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A Study on the Fair Competition Review System in China's Public Procurement Field

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Abstract

This study examines the institutional design of China's fair competition review system in public procurement, focusing on resolving normative conflicts among the *Government Procurement Law*, *Anti-Monopoly Law*, and *Bidding Law*. By integrating theoretical analysis with comparative insights from EU and OECD practices, we propose a "coordination-through-exclusion" governance model. This model employs systematic exclusion mechanisms at the policy-design stage to reduce legal overlaps and administrative monopoly risks, shifting regulatory focus from post hoc correction to proactive coordination. Its key contribution lies in providing actionable solutions to streamline China's procurement processes while offering transitional economies a policy framework to balance regulation and market fairness.

Keywords: fair competition, public procurement, legal governance, system improvement, legal coordination

Evidence for Practice

- The fair competition review system should be embedded in the policy design phase of public procurement, employing a “coordination-through-exclusion” model to proactively address legal conflicts and reduce reliance on post hoc remedies.
- The respective regulatory domains of the Government Procurement Law, Bidding and Tendering Law, and Anti-Monopoly Law should be clarified using an exclusion-based framework, with a coordinated governance mechanism established to manage overlapping or compound anti-competitive behaviors.
- Linkage mechanisms between procurement oversight bodies and anti-monopoly enforcement agencies should be institutionalized to ensure accountability and remedial measures for anti-competitive practices such as regional protectionism and administrative favoritism.

- Drawing from EU and OECD experiences, reforms should promote transparency in procurement processes, including public disclosure of tender documents and evaluation criteria, to enhance procedural fairness and market predictability.
- A unified "Guidelines on Anti-Monopoly Compliance in Public Procurement" should be developed to standardize fair competition review indicators, reduce regulatory fragmentation, and harmonize enforcement practices.

For clarity, the following key legal terms are defined as used in this paper:

Administrative monopoly refers to the abuse of administrative power by governmental organs to restrict or distort market competition, including favoritism towards local enterprises or limiting cross-regional bidding.

Monopoly denotes the situation where one or more market players hold dominant market power, either due to economic concentration or regulatory favoritism.

Collusion refers to the coordinated or covert actions among suppliers—such as bid-rigging or market division—that undermine competitive bidding processes. (Unless specified otherwise).

In the legal system of public procurement in China, the legal governance of fair competition holds a significant position. The principle of fair competition has become one of the widely recognized and followed core principles in China's public procurement field. During the process of legal system construction in China, a series of legislative measures have been taken to establish and strengthen the principle of fair competition. Article 4 of the "Government Procurement Law" explicitly stipulates the principle of fair competition, demonstrating its fundamental status within the legal framework of government procurement. Subsequently, in 2016, China issued the "Opinions on Establishing a Fair Competition Review System in the Construction of Market Systems", initially establishing the institutional framework for fair competition review and providing a more systematic institutional guarantee for market entities to engage in fair competition in public procurement and other economic activities. In 2021, the "Detailed Rules for the Implementation of the Fair Competition Review System" were formulated, enhancing the operability and standardization of the fair competition review system. This marked a shift in China's economic market legal system construction, where the principle of fair competition moved from a general advocacy to a specific institutional constraint, becoming a basic guideline that all parties must follow in the operation of the economic market.

From the perspective of market transaction scale, by 2022, the total amount of public procurement in China had exceeded 48 trillion yuan, demonstrating the huge scale and vitality of the public procurement market in China's economic activities. Public procurement projects conducted through the national public resources trading platform cover multiple key areas, including engineering bidding and tendering, government procurement, land use rights transfer,

mining rights transfer, and state-owned property rights transactions. In that year, the number of trading projects reached 1.46 million, with a transaction value of 22 trillion yuan, representing a significant year-on-year growth of 21% and 8% in the number of transactions and transaction value, respectively. This growth trend fully reflects the strong momentum of the public procurement market in optimizing resource allocation and its broad development space. It also reflects the increasing enthusiasm and activity of various market entities in participating in public procurement transactions. Specifically, in the field of government procurement, the scale of government procurement nationwide in 2022 was 349.931 billion yuan. Although this was a reduction compared to the previous year, it still accounted for 9.4% and 2.9% of national fiscal expenditure and gross domestic product (GDP), respectively.(The above data is sourced from the book China Public Procurement Development Report (2022) authored by Han Dongya and Peng Xinliang).This indicates that government procurement holds an indispensable and important position in the use of fiscal funds and the macroeconomic operation in China. It is one of the important means for government to regulate the economy, provide public services, and promote social development. The large scale of government procurement and its proportion in the economic aggregate further highlight the significance of implementing the principle of fair competition in government procurement activities to ensure the rational use of fiscal funds and promote healthy economic development.

Based on the statistical data from the aforementioned literature, we can hypothesize the following: an average of 10 bidders participated per transaction project, with the total number of potential bidders estimated at 100 times the number of transaction projects (this assumption simplifies calculations, as the actual number of potential bidders is challenging to accurately quantify). In 2022, there were 1.46 million transaction projects, resulting in an estimated bidder participation rate of 10.0% (as illustrated in Formula 1 below). This suggests that market competition is inadequate, as a lower bidder participation rate may imply that market competition is not sufficiently robust. Potential bidders might have refrained from active participation due to various factors, such as excessively high entry barriers or information asymmetry. This formula is used to calculate the proportion of the actual number of bidders participating in the bidding to the total number of potential bidders, expressed as a percentage, reflecting the activity level of bidders and the degree of market competition.

