of Land and Resources on September 21, 2007, promulgated under Decree No.39 of the Ministry of Land and Resources and effective November 1, 2007)

第一条 为规范国有建设用地使用权出让行为，优化土地资源配
置，建立公开、公平、公正的土地
使用制度，根据《中华人民共和国
物权法》、《中华人民共和国土地
管理法》、《中华人民共和国城市
房地产管理法》和《中华人民共和
国土地管理法实施条例》，制定本

Article 1 In order to regulate the grant of use right of state-owned land for construction purposes, optimize the allocation of land resources and establish an open, fair and impartial system for land use, the present Provisions are enacted according to the "Real Right Law of People's Republic of China", the "Land Administration Law of People's Republic of China", the "Urban Real Estate Administration Law of People's Republic of China" and the Implementing Regulations for the Land Administration Law of People's Republic of China."

规定。

第二条 在中华人民共和国境内以招标、拍卖或者挂牌出让方式在土地的地表、地上或者地下设立国有建设用地使用权的，适用本规定。

本规定所称招标出让国有建设用地使用权，是指市、县人民政府国土资源行政主管部门（以下简称出让人）发布招标公告，邀请特定或者不特定的自然人、法人和其他组织参加国有建设用地使用权投标，根据投标结果确定国有建设用地使用权人的行为。

本规定所称拍卖出让国有建设用地使用权，是指出让人发布拍卖公告，由竞买人在指定时间、地点进行公开竞价，根据出价结果确定国有建设用地使用权人的行为。

本规定所称挂牌出让国有建设用地使用权，是指出让人发布挂牌公告，按公告规定的期限将拟出让宗地的交易条件在指定的土地交易

Article 2 These Provisions apply to the grant of use right of state-owned land for construction purposes, by means of bidding, auction, or quotation; the land use right may be set up on surface of the land, above the land, or under the surface of the land within the territory of the People's Republic of China. For the purpose of these Provisions, the term "grant of use right of state-owned land for construction purposes through bidding" means that the administrative department of land and resources of a people's government at the municipal or county level (hereinafter referred to as the "Grantor") makes an announcement to invite specified or unspecified natural persons, legal persons or other organizations to bid for the right to use state-owned land for construction purposes, and determines the holder of such right on the basis of the bidding results.

For the purpose of these Provisions, the term "grant of use right of state-owned land for construction purposes through auction" means the Grantor makes an auction announcement, the bidders conduct public bidding at a designated place and time, and the Grantor then determines the holder of such right on the basis of the bidding results.

For the purpose of these Provisions, the term "grant of use right of state-owned land for construction purposes through quotation" means the Grantor publishes a quotation announcement, publicizes the transaction conditions and lists "the land parcels to be granted" on the designated land trading places within the time limit specified in the announcement, accepts the quotes of bidders and updates the quotation price, and determines the holder of such right on the basis of the quotes at the end of the quotation period or makes decision on the basis of the quotes on site.

场所挂牌公布，接受竞买人的报价申请并更新挂牌价格，根据挂牌期限截止时的出价结果或者现场竞价结果确定国有建设用地使用权人的行为。

第三条 招标、拍卖或者挂牌出让国有建设用地使用权，应当遵循公开、公平、公正和诚信的原则。

第四条 工业、商业、旅游、娱乐和商品住宅等经营性用地以及同一宗地有两个以上意向用地者的，应当以招标、拍卖或者挂牌方式出让。

前款规定的工业用地包括仓储用地，但不包括采矿用地。

第五条 国有建设用地使用权招标、拍卖或者挂牌出让活动，应当有计划地进行。

市、县人民政府国土资源行政主管部门根据经济社会发展计划、产业政策、土地利用总体规划、土

Article 3 The grant of use right of state-owned land for construction purposes by means of tendering, auction or quotation shall follow the principles of open, fair, impartial and honest.

Article 4 The grant of land use right for business operation such as industry, business, tourism, entertainment or commercial residence, etc., or the grant of use right for the land falling under the circumstance where the same parcel of land has received interests from two or more land users shall be carried out by means of bidding, auction or quotation. The term "land for industry purposes" as mentioned in the preceding paragraph shall include the land for storage but exclude the land for mining.

