

BIDDING FOR CONSTRUCTION WORKS IN CHINA

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SUMMARY

China is still a developing country although its economy has been growing rapidly. It has become more open to foreign contractors than before. There are opportunities for foreign contractors to undertake construction works in China. However, the social system different from that of western countries makes it difficult for foreign contractors to understand the bidding procedures in China. Only the foreign contractors who have fully understood the procedures will succeed in undertaking construction works in China.

This paper is written for foreign contractors who intend to obtain construction contracts in China and it presents the characteristics and administration of tendering system, the scope of construction contracts and forms of contract and the bidding procedure in China. The provisions promulgated recently by the Ministry of Construction of China concerning foreign contractors' obtaining a qualifications certificate have also been presented in detail.

KEYWORDS: Bidding, Contracting, Construction, Contractor

INTRODUCTION

A Short History of Tendering System in China

As well known, the process of selecting, either on a competitive or a negotiated basis, a contractor of construction, geological survey or design services or a supplier of building material and/or equipment is referred to as the tendering procedure. Now in China, this process and the related regulations are also referred to as tendering system.

Tendering has been used in western countries to select a contractor or supplier for more than 200 years. In China, the practice of obtaining building and civil engineering works by way of tendering dates back to the turn of the last century. Following the Opium War (1839-1842) China was forced open to western countries and the tendering procedure was brought into the country and had been used in the coastal areas and major urban centers prior to 1949 when the People's Republic of China was established in Beijing. During the period from 1949 to 1957 a major portion of construction works was allocated to construction enterprises by governments through a contracting system in which a contract was entered into between a government agency and a construction company providing for obligations and liabilities of the parties to the contract. The contracting system worked quite well during the period. However, in the subsequent years the contract system was condemned as a capitalist practice and was abandoned. The drawbacks suffered due to the lack of a contract system gave lessons to the government. The 3rd Plenary Session of the 11th Central Committee of the Communist Party of China in 1978 declared China's reform and open door policies and then the State Construction Commission (the predecessor of Ministry of Construction) followed suit by preparing and issuing "The Recommendations on Contracting Capital Construction Projects" in April 1979. The document required that a contract be entered into between client and construction company to bind the parties so that they join their efforts to accomplish the state capital project. Soon after the issuance of the document, tendering system was adopted formally in Shenzhen Special Economic Zone for allocation of the construction works in the early of 1980's. The tendering system was proved effective in shortening completion time, improving quality and lowering costs of construction works. This practice caught the attention of the central government and became one of the moves for reforming Chinese construction industry which were written in the documents of the 2nd Plenary Session of the 6th National People's Congress held in May 1984. In September of the same year, the State Council promulgated a document related to construction industry reform requiring that the tendering system should be used for allocating construction work. Since then, the tendering system has become increasingly popular in China. In 1988, the completed floor area of building works allocated through competitive tendering was estimated at 53,030,000 square meters, accounting for 25.4% of total

completed building floor area in China. In some more developed zones (cities or provinces) of China, e.g. Guangdong, Fujian, Beijing, Shanghai, Liaoning and Jilin, the construction work allocated through tendering account for over 60 percent of their total construction projects. Therefore, a construction market for construction enterprises to compete with each other has taken shape, which in turn has facilitated the development of construction industry in China.

The Characteristics of Tendering System in China

Now the economic system of China is in transition from planned economy to market economy and the tendering system in China can be characterized by the following:

1. The bidders competing for construction works are all from public-owned enterprises and it does not make difference to win or lose contract because theoretically all the participants in tendering work for the State's benefit.
2. The tendering competition is limited and guided by the governments. The construction works to bid for are all included in the State's capital construction plan. The clients and contractors are required to be pre-qualified by governments. The bid prices must be calculated based on the State's standard norms with just a limited price spread allowed. The governments have their own agencies in charge of preparing the norms and forcing the bidders to use in their preparation of bids.
3. The bidding process is to be carried out under the administration and supervision of a government agency in charge.

THE CLASSIFICATIONS OF CONSTRUCTION RELATED CONTRACTS

Just like the other parts of the world, a construction project in China is usually divided into several phases such as feasibility study, geological survey, design, ordering material and/or equipment, construction and installation, commissioning for operation, completion and acceptance. Hence a contract can be entered into for some or all the phases of a construction project.[1] The construction related contracts in China can be classified in several ways.