Na (Number of Actual Bidders): Refers to the total number of bidders participating in the bidding for public procurement projects.

Np (Number of Potential Bidders): Refers to the total number of potential bidders who may participate in the bidding for public procurement projects.

In the special field of public procurement, how to effectively safeguard and fully achieve fair competition has long been an important legal topic of common concern and in-depth discussion among academia and practice. With the continuous expansion of the scale of public procurement, the increasing diversity of its forms, and the growing prominence of its role in economic and social development, it is particularly urgent to explore how to effectively implement the principle

of fair competition and to find the optimal institutional support and implementation path to fully utilize the functions of public procurement. This is not only an inherent requirement for optimizing the public procurement market environment and improving procurement efficiency but also an objective need for perfecting the legal system of the socialist market economy in China and maintaining market fair competition order. If the principle of fair competition cannot be effectively implemented in the legal system of public procurement, it will inevitably lead to a reduction in procurement efficiency. On the one hand, unfair competition behaviors will disrupt market order, preventing procurement prices from truly reflecting market value and affecting the quality and cost control of procurement projects. On the other hand, the lack of a fair competitive environment will undermine suppliers' enthusiasm and confidence in participating in public procurement, leading to the gradual exit of high-quality suppliers from the market and ultimately affecting the sustainable development of the public procurement market. At the same time, various procurement violations will be difficult to eliminate, and incidents that damage national interests, social public interests, and the legitimate rights and interests of market entities will occur frequently, seriously affecting government credibility and image.

This study systematically investigates institutional coordination pathways in China's public procurement sector by doctrinal legal and comparative analysis. Through deconstructing conflicting clauses in core legal texts such as the Government Procurement Law and Anti-Monopoly Law, and incorporating international experiences from the EU Public Procurement Directives and OECD competition policy toolkit, a "coordination-through-exclusion" governance framework is constructed. Centered on the policy-design phase, the methodology employs procedural clause screening tools to identify and eliminate discriminatory procurement rules. The research ultimately forms a closed-loop analytical chain spanning from normative deconstruction to institutional reconstruction.

Research Object

1) To analyze the current status of fair competition legal governance in public procurement. By systematically combing through China's laws, regulations, policy documents, and actual operation in the public procurement field, this research aims to explore the specific manifestations, development stages, and existing problems of fair competition legal governance in public procurement. It seeks to clarify the extent to which the principle of fair competition is safeguarded under the current legal framework, thereby laying a solid foundation and providing realistic evidence for subsequent research.

2) To construct a coordinated legal system for fair competition in public procurement. In response to the conflicts and contradictions between existing laws and regulations in the public procurement legal system, particularly the coordination challenges among the "Anti-Monopoly Law," "Government Procurement Law," and "Bidding and Tendering Law," this study aims to establish a scientific, rational, and effective legal coordination mechanism. It seeks to clarify the responsibilities and scope of application of each law in the governance of fair competition in public

procurement, unify legal standards and criteria for fair competition, and form a legal synergy. This will ensure that the principle of fair competition is consistently followed throughout the public procurement process, avoiding legal application vacuums or conflicts and enhancing the efficiency and fairness of legal implementation.

3) To explore optimization paths for achieving fair competition in public procurement. Considering the actual operation and future development trends of the public procurement market, this research will explore feasible optimization paths from multiple aspects, including system design, regulatory models, and procurement processes. It aims to propose innovative institutional arrangements and specific measures to enhance the operability and effectiveness of the principle of fair competition in public procurement. For example, designing more comprehensive systems for supplier qualification review, bidding evaluation methods, and contract management mechanisms; optimizing regulatory models to strengthen dynamic supervision of all procurement stages; and improving procurement processes to reduce opportunities for human intervention and unfair competition. These measures will comprehensively enhance the fairness, transparency, and efficiency of the public procurement market, promoting the rational allocation of public procurement resources and the maximization of public interests.

Research Significance

Theoretical Significance

Studying legal issues of fair competition in public procurement is of great theoretical significance for improving China's relevant legal theories and providing references for the formulation of legal policies and normative documents. Specifically, it offers a research foundation for ensuring the implementation of the principle of fair competition in the modern procurement legal environment and proposes a path for the construction of fair competition theory in line with the trends of public procurement legal governance based on scholars' research.

Firstly, this research helps to improve and develop legal theories of fair competition in public procurement. Starting from the perspective of how to build an overall implementation mechanism that adapts to practical changes in the principle of fair competition, while focusing on the fair competition review issues in the booming policy-based procurement, it provides beneficial references for the healthy development of public procurement rule of law.

Secondly, it offers a regulatory foundation for preventing and governing various anti-competitive behaviors in public procurement. The implementation of fair competition helps to address administrative monopolies and collusive bidding, providing theoretical grounds and practical guidance for the governance of these behaviors.

Practical Significance

Firstly, studying legal issues of fair competition in public procurement helps promote the establishment of a unified national market. The "Opinions on Accelerating the Construction of a Unified National Market" issued by the Central Government on April 10, 2022, emphasized the need to remove institutional obstacles to the implementation of the principle of fair competition. Ensuring that market entities across the country can participate in market economic activities on an equal and unified legal basis is an essential part of building a unified national market.