Article 5 The activities for the grant of use right of state-owned land for construction purposes by means of bidding, auction or quotation shall be carried out in a planned way. The administrative department of land and resources under a people's government at the municipal or county level shall, according to the plan for economic and social development, industrial policies, overall planning for land use, annual plan for land use, urban planning and situation of land market, formulate the annual plan for the grant of use right of state-owned land for construction purposes, report it to the people's government at the same level for

地利用年度计划、城市规划和土地市场状况，编制国有建设用地使用权出让年度计划，报经同级人民政府批准后，及时向社会公开发布。

approval, and publicize it to the society in a timely manner.

第六条 市、县人民政府国土

资源行政主管部门应当按照出让年度计划，会同城市规划等有关部门共同拟订拟招标采购挂牌出让地块的出让方案，报经市、县人民政府批准后，由市、县人民政府国土资源行政主管部门组织实施。

Article 6 The administrative department of land and resources under a people's government at the municipal or county level shall, according to the annual plan for grant of land use, draw up a plan for grant of land parcels by means of bidding, auction or quotation in conjunction with the urban planning department and other relevant authorities. Once the plan is approved by the people's government at the municipal or county level under the people's government, the administrative department of land and resources under the people's government at the municipal or county level shall organize the implementation of it. The plan for grant of land use right as mentioned in the preceding paragraph shall include the spatial scope, purpose of use, term, way of grant, time limit and other conditions of the land parcel.

前款规定的出让方案应当包括出让地块的空间范围、用途、年限、出让方式、时间和其他条件等。

第七条 出让人应当根据招

标拍卖挂牌出让地块的情况，编制招标采购挂牌出让文件。

Article 7 The Grantor shall, in accordance with the situation of the land to be granted through bidding, auction or quotation, prepare documents for the grant of land use right through bidding, auction or quotation. The documents for the grant of land use right by means of bidding, auction or quotation shall include announcement for grant, instructions for bidding, conditions for land use, bidding document or auction bidding application, quotation, bid winning notice or sales confirmation, and the contract for grant of use right of the state-owned land for construction purposes.

招标采购挂牌出让文件应当包括出让公告、投标或者竞买须知、土地使用条件、标书或者竞买申请书、报价单、中标通知书或者成交确认书、国有建设用地使用权出让

合同文本。

第八条 出让人应当至少在投标、拍卖或者挂牌开始日前 20 日，在土地有形市场或者指定的场所、媒介发布招标、拍卖或者挂牌公告，公布招标采购挂牌出让宗地的基本情况和招标采购挂牌的时间、地点。

Article 8 The Grantor shall, at least 20 days prior to the commencement date of bidding, auction or quotation, issue the announcement for bidding, auction or quotation at the tangible land market or the place or medium designated, making public the basic information of the land to be granted through bidding, auction or quotation and its time and place.

第九条 招标采购挂牌公告应当包括下列内容：

Article 9 The announcement of bidding, auction or quotation shall include the following contents: (I) the name and address of the Grantor;

（一）出让人的名称和地址；

(II) the area, site, space scope, actual situation, term of use, purpose of use as well as the requirements of the planning indicators of the land to be granted;

（二）出让宗地的面积、界址、空间范围、现状、使用年期、用途、规划指标要求；

(III) the requirements for the qualification of the bidder or buyer and the method of applying for the qualification for bidding or purchase;

（三）投标人、竞买人的资格要求以及申请取得投标、竞买资格的办法；

(IV) the time, place and way of obtaining documents for grant of land use right by means of bidding, auction or quotation;

（四）索取招标采购挂牌出让文件的时间、地点和方式；

(V) the time and place of bidding, time limit for auction or quotation, the method of bidding or auction, etc.;

(VI) the criteria and method for determining the winning bidder or buyer;

（五）招标采购挂牌时间、地点、投标挂牌期限、投标和竞价方

(VII) the deposit for bidding or purchase; and

(VIII) any other matter that requires announcement.