1. Classification by scope of contract
 - Contract for whole project life cycle(i.e. turnkey contract)
 - Contract for construction service
 - Contract for installation service
 - Contract for section(s) of a project
2. Classified by contractual relationships
 - General contract
 - Sub-contract and supply contracts
3. Classification by way of allocating works
 - Assignment by government
 - Open competitive bidding
 - Selective competitive bidding
 - Negotiated bidding
4. Classification by contractual arrangements
 - Lump sum contracts
 - Measurement contracts
 - Cost reimbursement contracts
 1. Cost plus fixed percentage
 2. Cost plus fixed fee
 3. Cost plus fluctuating fee
 4. Target cost plus/minus bonus/fines

* Turnkey project contract

TENDERING PROCEDURES AND ADMINISTRATION IN CHINA

The Administration of Tendering System

The Government Duties

According to the Tendering Procedures for Works of Building and Civil Engineering Construction (TPWBCC) issued on December 30, 1992, all construction projects, except those of special nature, shall be obtained by way of tendering, either on a competitive or negotiated basis, or sometimes a combination of both.[2] The tendering methods commonly used in China are open competitive bidding, selective competitive bidding and negotiated bidding.

The Ministry of Construction of China is responsible for administering the tendering activities throughout the country, while the provincial, municipal and autonomous region construction authorities are responsible for those within their own areas.

The local construction commissions usually have their own Tender Administration Offices to perform the duties of administering bidding activities.

In general, the functions of government's authorities in the tendering process are:

1. Enforcing the government's tendering policies and regulations, guiding and supervising the tendering process;
2. Planning and arranging for bidders to bid for construction works in accordance with the government's capital construction plans to ensure that the bidding be carried out as planned;
3. Bringing all bidding activities under their exclusive supervision, coordinating the relationship between different government agencies, solving conflict and problems that occur during the bidding process; ensuring that competition be fair;
4. Monitoring the construction market, making sure that bidding activities be carried out and contracts be entered into according to government's policies, laws, rules and regulations;
5. Providing information and consultant services to the parties involved in the bidding process to facilitate the operation of tendering system.

Government Administration Organizations

At present, there are mainly three government organizations in charge of administering the tendering system, they are:

1. A leading group responsible for bidding process is formed by the leading officials from the authorities concerned. The group members are usually from the Construction Commission, Planning Commission, Fiscal and Auditing Bureau, Industrial and Commercial Administration Bureau and the People's Construction Bank of China. An office under the leading group is set up and handles routine matters related to bidding. The bid opening, evaluation and award of contract of key construction projects are usually arranged and administered by the leading group.
2. A separate tendering office is formed of professionals retained by the Construction Commission and handles directly the issues related to bidding. The rules and regulations related to bidding process are formulated jointly by the Construction Commission, Planning Commission, Fiscal and Auditing Bureau, Industrial and Commercial Administration Bureau and the People's Construction Bank of China with the Construction Commission as the leader of this office.
3. A bidding management unit is formed mainly of persons from the organization performing the project and some officials from local authorities are responsible for the whole bidding process.

The second form now is most popular in China. The third form is more suitable for key projects. However, it is being converted to the second form. The first form is not popular.

The main tasks of the government administration organizations includes pre-qualifying contractors, reviewing and approving the client's application for calling for tenders and the bidding documents, evaluating tenders, arranging and supervising bid opening, bid evaluation and award of contract, making arbitration regarding the disputes which occur during the bidding process, penalizing the organizations or individuals who violate bidding procedures, supervising the signing and performing contract, etc.

Bidding for Feasibility Study Services

The allocation of feasibility study services in China is usually done through selective but not open competitive bidding. The client invites several consultants or design offices to submit bids. The invitation to tender is usually accompanied by copies of the approved project proposal, the site plan, geological and climatic data, technical specifications, project budget, other available resources, etc.

When invited, the consultants or design offices estimate the work load and prepare a bid according to the requirements set out in the documents enclosed in the invitation, then submit it to the client to compete for the work.

Bidding for Geological Survey Work

The geological survey work in China is usually obtained through negotiated bidding. The bidders should hold the Qualification Certificate and Business License issued by government's Construction Commission and Industry & Commercial Administration Bureau respectively.

Bidding for Design Work

Design work in China is usually allocated in two ways, i.e. bidding and design competition.

Foreign designers who intend to obtain design work in China should apply for permission according to the Temporary Provisions for Joint Venture to Contract Design Works.

Tendering Procedure

Bidding for design work is usually done through open competitive bidding or selective competitive bidding. The number of bidders should not be less than three. If the design office intends to bid for the work, it should submit an application for bidding according to the requirements set out in the invitation to bid and provide the pre-qualification information, including design office's title, address, name of the person in charge, copy of business license, bank account number, date of registration, number of professional employees, previous design assignments, etc. When pre-qualified, the design office is required to submit a bid accompanied by general description of the designed project, specifications, detailed drawings, cost estimate of the project, financial analysis, time for completion, major construction technology and management plans, applicable design codes, an estimate of professional fees for the design services, etc.