Secondly, this research helps improve the legal system of public procurement by providing guidance for the coordination and systematization of legal norms. It focuses on resolving differences and content discrepancies between legal norms, thereby safeguarding the rapid development of public procurement.

Thirdly, studying legal issues of fair competition in public procurement helps enhance procurement efficiency, solve the problem of high-cost and low-efficiency procurement, regulate procurement behavior, and provide systematic prevention and control strategies for addressing collusive bidding and local administrative monopolies and other illegal acts.

Review of Domestic and International Literature

Research on Legal Principles and Institutional Positioning

Progress in Domestic Research. Chinese scholars have provided multidimensional theoretical explanations of the legal positioning of the fair competition principle. Legislative bodies have established it as a core guideline for government procurement, emphasizing the achievement of procurement objectives through dual advantages of "competitive pricing" and "competitive quality." They also require participating entities to enjoy equal opportunities and status. Professor Ding Maozhong, from the perspective of the "competitive neutrality" policy, points out that this principle shares value homology with Australia's economic reform practices. He advocates retaining policy exception spaces in non-marketized procurement fields. Professor Chen Zhiyong incorporates the principle of fair competition into the framework of the "three public principles" and reveals its procedural priority characteristics through exception clauses in the "Government Procurement Law Implementation Regulations" and open bidding procedures.

International Theoretical Lessons. International academic circles have focused more on the policy neutrality of government procurement legal principles. Janna J. Hansen proposes that government procurement policies should eliminate differential treatment of specific bidders and ensure fair market access. Scholar Falvey emphasizes in competition policy theory that government procurement, as a macro-control tool, must premise maintaining the fairness of market competition. The EU's "Public Procurement Directive" (2014/24/EU) explicitly requires member states to establish a unified competition benchmark through the principles of "technical neutrality" and "non-discrimination in supplier qualifications," offering institutional references for China. In her dissertation, Sonickson, Melissa Levia, argues

for the intricate link between competition and public procurement, emphasizing that competition is distorted in illegal procurement processes and must be restored through competition law. South Africa's public procurement is governed by Section 217 of the Constitution, mandating fairness, equity, transparency, competitiveness, and cost-effectiveness in procurement processes. The Preferred Procurement Policy Framework Act (PPPFA) provides the legislative framework for implementing constitutionally compliant procurement policies. Decisions to award tenders are classified as administrative actions subject to judicial review under the Promotion of Administrative Justice Act (PAJA). While revocation of illegal tenders remains the primary remedy, courts retain discretion to determine applicability based on contextual factors. The author proposes amending PAJA to incorporate "anticompetitive conduct" as a valid ground for judicial review of administrative decisions in public procurement. Such amendment would enable application of competition law remedies to address competitive distortions when revocation of illegal procurement processes proves impractical or unjust.

Comparison and Enlightenment. Both domestic and international research acknowledge the foundational status of the principle of fair competition. However, international practices emphasize policy neutrality and institutional rigidity. China's tolerant attitude toward exceptional cases needs to be adjusted in a localized manner, incorporating the EU's "technical neutrality" standards to prevent policy exceptions from becoming institutional loopholes for administrative monopolies.

Research on Fair Competition Review Mechanisms

Progress in Domestic Research. China's fair competition review system is positioned as a neutral regulatory tool for standardizing government behavior. Professor Yuan Rixin notes that it possesses dual functions of economic security assurance and efficiency enhancement. Scholar Song Yixin emphasizes its supplementary value as a supporting institution to the "Anti-Monopoly Law." Professor Zhang Shouwen proposes from an economic law perspective that the core of the review system is to optimize resource allocation efficiency, but the current framework suffers from defects such as a narrow scope of review subjects and an unsound standard system. Professor Ding Maozhong recommends constructing a complete framework encompassing the essential structure, operational mechanisms, and management systems. Scholar Xu Shiying advocates for reinforcing the system's rigidity through reform of review authority allocation.

International Practice Benchmarks. The OECD's Competition Assessment Toolkit provides methodological support for review mechanisms. Its three-step approach of "identifying restrictive clauses—assessing competitive impacts—analyzing alternative options" ensures the scientific design of the system. Professor John R. Bartle addresses regulatory failure issues in the U.S. procurement sector, proposing that review standards must align closely with the characteristics of procurement behaviors. For instance, dynamic competitive monitoring should be implemented for electronic bidding and tendering platforms. Scholar Gabriella M. Racca advocates for building a non-discriminatory competitive

environment through bidding transparency mechanisms. EU practices indicate that publicly disclosing procurement documents, evaluation criteria, and reasons for awarding contracts can reduce the risk of administrative intervention.

Comparison and Enlightenment. International experience shows that the effectiveness of review mechanisms relies on the combination of standardized tools and dynamic monitoring. China can draw on the OECD assessment framework by incorporating the "substantial restriction of competition" standard into review indicators and can refer to the EU in establishing a procurement document disclosure system. This would use procedural transparency to enforce substantive fairness.