式等；

（六）确定中标人、竞得人的

标准和方法；

（七）投标、竞买保证金；

（八）其他需要公告的事项。

第十条 市、县人民政府国土资源行政主管部门应当根据土地估价结果和政府产业政策综合确定标底或者底价。标底或者底价不得低于国家规定的最低价标准。

确定招标标底，拍卖和挂牌的起叫价、起始价、底价，投标、竞买保证金，应当实行集体决策。

招标标底和拍卖挂牌的底价，在招标开标前和拍卖挂牌出让活动结束之前应当保密。

Article 10 The competent administrative department of land and resources under a people's government at the municipal or county level shall, in light of the result of land evaluation and the industrial policies of the government, comprehensively determine the minimum limit on bids or the base price. The minimum limit on bids or the base price shall not be lower than the minimum price as prescribed by the state. The determination of the minimum limit on bids, the starting price of auction, the starting price of quotation, base price for auction or quotation, and the deposit for bidding and auction shall be subject to collective decision-making.

The minimum limit on bids, auction or quotation shall be kept confidential before the bids are opened and before the grant of land use right by auction or quotation is completed.

第十一条 中华人民共和国境内外的自然人、法人和其他组织，除法律、法规另有规定外，均可申请参加国有建设用地使用权招标投标挂牌出让活动。

Article 11 Any natural person, legal person or any other organization within or outside the territory of the People's Republic of China may apply for participating in the grant of use right of the state-owned land for construction purposes by means of bidding, auction or quotation, unless it is otherwise prescribed in any law or regulation. The Grantor shall not set restrictive conditions which may affect the fair and impartial competition in the grant of land use right by means of

出让人在招标采购挂牌出让公告中不得设定影响公平、公正竞争的限制条件。挂牌出让的，出让公告中规定的申请截止时间，应当为挂牌出让结束日前 2 天。对符合招标采购挂牌公告规定条件的申请人，出让人应当通知其参加招标采购挂牌活动。

bidding, auction or quotation. For grant of land use right by quotation, the cut-off date for application as specified in the announcement for quotation shall be 2 days before the end of quotation. With respect to the applicants that meet the requirements as specified in the announcement of bidding, auction or quotation, the Grantor shall notify them to participate in the activities of bidding, auction or quotation.

第十二条 市、县人民政府国土资源行政主管部门应当为投标人、竞买人查询拟出让土地的有关情况提供便利。

Article 12 The administrative department of land and resources of a people's government at the municipal or county level shall provide convenience for the bidders or buyers to inquire about the relevant information about the land to be granted.

第十三条 投标、开标依照下列程序进行：

Article 13 Bidding and bid opening shall be conducted in accordance with the following procedures: (I) The bidders shall put their bidding documents into the bid box before the deadline for bidding. Where it is allowed to send the bidding documents by mail, the bidders may send their bidding documents by mail. The bidding documents shall not be valid unless they are received by the Grantor before the deadline.

（一）投标人在投标截止时间前将标书投入标箱。招标公告允许邮寄标书的，投标人可以邮寄，但出让人在投标截止时间前收到的方为有效。

The bidding document may not be withdrawn after it is put into the bid box. The bidder shall be responsible for its bidding document and relevant written commitments.

标书投入标箱后，不可撤回。投标人应当对标书和有关书面承诺承担责任。

(II) The Grantor shall, in accordance with the time and place as specified in the announcement on invitation for bid, invite all bidder bidders to open the bids. The bidders or the representatives elected by them shall examine the sealing status of the bid box, open it in public and count the bidding documents. Where there are fewer than three bidders, the Grantor shall terminate the

（二）出让人按照招标公告规定的时间、地点开标，邀请所有投标人参加。由投标人或者其推选的代表检查标箱的密封情况，当众开启标箱，点算标书。投标人少于三人的，出让人应当终止招标活动。投标人不少于三人的，应当逐一宣布投标人名称、投标价格和投标文件的主要内容。

（三）评标小组进行评标。评标小组由出让人代表、有关专家组成，成员人数为五人以上的单数。

评标小组可以要求投标人对投标文件作出必要的澄清或者说明，但是澄清或者说明不得超出投标文件的范围或者改变投标文件的实质性内容。

评标小组应当按照招标文件确定的评标标准和方法，对投标文件进行评审。

（四）招标人根据评标结果，确定中标人。

bidding. Where there are no fewer than three bidders, the names of each bidder, the bid price and the main contents of the bidding documents shall be announced one by one.

