

Order of the Ministry of Land and Resources of the People's Republic of China

No. 39

The Provisions on the Grant of State-owned Construction Land Use Rights by Tender, Auction and Listing, as revised and adopted at the third ministerial meeting of the Ministry of Land and Resources on 21 September 2007, are hereby promulgated and shall come into force as of 1 November 2007.

Minister: Xu Shaoshi

28 September 2007

Provisions on the Grant of State-owned Construction Land Use Rights by Tender, Auction and Listing

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

Article 1 These Provisions are formulated in accordance with the Property Law of the People's Republic of China, the Land Administration Law of the People's Republic of China, the Urban Real Estate Administration Law of the People's Republic of China and the Implementing Regulations of the Land Administration Law of the People's Republic of China, for the purposes of regulating the grant of State-owned construction land use rights, optimizing the allocation of land resources, and establishing an open, fair and impartial land use system.

Article 2 These Provisions shall apply to the grant, within the territory of the People's Republic of China, of State-owned construction land use rights on the surface, above the surface or below the surface of land by way of tender, auction or listing.

For the purposes of these Provisions, grant of State-owned construction land use rights by tender means the act whereby the land grantor issues a tender announcement, invites specified or unspecified natural persons, legal persons and other organizations to participate in bidding for State-owned construction land use rights, and determines the holder of the State-owned construction land use rights based on the bidding results.

For the purposes of these Provisions, grant of State-owned construction land use rights by auction means the act whereby the land grantor issues an auction announcement, and bidders conduct open bidding at a designated time and place, with the holder of the State-owned construction land use rights determined based on the bidding result.

For the purposes of these Provisions, grant of State-owned construction land use rights by listing means the act whereby the land grantor issues a listing announcement, publishes the transaction conditions of the land parcel to be granted at a designated land exchange venue within the period specified in the announcement, accepts bidders' applications for quotation and updates the listing price, and determines the holder of the State-owned construction land use rights based on the quotation result or the on-site bidding result at the end of the listing period.

Article 3 The grant of State-owned construction land use rights by tender, auction or listing shall follow the principles of openness, fairness, impartiality and good faith.

Article 4 Industrial, commercial, tourism, entertainment and commodity residential land, and land for which there are two or more intended users for the same parcel, shall be granted by way of tender, auction or listing.

Industrial land as provided in the preceding paragraph includes warehousing land, but does not include mining land.

Article 5 The grant of State-owned construction land use rights by tender, auction or listing shall be carried out in a planned manner.

Article 6 The competent departments of land and resources administration of municipal and county people's governments shall, in light of economic and social development plans, industrial policies, the overall land use plan, the annual land use plan, urban planning and land market conditions, prepare annual plans for the grant of State-owned construction land use rights and, after approval by the municipal or county people's government, release them to the public in a timely manner.

Article 7 The competent departments of land and resources administration of municipal and county people's governments shall, in accordance with the annual grant plan, urban planning and other relevant requirements, jointly prepare, together with departments such as urban planning, a grant plan for the parcel to be granted by tender, auction or listing, and submit it for approval by the municipal or county people's government in accordance with the authority for approval of grants of State-owned construction land use rights.

The grant plan referred to in the preceding paragraph shall include the spatial scope, use, term, method of grant, time and other conditions of the parcel to be granted.

Article 8 The land grantor shall prepare the tender, auction or listing documents according to the circumstances of the parcel to be granted by tender, auction or listing.

The tender, auction or listing documents shall include the grant announcement, tender or auction instructions, land use conditions, bid or bidding application forms, quotation forms, bid-winning confirmation or transaction confirmation, and the text of the State-owned construction land use right grant contract.

Article 9 The land grantor shall, at least 20 days before the commencement of the tender, auction or listing, publish a tender, auction or listing announcement on the land tangible market or designated venues or through media, announcing the basic particulars of the parcel to be granted by tender, auction or listing and the time and place of the tender, auction or listing.