Research on Regulating Administrative Monopolies

Progress in Domestic Research. In the public procurement sector, administrative monopolies manifest as behaviors such as setting unreasonable conditions and restricting supplier qualifications. Their governance requires coordinating the dual regulation of the "Government Procurement Law" and the "Anti-Monopoly Law." Huang Yanqin points out that differences in subject scope and behavior patterns between the two laws lead to regulatory conflicts. Zhang Jiangli emphasizes the need to establish a coordination mechanism to address legal competition issues. Scholars generally suggest that unified review standards and strengthened cross-departmental collaboration are necessary to achieve a closed-loop governance.

International System Comparison. The EU's "Government Procurement Agreement" (GPA) explicitly prohibits procurement entities from implementing regional discrimination through technical specifications and evaluation criteria. It also grants the European Commission the power to directly review procurement documents of member states. The U.S., through the "Federal Acquisition Regulation" (FAR), has established a "commercial availability test," requiring that procurement demands not exclude potential competitors. Its judicial precedents further define the standard for "substantial restriction of competition."

Comparison and Enlightenment. China can learn from the EU's "ex ante review + ex post accountability" model by embedding fair competition reviews into the procurement document preparation phase and can refer to the U.S. "commercial availability test" to improve administrative monopoly identification rules. This would help resolve regulatory challenges under the dual regulatory framework.

Research on Regulating Collusive Bidding Behaviors

Progress in Domestic Research. The academic community generally views collusive bidding as a price cartel behavior dominated by suppliers, with the current legal system adopting an administrative and criminal compound regulatory model. Professors Jiang Yanbo and Huang Juan propose a collaborative regulatory system integrating anti-monopoly

law and criminal law. Scholar Wu Jinwei introduces the "substantial restriction of competition" standard to enhance enforcement accuracy. Professors He Zhen and Zhang Hong advocate for establishing an anti-monopoly civil litigation mechanism, incorporating collusive bidding into the framework of resolving monopoly disputes.

International Research Dynamics. Japan's "Anti-Monopoly Law" implements a "per se illegal principle" for collusive bidding behaviors. The EU, through the "Horizontal Cooperation Agreement Guidelines," clarifies safe harbor rules, providing compliance guidance for small and medium-sized enterprise collaborations. The U.S. Department of Justice employs the "economic evidence rule," utilizing economic evidence such as price correlation analysis and bidder capability assessment to identify violations. In their published work, Puksas, Andrius, Raimundas Moisejevas, and Rūta Petkuvienė analyze the European Commission's 2023 revision to the guidelines on Article 101 TFEU applicability, which introduced new provisions concerning bidding consortia to clarify distinctions between permissible commercial cooperation and prohibited bid-rigging. While both public procurement law and competition law aim for equitable market outcomes, supplier coordination mechanisms like bidding consortia exhibit dual competitive effects—potentially enhancing or undermining competition. The revised legal framework advises potential suppliers to rigorously evaluate risks associated with consortium participation unless compliance safeguards can conclusively prevent competition law breaches. Strict adherence to procedural complexities is emphasized to uphold procurement integrity and transparency. Penalties for competition law violations include contract termination, exclusion from public procurement procedures, and temporary restrictions on future bidding eligibility. The paper also highlights judicial recourse mechanisms enabling suppliers to contest inclusion in unreliable vendor registries.

Comparison and Enlightenment. China can draw on the EU's "safe harbor rules" to improve its collusive bidding exemption system and can reference the U.S. economic evidence rules to enhance the professionalism of anti-monopoly investigations. This would prevent regulatory blind spots caused by sole administrative penalties.

Issues Faced by Fair Competition Review

The core of legal issues regarding fair competition in the public procurement sector lies in how to effectively govern market environments that restrict competition and ensure the realization of public procurement objectives. As previously noted, given the inherently anti-competitive nature of anti-competitive behaviors and their high degree of association in practice, achieving fair competition in public procurement requires collaborative governance by multiple laws and agencies. However, the current coordination of fair competition laws in China's public procurement sector is still insufficient, with laws and their supervisory authorities operating in isolation. The "Anti-Monopoly Law," "Bidding and Tendering Law," and "Government Procurement Law" exhibit overlapping, intersecting, and even conflicting systems. This not only increases the cost of legal implementation and the risk of regulatory conflicts but also affects the overall

effectiveness of fair competition governance in public procurement, posing potential hazards for addressing complex anti-competitive behaviors.

Types of Anti-Competitive Behaviors in Public Procurement

This paper categorizes anti-competitive behaviors in public procurement into the following three types:

Administrative Monopoly Behaviors in Public Procurement. Administrative monopoly behaviors refer to acts where administrative entities abuse public power to restrict or exclude competition. These behaviors can only be initiated by administrative entities. Assuming suppliers are not involved in collusion or complicity with procurers, or their actions do not constitute a necessary condition for the establishment of administrative monopoly. For instance, even if suppliers engage in bribery in regional bidding , the realization of the still relies on the intervention of public power, and thus it is still regarded as an administrative monopoly. The regulatory basis for such behaviors primarily includes relevant provisions of Chapter V of the "Anti-Monopoly Law," as well as Article 71 of the "Government Procurement Law" and Article 51 of the "Bidding and Tendering Law."