Conceptual Design Competition

This is usually used for large scale public or memorial buildings. The tendering procedure is as follows. First, the client chooses one or more design offices and invite them to take part in design competition. If a design office likes to do so, then it submits its design to the client according to client's requirements.

Bidding for Material and/ or Equipment Supply Contract

It is required that, if award of material/equipment supply contract is to be done through bidding, the bills of quantities for materials and/or equipment should be prepared by the design contractor. Usually, material/equipment supply contract is allocated through open competitive bidding only when the quantities are large. To avoid price fluctuation risk, the supplier should set out the period of validity for their quotations in his bid. Usually, the period of validity is from two to four weeks of the deadline for submission of bids.

Bidding for Construction Work

Calling for Bids

(1) Steps of calling for bids

Client or development organization is required by TPWBCC to have his construction project approved and included in the annual capital construction plan of the central, provincial or local governments. It must also make the land, detailed drawings and other technical documents, funds, major materials and equipment available. The development organization must also obtain approval from the local planning authority and make the site ready for the works to be carried out before calling for bids.

The development organization is usually required to go through the following steps in calling for bids. (a) set up a tender board, (b) submit an application to Tender Administration Office, (c) prepare bidding documents and an estimate of the project costs, and submit them to Tender Administration Office for review (if the project is financed entirely by foreigners, it needn't submit to Tender Administration Office), (d) call bids either by invitation or advertisement, (e) pre-qualify the interested applicants for bidding and notify them of its decision, (f) issue bidding documents to the qualified bidders, (g) arrange to visit the site and answer questions thereabouts, (h) set out procedure and criteria for evaluating bids and awarding contract, (i) arrange to open and

examine bids, (j) arrange to evaluate and accept bids, (k) send letter of acceptance to successful bidder and inform unsuccessful bidders of non-acceptance, (l) enter into a contract with the successful bidder.

(2) Bidding documents

All bidding documents must be completed prior to calling for bids and enable the bidders to prepare their bids for the works. The documents vary with the size and nature of the works, but usually include: (a) general description of the project, (b) working drawings and specifications, (c) bills of quantities, (d) bank documents in support of the financial standing of the development organization, (e) documents in support of availability of major materials, such as cement, steel, timber etc., and equipment, (f) requirements of special works, (g) instructions to bidders as to preparation of bids, (h) a schedule of events such as deadline for submission of bids, bid opening and evaluation, award of contract, (i) conditions of contract for construction and amendments, (j) request of a bid bond, (k) other things as appropriate.

(3) Bid caller's estimate of project costs

An estimate of the construction costs together with reasonable allowance for overheads and profit must be made either by the development organization itself or the supervision organization capable of doing so engaged by the same before calling for bids. The estimate shall be made on the basis of the drawings, specifications and other bidding documents in accordance with the national economic and technical standards, codes and norms.

The estimated price of the works shall include costs, overheads, profit and taxes, be within the project budget, and allow for possible fluctuations in labor, material and plant costs, contingencies and special equipment. The prepared estimate must be submitted to the local Tender Administration Office for review. If the project is financed entirely by foreigners, there is no need to submit the estimate to Tender Administration Office. The development organization's estimate is intended for its own use, so that it will be aware of its financial obligations, be able to determine the reasonableness of the bids to be submitted by the bidders, and for cost control purpose.

Bidding Procedures

The bidding is carried out in the following steps:

(1) Pre-qualification of bidders

This step is intended to assess the capabilities of the bidders and sufficiency of resources to carry out the works, prevent incompetent construction companies from wasting their time and money on hopeless attempts to secure the contract, and for the bid caller to obtain information for reference in evaluating bids.

To this end, the bidders are usually required to submit: (i) copies of original registration certificate and qualification certificate, (ii) brief history of company, (iii) documents in support of company's financial standing, (iv) number of full employees, technical staff, skilled workers and their technical qualifications, a list of major plant, (v) a list of major projects which have been completed in the last three years, (vi) work load in hand, (vii) bid bond as required.

For foreign contractors, there are some other qualification requirement. Please refer to next section for details.

(2) Preparation of bidding documents by bidders

(3) Clarification of bidding documents and pre-bid meeting

The bidder's representative will be advised to attend a pre-bid meeting when the bidding documents have been issued and the bidders have visited the site.

(4) Bid opening, evaluation and award of contract.

The bid which is not substantially responsive to the requirements of the bidding documents will be rejected. As in other parts of the world, the lowest bid is not necessarily the successful bid.