Article 10 The tender, auction or listing announcement shall include the following particulars:

- (1) the name and address of the land grantor;
- (2) the area, boundaries, spatial scope, current status, land use term, permitted use and planning requirements of the parcel to be granted;
- (3) qualification requirements for bidders and applicants, and the method for applying for bid or bidding qualifications;
- (4) the time, place and method for obtaining the tender, auction or listing grant documents;
- (5) the time and place of the tender, auction or listing, the listing period, and the method of bidding or quotation;
- (6) the criteria and method for determining the bid winner or successful bidder;
- (7) the bid deposit or bidding deposit; and
- (8) any other matters that need to be announced.

Article 11 The competent departments of land and resources administration of municipal and county people's governments shall, on the basis of land valuation results and government industrial policies, comprehensively determine the base price or reserve price.

The base price or reserve price must not be lower than the minimum price standard prescribed by the State.

In determining the tender base price, auction or listing starting price, reserve price, and bid or bidding deposit, collective decision-making shall be implemented.

The tender base price and the reserve price for auction or listing shall be kept confidential before the opening of tenders and before the completion of the auction or listing grant activity.

Article 12 Natural persons, legal persons and other organizations within and outside the territory of the People's Republic of China may, unless otherwise provided by laws or regulations, apply to participate in the tender, auction

or listing grant activities for State-owned construction land use rights.

The land grantor shall not set restrictions affecting fair and impartial competition in the tender, auction or listing announcement. Where grant is made by listing, the application deadline specified in the listing announcement shall be two days before the end of the listing period. Applicants who meet the conditions specified in the tender, auction or listing announcement shall be notified by the land grantor to participate in the tender, auction or listing activity.

Article 13 The competent departments of land and resources administration of municipal and county people's governments shall provide convenience for bidders and applicants to inquire about the relevant particulars of the parcel to be granted.

Article 14 Tender, bid opening and bid evaluation shall be conducted according to the following procedures:

(1) A bidder shall submit the bid documents into the bid box before the tender deadline. Where the tender announcement permits bids by mail, a bidder may mail the bid documents; however, only documents received by the land grantor before the tender deadline shall be valid.

After the bid documents are placed in the bid box, they may not be withdrawn. The bidder shall be responsible for the bid documents and the relevant written undertakings.

(2) The land grantor shall open the bids at the time and place specified in the tender announcement and invite all bidders to attend. The presider shall count the bid documents, announce the results of the counting, open the envelopes and announce the names of the bidders, bid prices and the main contents of the bid documents one by one. Where there are fewer than three bidders, the land grantor shall terminate the tender activity.

(3) The bid evaluation panel shall conduct bid evaluation. The bid evaluation panel shall consist of representatives of the land grantor and relevant experts, with at least five members.

The bid evaluation panel may require bidders to provide necessary clarification or explanations regarding the bid documents, but such clarification or explanations must not exceed the scope of the bid documents or change the substantive contents of the bid documents.

The bid evaluation panel shall evaluate bid documents in accordance with the bid evaluation standards and methods determined in the tender documents.

(4) The land grantor shall determine the bid winner based on the bid evaluation result. Where the bid winner is determined in accordance with the principle of the highest bidder, a bid evaluation panel may be dispensed with, and the bid winner may be determined by the tender presider based on the bid opening results.

Article 15 Auction shall be conducted according to the following procedures:

(1) The presider shall count the bidders.

(2) The presider shall introduce the area, boundaries, spatial scope, current status, use, land use term, planning indicators and requirements of the auctioned parcel, and other relevant matters.

(3) The presider shall announce the starting price, reserve price and rules for price increase and the price increment. Where there is no reserve price, this shall be expressly stated.

(4) The presider shall state the starting price.

(5) Bidders shall raise their number cards to bid or quote.

(6) The presider shall confirm the bid or quotation and continue the bidding.

(7) Where the presider announces the same bid or quotation three consecutive times without another bid or quotation, the presider shall strike the gavel to indicate the auction is concluded.

(8) The presider shall announce that the bidder with the highest bid or quotation is the successful bidder.

Article 16 Where the highest bid or quotation from a bidder fails to reach the reserve price, the presider shall terminate the auction.

During the auction, the presider may adjust the price increment according to the bidding circumstances of the bidders.