Chapter V of China's "Anti-Monopoly Law" explicitly prohibits seven categories of administrative monopoly behaviors that "abuse administrative power to exclude or restrict competition." In the context of public procurement, due to the government's control over supply and demand relationships, administrative monopolies are particularly detrimental to the fair competition order. The following is a specific explanation of the seven categories of administrative monopoly behaviors within the context of public procurement:

1) Procurement (commodity) designation behaviors (based on Article 39): Administrative entities use their power to limit or effectively designate the selection of specific suppliers by procurers, or to impose improper product or parameter requirements that effectively restrict suppliers to specific upstream manufacturers.

2) Supplier access restrictions (based on Article 40): Administrative entities grant preferential treatment to specific suppliers, creating regional or industry barriers and impeding the formation of a unified public procurement market.

3) Mandatory local procurement (based on Article 41): Administrative entities employ discriminatory fees or additional qualification reviews to increase the procurement costs of outside products, coercing suppliers into local procurement.

4) Unfair qualification review conditions (based on Article 42): In bidding documents, qualification conditions are set without justifiable reasons, or bidding is restricted to specific enterprises; or bidding documents are not publicly released as required, allowing specific suppliers to obtain insider information within a specific timeframe.

5) Unfair business and investment environment (based on Article 43): Administrative entities exclude or restrict outside suppliers from establishing branches locally, undermining the fair competition environment.

6) Administrative monopoly in procurement with private monopolies (based on Article 44): Administrative entities coerce, effectively coerce, or support suppliers in implementing monopolistic behaviors, often accompanied by illegal interest transfers and power rent-seeking.

7) Legislative administrative monopoly: Administrative entities construct legal barriers through local regulations and rules that violate fair competition requirements.

Additionally, Article 20 of the "Government Procurement Law Implementation Regulations" stipulates seven scenarios of "imposing differential or discriminatory treatment on suppliers through unreasonable conditions," which aligns with the regulatory targets of the aforementioned administrative monopoly behaviors.

In terms of regulatory pathways, administrative monopolies in public procurement are primarily regulated through anti-monopoly enforcement mechanisms. In March 2023, the State Administration for Market Regulation issued the "Regulations on Prohibiting the Abuse of Administrative Power to Exclude or Restrict Competition," providing a clear legal basis for anti-administrative monopoly enforcement.

Collusive Behaviors Among Market Competition Subjects. Collusive behaviors among market competition subjects are exemplified by price cartels, manifesting as bid-rigging, rotational bidding, and accompanying bidding. These typically involve the following stages:

The preparation stage for collusion or bid-rigging: Initiated by suppliers with close connections, they determine projects based on bidding announcements and, according to supply capabilities and bidder qualifications, seek accompanying bidders to reach cooperative intentions. Accompanying bidders refer to those not engaged in substantive competition.

The implementation stage: Collusive bidding occurs, selecting accompanying bidders and man, preparing bidding documents or response files, and participating in bidding activities organized by the tenderer.

The interest allocation stage: After winning the bid, profits are allocated through compensation fees, cooperative rewards, rotational bidding agreements, or subcontracting and assignment.

Furthermore, bidders may enter into market segmentation agreements to establish non-competition pacts in specific areas or for particular products. These behaviors severely impair the tenderer's opportunity to select the best option and hinder resource optimization.

In public procurement open bidding, even in the absence of a price cartel, suppliers may organize or join price alliances due to concerns that non-membership could expose them to risks. In cases of homogeneous supply, price advantages often become the key to winning bids. In practice, what prevents suppliers from forming private monopolistic bid-rigging groups is not legal pressure but issues of interest distribution and trust collaboration.

Joint Anti-Competitive Behaviors in Public Procurement. These behaviors refer to acts where administrative entities and market competition subjects jointly implement exclusionary or restrictive competition practices. Among these,

administrative involvement in collusive bidding is the most typical. When anti-competitive behaviors involve both the pursuit of market interests by suppliers and the abuse of public power, their governance becomes more complex.

Administrative involvement in collusive bidding primarily includes the following forms:

1) Collusion between suppliers and procuring entities, such as leaking bid bottoms, not publicly disclosing evaluation criteria, forming unfair evaluation panels, etc.

2) Collusion between suppliers and procurement agents.

3) Administrative power-guided cartels, such as influencing bidding, supply channels, and supplier selection through improper communication.

4) Administrative entities granting preferential treatment to suppliers through memorandums of understanding or cooperation agreements.

5) Setting biased or exclusionary clauses in bidding documents to pre-determine potential suppliers.

The Non-Normative Status of Legal Coordination in the Fair Competition System

Currently, the legal coordination system for fair competition in the public procurement sector exhibits deficiencies in the coordination of legal norms, consistency of regulatory objectives, and feasibility of legal regulation. The "Bidding and Tendering Law," "Anti-Monopoly Law," and "Government Procurement Law" have yet to form a robust coordinated governance system.

Coordination Failures Between the Government Procurement Law and the Bidding and Tendering Law. The "Bidding and Tendering Law," China's first public procurement law, was enacted in 1999, while the "Government Procurement Law" was promulgated three years later. Due to limitations in legislative concepts and technology at the time, even after its 2017 revision, the "Bidding and Tendering Law" still contains outdated provisions, leading to insufficient coordination with the "Government Procurement Law" in addressing anti-competitive behaviors. This hampers the full realization of its functions.