(III) The bid evaluation group shall evaluate the bids. The bid evaluation group shall be composed of the representative of the Grantor and the relevant experts, and the number of the members shall be an odd number of more than five.

The bid evaluation group may require a bidder to make necessary clarification or explanation on its bidding documents, however, such clarification or explanation shall not exceed the scope of the bidding documents or change the substantive contents thereof.

The bid evaluation group shall evaluate the bidding documents in accordance with the bid evaluation standards and methods as specified in the bid invitation documents.

(IV) The bid inviter shall, on the basis of the results of bid evaluation, determine the bid winner.

Where the bid winner is determined under the principle that "one who offers the highest price wins", it is not required to set up a bid evaluation group. The bidding host bidding shall, on the basis of the results of bid opening, determine the bid winner.

按照价高者得的原则确定中标人的，可以不成立评标小组，由招标主持人根据开标结果，确定中标人。

第十四条 对能够最大限度地满足招标文件中规定的各项综合评价标准，或者能够满足招标文件的实质性要求且价格最高的投标人，应当确定为中标人。

Article 14 The bidder who can meet the various comprehensive evaluation standards as specified in the bid invitation documents to the greatest extent, or can meet the substantive requirements as specified in the bid invitation documents and offers the highest price shall be determined as the bid winner.

第十五条 拍卖会依照下列程序进行：

- （一）主持人点算竞买人；
- （二）主持人介绍拍卖宗地的面积、界址、空间范围、现状、用途、使用年期、规划指标要求、开工和竣工时间以及其他有关事项；
- （三）主持人宣布起叫价和增价规则及增价幅度。没有底价的，应当明确提示；
- （四）主持人报出起叫价；
- （五）竞买人举牌应价或者报

Article 15 An auction shall be directed under the following procedures: (I) The auction host counts the bidders;

(II) The auction host introduces the area, site, space scope, current situation, purpose of use, term of use, requirements of the planning indicators, date of commencement of construction, date of completion of construction and other relevant matters relating to the land to be granted through auction;

(III) The auction host announces the starting price, the price-increasing rules and the extent of price-increasing. If there is no base price, it shall be clearly indicated;

(IV) The auction host announces the starting price;

(V) The bidders put up a placard to respond or make an offer;

(VI) The auction host confirms the response or offer and continues the auction;

(VII) Where the auction host calls the same response or offer for continuous 3 times but there is no more response or offer, the auction host drops the hammer to indicate a deal is made; and

价；

(VIII) The auction host announces that the bidder who responses with the highest price or makes the highest offer is the winner of the auction.

（六）主持人确认该应价或者

报价后继续竞价；

（七）主持人连续三次宣布同

一应价或者报价而没有再应价或者

报价的，主持人落槌表示拍卖成

交；

（八）主持人宣布最高应价或

者报价者为竞得人。

第十六条 竞买人的最高应价

或者报价未达到底价时，主持人应当终止拍卖。

Article 16 Where the highest response or offer fails to reach the base price, the auction host shall terminate the auction. The auction host may, in the process of auction, adjust the extent of price-increasing according to the bidding situation.