Article 17 Listing shall be conducted according to the following procedures:

- (1) On the listing commencement date specified in the listing announcement, the land grantor shall publish the area, boundaries, spatial scope, current status, use, land use term, planning indicators and requirements, commencement and closing times, starting price, price increment and other particulars of the listed parcel at the land exchange venue specified in the listing announcement.
- (2) Qualified bidders shall complete the quotation form and submit a quotation.
- (3) After the listing presider confirms the quotation, the listing price shall be updated and displayed.
- (4) The listing presider shall determine the successful bidder at the listing deadline specified in the listing announcement.

Article 18 The listing period shall not be less than ten days. During the listing period, the price increment may be adjusted according to the bidding circumstances of bidders.

Article 19 The listing deadline shall be determined by the listing presider. At the expiry of the listing period, the listing presider shall announce on site the highest quotation and the bidder who made that quotation, and inquire whether the bidders are willing to continue bidding. Where a bidder indicates willingness to continue bidding, the listing grant shall be transferred into on-site bidding, and the successful bidder shall be determined through on-site bidding. If the listing presider announces the highest quotation and the bidder who made that quotation for three consecutive times and no bidder expresses willingness to continue bidding, the listing presider shall determine whether the transaction is concluded in accordance with the following provisions:

- (1) Where only one bidder submits a quotation during the listing period, and the quotation is not lower than the reserve price and meets other conditions, the listing transaction shall be concluded.
- (2) Where two or more bidders submit quotations during the listing period, the bidder with the highest quotation shall be the successful bidder; where the quotations are the same, the bidder who submitted the quotation first shall be the successful bidder, except where the quotation is below the reserve price.
- (3) Where no bidder submits a quotation during the listing period, or the bidders' quotations are below the reserve price or otherwise fail to meet the conditions, the listing transaction shall not be concluded.

Article 20 After a bid winner or successful bidder is determined by tender, auction or listing, the bid winner or successful bidder shall sign a written confirmation of transaction with the land grantor on the spot. The bid-winning confirmation or transaction confirmation shall include the names of the land grantor and the bid winner or successful bidder, the subject matter granted, the time and place of the transaction, the price, and the time and place for signing the State-owned construction land use right grant contract.

The bid-winning confirmation or transaction confirmation shall have legal effect on both the land grantor and the bid winner or successful bidder. Where the land grantor changes the bid-winning or transaction result, or the bid winner or successful bidder abandons the bid-winning parcel or the parcel won, it shall bear liability according to law.

Article 21 The bid winner or successful bidder shall sign the State-owned construction land use right grant contract with the land grantor in accordance with the time agreed in the bid-winning confirmation or transaction confirmation. The bid or bidding deposit paid by the bid winner or successful bidder shall offset the land grant price; any bid or bidding deposits paid by other bidders shall be refunded in full by the land grantor within five working days after the completion of the tender, auction or listing grant activity, without interest.

Article 22 After the tender, auction or listing activity has ended, the land grantor shall publish the grant result within ten working days on the land tangible market or designated venues or through media.

The land grantor shall not charge fees to the assignee for publishing the grant result.

Article 23 Only after the assignee has paid the entire land grant price in accordance with the State-owned construction land use right grant contract may it apply for land registration and obtain the State-owned construction land use right certificate.

Where the entire land grant price has not been paid in accordance with the grant contract, the State-owned construction land use right certificate shall not be issued, and the land use right certificate shall not be issued in proportion to the amount of the grant price paid.

Article 24 Where the grant of State-owned construction land use rights that should be made by tender, auction or listing is instead made by agreement without authorization, the directly responsible persons in charge and other directly responsible persons shall be disciplined according to law; where a crime is constituted, criminal liability shall be investigated according to law.

Article 25 Where a bid winner or successful bidder commits any of the following acts, the result of the bid winning or successful bidding shall be invalid; where losses are caused, it shall bear compensation liability according to law:

- (1) providing false documents to conceal facts; or
- (2) winning the bid or successful bidding through illegal means such as offering or accepting bribes or colluding maliciously.

Article 26 Where staff members of the competent departments of land and resources administration neglect their duties, abuse their powers or engage in malpractice for personal gain in tender, auction or listing grant activities, they shall be disciplined according to law; where a crime is constituted, criminal liability shall be investigated according to law.

Article 27 Where State-owned construction land use rights are leased by way of tender, auction or listing, these Provisions shall apply mutatis mutandis.

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