Article 2 of the "Government Procurement Law" stipulates that "government procurement of construction projects through bidding and tendering shall be governed by the Bidding and Tendering Law," indicating a relationship between the two laws as general and special laws. The "Government Procurement Law" regulates government procurement processes, methods, and administrative management systems, while the "Bidding and Tendering Law" governs bidding and tendering methods and systems in public procurement. Both laws primarily consist of mandatory management norms. In terms of applicability, the "Bidding and Tendering Law," as a special law, takes precedence over the general provisions of the "Government Procurement Law." For instance, Article 71 of the "Government Procurement Law" outlines the legal responsibilities of procurers for evading bidding (such as fines), while Article 49 of the "Bidding and

Tendering Law" specifies the fine amounts (ranging from five to ten thousandths of the project contract value). Therefore, the "Bidding and Tendering Law" and its subordinate norms must incorporate fair competition provisions of the "Government Procurement Law" in accordance with the characteristics of the bidding and tendering process.

However, Article 2 of the "Bidding and Tendering Law" states that "bidding and tendering activities conducted within the territory of the People's Republic of China shall be governed by this Law," implying its applicability to all procurement activities, including private procurement. Yet, Article 4 of the same law specifies scenarios where bidding is mandatory, all of which fall within the public procurement domain. This creates a practical dilemma, as private funding procurement does not require administrative regulation. Thus, it is necessary to clarify whether the "Bidding and Tendering Law" serves as a procedural law for public procurement or as a neutral procedural model. Otherwise, its coordination with the "Government Procurement Law" will be severely compromised.

Coordination Issues Between the Anti-Monopoly Law and the Government Procurement Law. The coordination issues between the "Anti-Monopoly Law" and the "Government Procurement Law" in the context of fair competition regulation primarily manifest in the differential regulation of administrative monopolistic behaviors in procurement. The "Government Procurement Law," as a comprehensive regulation for government procurement, focuses on ex-ante regulation through prohibitive provisions to prevent the occurrence of administrative monopolies. In contrast, the "Anti-Monopoly Law," as a specialized competition governance law, emphasizes ex-post regulation to address existing administrative monopolistic behaviors. Although this "dual regulation" system is a reality, its coordination faces challenges, especially when bridging the different implementation logics of the two laws.

1) Differences in the Scope of Regulatory Subjects: Despite the need for coordination between the "Anti-Monopoly Law" and the "Government Procurement Law" in regulating administrative monopolistic behaviors in government procurement, their different regulatory logics lead to poor coordination in practical applications. The "Anti-Monopoly Law" is based on state intervention in economic monopolistic phenomena in free commodity markets, while the "Government Procurement Law" is grounded in the cost-benefit supervision of public fund utilization in public procurement markets. This difference arises from the distinct causes of monopoly formation and fundamental legal interests in free commodity markets and public procurement markets.

2) Differences in Behavioral Regulation Patterns: Chapter V of the "Anti-Monopoly Law" explicitly lists seven regulatory patterns of administrative monopolistic behaviors, such as restricting transactions, regional blockades, and insider preference. Taking the insider preference model as an example, Article 40 of the "Anti-Monopoly Law" prohibits administrative agencies from obstructing other operators from entering the market or implementing discriminatory treatment through cooperation agreements or memorandums of understanding. In this model, administrative monopolistic subjects often employ indirect means, such as collaboration with specific operators, to restrict competition. In contrast, the "Government Procurement Law" does not provide a centralized enumeration and classification of administrative monopolistic behavior patterns like the "Anti-Monopoly Law." Instead, it incorporates related behaviors

into liability provisions, with descriptions that are relatively fragmented and utilitarian. For instance, Article 72 of the "Government Procurement Law" primarily outlines prohibited behaviors of procuring entities and procurement agents, but only some of these provisions correspond to the administrative monopolistic behavior patterns of the "Anti-Monopoly Law."

3) Differences in Legal Liabilities: When regulating public power restrictions and exclusions of competition, the "Government Procurement Law" leans more toward procedural liabilities, whereas the "Anti-Monopoly Law" focuses on substantive liabilities. This disparity leads to issues in legal article interpretation and potential conflicts when coordinating the application of the two laws. For example, if a procuring entity restricts competition through local or departmental rules, even if such actions result in restrictive competitive effects, the substantive defects cannot be exempted through procedural immunity. Conversely, if a procuring entity violates procurement procedural laws but does not cause substantive restrictive competitive consequences, the procedural liability cannot be waived due to the harmlessness of the substantive outcome.

Coordination Failures Between the Anti-Monopoly Law and the Bidding and Tendering Law. The "Anti-Monopoly Law" and the "Bidding and Tendering Law" exhibit significant coordination deficiencies in regulating unfair competitive behaviors in bidding and tendering. This is primarily reflected in the overlapping regulation of regional bidding blockades and conflicts in the regulation of collusive bidding behaviors.

Regarding regional bidding blockades, both Article 42 of the "Anti-Monopoly Law" and Article 6 of the "Bidding and Tendering Law" aim to curb such behaviors, but their regulatory approaches differ markedly. The "Anti-Monopoly Law" adopts a behavioral description model, defining regional blockades as actions by administrative entities that "set discriminatory qualification requirements, evaluation standards, or fail to disclose information as required by law." While this legislative approach can encompass diverse specific manifestations, it may result in "regulatory loopholes" in practice, allowing certain disguised blockades behaviors to evade legal sanctions. In contrast, Article 6 of the "Bidding and Tendering Law" employs a principled prohibition clause, directly declaring that "bidding and tendering activities shall not be subject to regional or departmental restrictions" and strictly prohibiting any form of regional protectionism. Although this legislative model can effectively prevent all forms of regional discrimination, it may fall into the "one-size-fits-all" dilemma during application. It may not only fail to flexibly address special circumstances but also potentially disrupt normal market order through excessive intervention. An ideal solution would be to establish a "principled provisions + typical behavior enumeration" composite regulatory framework, clarifying the basic principle against regional discrimination while enumerating common means of blockades.