OPPORTUNITIES FOR FOREIGN CONTRACTORS IN CHINA

Introduction

In order to bring under the exclusive administration of Chinese governments the foreign contractors who have been already or will be involved in the construction activities in China, the Ministry of Construction issued a decree on Mar. 22, 1994, i.e. the "Temporary Provisions for Foreign Contractors to Be Qualified for Undertaking Construction Works in China".[3] The document became effective on July 1, 1994.

Application of Qualifications Certificate

The provisions require that all foreign contractors who intend to undertake construction or decoration of building or civil engineering works, or installation of pipelines or equipment should apply for pre-qualification and a Qualifications Certificate to the Ministry of Construction or the local construction administration authorities.

The foreign contractors who have operations in more than two provinces, autonomous regions or municipalities (cities directly under the central government) should apply for the Qualifications Certificate to the Ministry of Construction. The foreign contractors who intend to bid for construction contracts in the special economic zones (i.e. Shenzhen, Zhuhai, Shantou and Xiamen) and the cities open to foreigners (i.e. Dalian, Qinhuangdao, Yantai, Qingdao, Lianyungang, Nantong, Ningbo, Wenzhou, Fuzhou, Guangzhou, Zhanjiang, Beihai, etc.) should apply for the certificate to the local authorities of the zones or cities. Otherwise they should apply for the certificate to the province-level construction authority in charge of administration over the construction works to be carried out by them.

The foreign contractors are required to submit the following documents and information to the Ministry of Construction or the local authorities when they apply for pre-qualification and the Qualifications Certificate:

1. The letter of intent and the letter of acceptance signed by the client of the project and the agreement entered into by the client and the foreign contractor;
2. Application for bidding for construction works in China signed by the legal representative of the foreign contractor;
3. The original or a copy of the business license issued by the Chinese government registration agency;
4. The reports on the financial standing of the contractor for the past three years, and other supportive documents issued by the contractor's auditing office, bankers or other financial institutions;
5. The names, sizes and locations of the works completed by the contractor within the past five years, and the written comments made by their clients on the completion period and quality;
6. The qualifications and experience of key technical and managerial personnel available for administration and execution of construction works in China;
7. The foreign contractor's scope and places of business in China;
8. The licensed foreign contractors are allowed to bid for the construction works which are financed
 1. directly by foreigners;
 2. by loan made entirely by foreign financial institutions and obtained through open competitive bidding;
 3. by joint-venture between Chinese and foreign investors, but the local contractors can not execute on their own for technological reason;
 4. by local entities but the local contractors for some reasons are not capable of executing on their own. When bidding for those under ;
 5. the foreign contractors are required to form a joint venture with the local contractors subject to the approval of province-level construction administrative authority.
9. The contractor's address of resident office in China;
 1. The preliminary evaluation of the foreign contractor made by provincial construction administrative authority;
 2. Three copies of the completed form of application for Qualifications Certificate. The application forms can be obtained from Ministry of Construction or the local authorities and the applicant will be charged a small sum for application fee. The Ministry of Construction or the local authority will give notice of their decision as to whether the Certificate will be issued to the applicant within 30 days of receiving the application.

The foreign contractor who has been given the Qualifications Certificate should also register with the local Industrial and Commercial Administration Bureau. The Qualifications Certificate has a validity period of 5 years. Within 6 months of expire, the contractor should renew the Certificate.

The contractors from Taiwan, Hong Kong, Macao who intend to undertake construction contracts in the mainland China should follow the same procedure as the foreign contractors. In addition, however, they should apply for a Qualifications Certificate of

Hong Kong, Macao and Taiwan Contractors.

The foreign firms who intend to obtain design contracts in China should apply for permission according to the Temporary Provisions on Design Services Joint Venture. The foreign firms who have interest in offshore or inland oil tapping projects of China are required to apply for permission according to the Provisions on Offshore and Inland Oil Extracting Joint Venture in China.

Some Explanations

- (1) The foreign contractors must make sure that they will be successful in obtaining construction contracts before applying for the Qualifications Certificate. Otherwise, they can not be given the Certificate.
- (2) The Qualifications Certificate can only be applied for by a single foreign contractor, i.e. the application can not be made in joint names of several foreign contractors.
- (3) As far as a group and its subsidiaries is concerned, it should be noted that only the entity, group or subsidiary, who has obtained the contract is eligible for applying for the Certificate.

CONCLUSIONS

China is still a developing country, although its economy has been growing rapidly in recent years. There is a plenty of opportunities for foreign contractors to step on the construction market of China. However, China's unique culture and social system which are not familiar to many foreign contractors make the tendering system in China different from that of western countries. As a result, the administrative procedures and regulations which the foreigners have to follow are also different and sometimes a little confusing. It takes time and patience to get familiar with all this. Only those foreign contractors who have fully understood the system and feel comfortable about it can survive and succeed in bidding for construction contracts in China.

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