拍卖主持人在拍卖中可以根据

竞买人竞价情况调整拍卖增价幅度。

第十七条 挂牌依照以下程序

进行：

Article 17 A quotation shall be directed under the following procedures:

(I) On the first day of the quotation as specified in the quotation announcement, the Grantor announces the area, site, space scope, current situation, purpose of use, term of use, requirements of the planning indicators, date of commencement of construction, date of completion of construction, starting price, price-increasing rules and the extent of price-increasing for the land to be granted through quotation, at the land trading place as specified in the quotation announcement;

（一）在挂牌公告规定的挂牌

起始日，出让人将挂牌宗地的面

积、界址、空间范围、现状、用

途、使用年期、规划指标要求、开

工时间和竣工时间、起始价、增价规则及增价幅度等，在挂牌公告规定的土地交易场所挂牌公布；

(II) The bidders that meet the relevant conditions fill in the quotation sheet and give their quotes;

(III) The quotation host confirms the quotes and renews the quotation price; and

（二）符合条件的竞买人填写报价单报价；

(IV) The quotation host determines the winner of the quotation by the deadline as specified in the quotation announcement;

（三）挂牌主持人确认该报价后，更新显示挂牌价格；

（四）挂牌主持人在挂牌公告规定的挂牌截止时间确定竞得人。

第十八条 挂牌时间不得少于10日。挂牌期间可根据竞买人竞价情况调整增价幅度。

Article 18 The period of quotation shall be no fewer than 10 days. The extent of price-increasing may be adjusted based on the bidding situation during the listing period.

第十九条 挂牌截止应当由挂牌主持人主持确定。挂牌期限届满，挂牌主持人现场宣布最高报价及其报价者，并询问竞买人是否愿意继续竞价。有竞买人表示愿意继续竞价的，挂牌出让转入现场竞价，通过现场竞价确定竞得人。挂牌主持人连续三次报出最高挂牌价格，没有竞买人表示愿意继续竞价的，按照下列规定确定是否成交：

Article 19 The quotation host shall confirm the ending of quotation. Once the quotation term is expired, the quotation host shall announce on the spot the highest quote and the bidder who offers that quote, and asks if any bidder intends to continue the quotation; if there is a bidder who intends to continue the quotation, the grant of land use right by quotation shall be transformed into on-site bidding, by which the quotation winner should be determined. Where the quotation host declares a highest quote for continuous 3 times, and if no bidder indicates any intent to continue the quotation, the following provisions should be applied in order to determine whether a deal is made: (I) Where only one bidder offers a quote within the quotation term, the quote is not lower than the base price, and other conditions are met, a deal is made;

(II) Where two or more bidders offer quotes within the quotation

（一）在挂牌期限内只有一个竞买人报价，且报价不低于底价，并符合其他条件的，挂牌成交；

（二）在挂牌期限内有两个或者两个以上的竞买人报价的，出价最高者为竞得人；报价相同的，先提交报价单者为竞得人，但报价低于底价者除外；

（三）在挂牌期限内无应价者或者竞买人的报价均低于底价或者均不符合其他条件的，挂牌不成交。

term, the bidder who offers the highest quote is the quotation winner; where quotes are all the same, the bidder who submits the quotation sheet first is the quotation winner, unless the quote is lower than the base price; or

(III) Where no bidder offers quotes within the quotation term, or the price offered by the bidder is lower than the base price, or no bidder meets the others conditions, it should be concluded that no deal is made in the quotation.

第二十条 以招标、拍卖或者挂牌方式确定中标人、竞得人后，中标人、竞得人支付的投标、竞买保证金，转作受让地块的定金。出让人应当向中标人发出中标通知书或者与竞得人签订成交确认书。

中标通知书或者成交确认书应当包括出让人和中标人或者竞得人的名称，出让标的，成交时间、地点、价款以及签订国有建设用地使用权出让合同的时间、地点等内

Article 20 Where the bid winner is determined by means of bidding, auction or quotation, the deposit paid by the bid winner should be transformed as the earnest money for the granted land. The Grantor shall issue a notice of bid winning to the bid winner, or conclude a deal confirmation with the bid winner. The notice of bid winning or deal confirmation shall state the names of the Grantor and the bid winner, the granted land, the time, place and price of the deal, as well as the time and place for the contract of the grant of use right of the state-owned land for construction purposes.

The notice of bid winning or deal confirmation shall be binding upon the Grantor and the bid winner. Where the Grantor changes the bidding results, or the bid winner gives up the land it wins, it should bear corresponding liability in accordance with the law.