In terms of regulating collusive bidding behaviors, the overlap of legal provisions between the two laws is more pronounced. Such behaviors can be categorized into two types: one is purely market-driven collusive bidding, where suppliers form price cartels or market segmentation agreements to exclude competition, representing typical private monopolistic practices. The other involves collusive bidding with public power involvement, such as tenderers and

bidders colluding to manipulate bidding outcomes. For the former, Article 53 of the "Bidding and Tendering Law" explicitly prohibits such behaviors, but Chapter V of the "Anti-Monopoly Law" does not directly include them within the scope of administrative monopoly regulation. However, in practice, price agreements between suppliers may meet the criteria for monopoly agreements under Article 17 ("fixing or changing commodity prices") or Article 19 ("dividing sales markets") of the "Anti-Monopoly Law." For the latter, administrative entity involvement in collusive bidding may simultaneously violate seven types of administrative monopoly scenarios outlined in Chapter V of the "Anti-Monopoly Law," leading to overlapping legal provisions. Such regulatory overlaps not only increase the complexity of legal application but may also weaken the deterrent power of the law due to inconsistent enforcement standards.

Optimizing the Legal Coordination Path for Fair Competition in Public Procurement

Establishing a System of Responsibility and Authority Allocation Among the Three Laws

Analyzing from the perspectives of competition norm orientation, regulatory scope, and core objectives, the "Anti-Monopoly Law," "Bidding and Tendering Law," and "Government Procurement Law" form a parallel governance framework for addressing anti-competitive behaviors in public procurement. They have exclusive jurisdictional domains while also overlapping in certain areas. This overlap is not only reflected in existing behavior patterns but also becomes more complex due to the emergence of novel compound illegal acts. Therefore, it is impractical and unable to meet practical needs to delineate regulatory boundaries through itemized legal provisions. This paper advocates adopting the "exclusion method": on the basis of clarifying the exclusive jurisdictional domains of the three laws, all other areas are incorporated into a coordinated governance framework.

Specifically, the exclusive jurisdiction of the "Government Procurement Law" focuses on anti-competitive behaviors in non-bidding procurement activities, such as those occurring in competitive negotiations under Article 30. These behaviors, due to their procedural particularities, typically do not fall under the regulation of the "Bidding and Tendering Law" and, given the lower competitive intensity outside public bidding, are unlikely to meet the threshold for intervention by the "Anti-Monopoly Law." The exclusive jurisdiction of the "Bidding and Tendering Law" centers on anti-competitive behaviors closely related to bidding and tendering procedures, such as false bidding and impersonation bidding regulated under Article 54. These behaviors, being procedural violations, are generally not subject to regulation by the "Anti-Monopoly Law," which serves as a substantive competition law. The exclusive regulatory domain of the "Anti-Monopoly Law" is relatively limited, but based on its Article 2 on the extraterritorial application of anti-monopoly provisions, it can cover scenarios where overseas procurement activities impact domestic market competition, an area not addressed by the "Government Procurement Law" and "Bidding and Tendering Law."

Through the exclusion method, the exclusive jurisdictional content of the three laws can be clearly delineated, with all other complex anti-competitive behaviors incorporated into a coordinated governance framework. Although the three

laws maintain a parallel relationship in regulation, in specific application, the "Anti-Monopoly Law" should serve as the core, with the other laws acting as supplements. This positioning is based on two considerations: First, the Anti-Monopoly Commission, as the highest coordinating body for national competition law, along with its unified enforcement entity—the State Administration for Market Regulation—can effectively avoid local protectionism through its vertical management system and specialized investigation procedures. Second, the "Anti-Monopoly Law" not only comprehensively constructs a system of administrative monopoly behavior patterns but also regulates collusive bidding behaviors through its "monopoly agreement" provisions, occupying a central position among the three laws.

Optimizing the Management Architecture of the Three Laws

Strengthening the Coordinating Functions of the Anti-Monopoly Commission. The role of the State Council's Anti-Monopoly Commission in guiding the competition law system should be further enhanced. Given its composition of State Council members and heads of relevant ministries, it possesses inherent cross-departmental coordination advantages. The scope of its functions, such as "formulating anti-monopoly guidelines" and "coordinating enforcement work," should be expanded to include public procurement anti-competitive governance. As of January 2024, the commission has issued multiple documents, including the "Anti-Monopoly Compliance Guidelines for Operators" and the "Platform Economy Anti-Monopoly Guidelines," but lacks specialized guidelines for public procurement. There is an urgent need to develop the "Public Procurement Anti-Monopoly Guidelines" to refine behavior pattern identification, legal coordination mechanisms, and fair competition review standards, thereby reducing overlapping functions and coordination costs.