容。

中标通知书或者成交确认书对出让人和中标人或者竞得人具有法律效力。出让人改变竞得结果，或者中标人、竞得人放弃中标宗地、竞得宗地的，应当依法承担责任。

第二十一条 中标人、竞得人应当按照中标通知书或者成交确认书约定的时间，与出让人签订国有建设用地使用权出让合同。中标人、竞得人支付的投标、竞买保证金抵作土地出让价款；其他投标人、竞买人支付的投标、竞买保证金，出让人必须在招标投标挂牌活动结束后 5 个工作日内予以退还，不计利息。

第二十二条 招标投标挂牌活动结束后，出让人应在 10 个工作日内将招标投标挂牌出让结果在土地有形市场或者指定的场所、媒介公布。

出让人公布出让结果，不得向受让人收取费用。

Article 21 The bid winner shall, in accordance with the time as specified in the notice of bid winning or deal confirmation, conclude a contract for the grant of use right of state-owned land for construction purposes with the Grantor. The deposit paid by the bid winner should offset the price for grant of land use right; the deposit paid by other bidders shall be refunded by the Grantor within 5 working days after the conclusion of the bidding , auction or quotation, without any interest accrued.

Article 22 After the conclusion of the bidding, auction or quotation, the Grantor shall, within 10 working days, publicize the result thereof in the tangible land market or the designated place or media. The Grantor publicizes the result of grant of land use right, and should not charge fees from the grantee.

第二十三条 受让人依照国有建设用地使用权出让合同的约定付清全部土地出让价款后，方可申请办理土地登记，领取国有建设用地使用权证书。

未按出让合同约定缴清全部土地出让价款的，不得发放国有建设用地使用权证书，也不得按出让价款缴纳比例分割发放国有建设用地使用权证书。

第二十四条 应当以招标投标挂牌方式出让国有建设用地使用权而擅自采用协议方式出让的，对直接负责的主管人员和其他直接责任人员依法给予处分；构成犯罪的，依法追究刑事责任。

第二十五条 中标人、竞得人有下列行为之一的，中标、竞得结果无效；造成损失的，应当依法承担赔偿责任：

（一）提供虚假文件隐瞒事实的；

Article 23 The grantee may apply for land registration and obtain the certificate to use state-owned land for construction purposes only after it has paid off the grant of land use right in accordance with the contract for the grant of land. If the grantee fails to pay off the grant of land use right in accordance with the contract for the grant of land, the Grantor shall not issue the certificate to use state-owned land for construction purposes, and shall not issue such certificate in proportion to the partial payment for the grant of land use right.

Article 24 Where the right to use state-owned land for construction purposes shall be granted by means of bidding, auction or quotation, but has been granted under an agreement without authorization, the person in charge and other directly liable persons shall be punished in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 25 Where the bid winner commits any of the following acts, the winning result shall be invalid; where any losses are caused, the bid winner shall bear the liability for compensation in accordance with the law: (I) providing false documents to conceal facts; or

(II) winning the bid by illegal means such as bribery or malicious collusion.

（二）采取行贿、恶意串通等

非法手段中标或者竞得的。

第二十六条 国土资源行政主管部门的工作人员在招标投标挂牌出让活动中玩忽职守、滥用职权、徇私舞弊的，依法给予处分；构成犯罪的，依法追究刑事责任。

Article 26 Where any functionary of an administrative department of land and resources neglects his/her duties, abuses his/her power or commits irregularities for personal gains in the course of grant of land use right by bidding, auction or quotation, such functionary shall be punished in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

第二十七条 以招标投标挂牌方式租赁国有建设用地使用权的，参照本规定执行。

Article 27 These Provisions shall apply mutatis mutandis to the lease of the right to use state-owned land for construction purpose by means of bidding, auction or quotation.

第二十八条 本规定自 2007 年 11 月 1 日起施行。

Article 28 These Provisions shall enter into force as of November 1, 2007.



扫一扫，手机阅读更方便