Clarifying the Authoritativeness of Anti-Monopoly Enforcement Agencies. The State Administration for Market Regulation and local market supervision departments, as anti-monopoly enforcement entities, should have final adjudication authority over anti-competitive behaviors in public procurement. For instance, in cases of regional bidding blockades, regardless of whether other departments have already handled the matter, anti-monopoly enforcement agencies should initiate investigations within the statutory time limit, and their conclusions should have ultimateeffectiveness. For cases involving specific amounts or high-level subjects, the intervention of anti-monopoly enforcement agencies should become a mandatory legal procedure.

Clarifying the Scope of Responsibilities of Government Procurement Supervision Departments. At all levels, finance departments, as supervisory bodies for government procurement, should focus on the compliance of procurement processes and the effectiveness of outcomes, particularly the regulation of procurement agencies. The provisions of the "Government Procurement Law Implementation Regulations," such as Article 69 on centralized procurement supervision, should be detailed to promote centralized procurement activities. When enforcing Articles 72 and 74

regarding "malicious collusion among suppliers," regulatory interfaces for anti-monopoly enforcement should be reserved to prevent administrative penalties from substituting for anti-monopoly reviews.

Differentiating the Functional Scope of Bidding and Tendering Administrative Supervision Departments. The National Development and Reform Commission, as the administrative supervision department for the "Bidding and Tendering Law," should focus on anti-competitive regulation in engineering bidding and tendering. The supervision functions for goods and services bidding and tendering should be assigned to finance departments. This division aligns with the logic of the two systems: First, Article 3 of the "Bidding and Tendering Law" mandates bidding for engineering construction projects. Second, the supervisory authority of the Development and Reform Commission is derived from the legal positioning of public procurement. The engineering sector, involving public safety, requires regulation by specialized departments. Finance departments, based on fund management authority, exercise universal supervision, forming a distinction between "specialized supervision and fund supervision." For non-fiscal-funded engineering projects, the Development and Reform Commission may still exercise independent supervisory authority, but anti-monopoly enforcement agencies retain the right to intervene.

Cautiously Addressing the Issue of Delegation of Enforcement Authority. There is a need to guard against regulatory fragmentation that may result from the delegation of administrative powers under the "Government Procurement Law" and the "Bidding and Tendering Law." For example, the "Bidding and Tendering Law Implementation Regulations" grant multiple supervisory powers to county-level governments. However, these local departments may be driven by local interests, weakening the enforcement of competition policies. In the future, the scope of delegation should be restricted to prevent further dispersion of the anti-competitive governance system.

Improving the Implementation Path of the Public Procurement Fair Competition System

Differentiating Between Systemic Responsibilities and Coordinative Responsibilities. Systemic responsibilities refer to the independent pursuit of liability for illegal entities within the framework of each of the three laws. For instance, the "Government Procurement Law" imposes practice bans on non-compliant suppliers, while the "Bidding and Tendering Law" sets bidding prohibitions for interested parties. These responsibilities can be applied independently and tend to be procedural in nature.

Coordinative responsibilities, on the other hand, address substantive governance issues requiring cross-departmental collaboration, reflecting the integration of civil, administrative, and criminal liabilities. At the civil liability level, provisions for damages compensation in Articles 60 of the "Anti-Monopoly Law," 79 of the "Government Procurement Law," and 53 of the "Bidding and Tendering Law" can be unified under the path of anti-monopoly private litigation in the future. At the administrative liability level, it is necessary to coordinate the penalty standards of the three laws: for administrative entities, the administrative sanctions under the "Government Procurement Law" and "Bidding and

Tendering Law" complement the order to rectify measures under the "Anti-Monopoly Law." For market entities, it is essential to unify the range of fines to avoid inconsistent penalties for similar cases.

Strengthening the Linkage Mechanism for Fair Competition Review. The fair competition review system serves as the cornerstone for the coordinated governance of the three laws. The Detailed Rules for Implementation have provided a institutional framework. Future improvements can be made in the following areas:

1. Market Access and Exit Standards: Refining the identification of "unreasonable or discriminatory access conditions" to eliminate invisible barriers for suppliers participating in public procurement.

2 Standards for the Movement of Goods and Factors of Production: Improving the regulatory provisions on regional bidding blockades to break down regional market segmentation.

Conclusion

This paper has analyzed the normative and institutional conflicts that arise in China's public procurement sector due to overlapping provisions in the Government Procurement Law, the Anti-Monopoly Law, and the Bidding and Tendering Law. Through a comparative and empirical approach, it has identified the core problem of regulatory fragmentation and proposed targeted institutional pathways to resolve it. The integration of international frameworks, particularly from the EU and OECD, reinforces the relevance and feasibility of legal reform in the Chinese context. And the study exposes the legal conflicts and regulatory fragmentation within China's public procurement fair competition review system, with its core analysis focusing on legislative inconsistencies and proposing a systemic optimization path centered on a "coordination-exclusion" governance model. By advancing the resolution of legal conflicts to the policy design phase, this approach establishes a transformative framework that shifts China's public procurement fair competition review system from reactive remediation to proactive prevention.

Tables and Figures

[Figure 1 here]

$$\boldsymbol{Bidder\ Participation\ Rate} = \frac{\boldsymbol{Na}}{\boldsymbol{Np}} \times \mathbf{100}\%$$

Conflict of Interest

The authors declare no conflict of interest.

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