

Comparison of the Tender Law and Procedure between China and Korea

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Abstract

The construction industry has maintained a strong level of development in China in recent years. And with the steady development of the national economy, the construction industry will continue its momentum of growth in the coming years, which indicates a great tendering market in China. To gain a comprehensive understanding of Chinese tender market, a research based on construction laws and tendering laws was carried out. This research focused on differences of the tender environment between China and Korea, such as construction company certificate, bidding procedure and so on.

Keyword : the tender law; the tender procedure; China; Korea;

1. Introduction

The construction industry has maintained a strong level of development in China in recent years. The Shanghai 2010 World Expo, the Western Development Strategy and National Housing Reform all provide enormous bidding and investment opportunities for foreign companies who are interested in Chinese construction industry. As the neighbor of China, Korean construction companies enjoy more advantages in occupying Chinese market. To make sure of the success, it is very necessary to gain a comprehensive understanding of Chinese tender laws and figure out the difference between China and Korea. Nevertheless, the comparison of the bidding environment between China and Korea remains lacking. To fill this gap, a research study based on the national laws is developed

to examine the difference of the tendering and bidding environment between both countries. This research is organized into two parts. In the first part, how to obtain the certificate before bidding is examined. The second part focuses on the bidding process, and differences between Korea and China in the bidding process.

2. Obtain the certificate as a construction enterprise before bidding

A foreign investor, which intends to establish a foreign-invested construction enterprise and conduct construction business in China, shall, in accordance with laws, obtain the approval certificate from the relevant foreign trade and economic cooperation administration department, register with the relevant Administration of Industry and Commerce, and get the qualification certificate from the relevant construction administration department. In this step, the foreign investors should pay attention to the following laws:

- Regulations on Administration of Foreign - Invested Construction Enterprises (Decree No. 113), 27th, September, 2002

- Provision on Administration of Qualifications of

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Enterprises in Construction Industry (Decree No. 159), 26th, June, 2007

- Criteria of Grading of Construction Enterprise Qualifications (Decree No. 82), 18th, April, 2001

- Construction General Contractor Enterprise Special Grade Aptitude Standards (Decree No. 72), 13th, March, 2007

The application for and the examination and approval of the establishment of foreign-invested construction enterprises and their qualifications shall be managed by a grading and categorization system. According to Decree No.159, the qualifications of construction enterprises can be divided into three categories, including General Contractor (GC), Specialized Contractor and Labor Subcontractor. According to Decree No.82, Decree No.72 and their complementarities, each category can be split further into many types, including 12 kinds of GC, 60 kinds of Specialized Contractor and 13 kinds of Labor Subcontractor. And each type is rated into different grades according to its registered capital, professionals and technicians, technical equipment and performance record of completed construction projects, etc.

The ways that foreigners may enter Korea for business purposes may be classified into four types:

- Local Corporation: the foreign corporation or individual investor organizes a local corporation in Korea pursuant to the Foreign Investment Promotion Act and the Korean commercial code. To enjoy the benefits under the Foreign Investment Promotion Act, the foreign investor should invest 50 million wons or more in the local corporation;

- Individual investor: when a foreign individual invests 50 million wons or more as an individual proprietor, it is recognized to be a foreign investment provided under the Foreign Investment Promotion Act;

- Branch: that operates revenue-generating business activities in Korea;

- Office: that does not operate any avenue-generating business (sales) activities in Korea but performs only non-business (non-sales related) functions such as business liaison, market survey, or research and development.

Different from China, the qualifications of construction enterprises are divided into only two categories in Korea, including GC and Specialized Contractor.

Compared with Korean system, the Chinese categories are more complicated as showed in Table.1. After classifying the construction enterprises, Chinese government then adopts ABC grading system to

identify the level of construction enterprises, while there isn't any grading system in Korea.

Table.1 Qualification type and grade of construction enterprises

	China	Korea	China	Korea
	Type		Grade	
GC	12	5	Super, A,B,C	-
Specialized Contractor	60	25	A,B,C	
Labor Subcontractor	13	-	A,B or None	

3. The tendering and bidding process

3.1 The type of tender

In China tenders are classified into two categories, that are open tenders and selective tenders. Open tenders indicate that tenderers, in the form of tender notice, invite unspecified legal persons or other organizations to bid. Selective tenders mean that tenderers, in the form of invitation to bid, invite specified legal persons or other organizations to bid. Their tendering and bidding process is listed in Fig. 1.

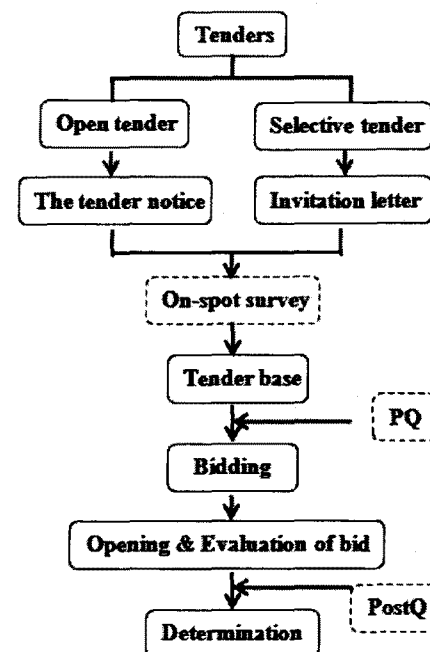


Fig. 1. The tendering and bidding process in China

In Korea, the most popular bidding is competitive public bid, and its tendering and bidding processes are listed in Fig. 2. To decide whether those in the bidding

can participate in the field of competition to receive an order, this bidding is categorized into four types depending on the existence/absence of competition: ① competitive public bid ② limited competitive bid ③ designated competitive bid ④ private contract.

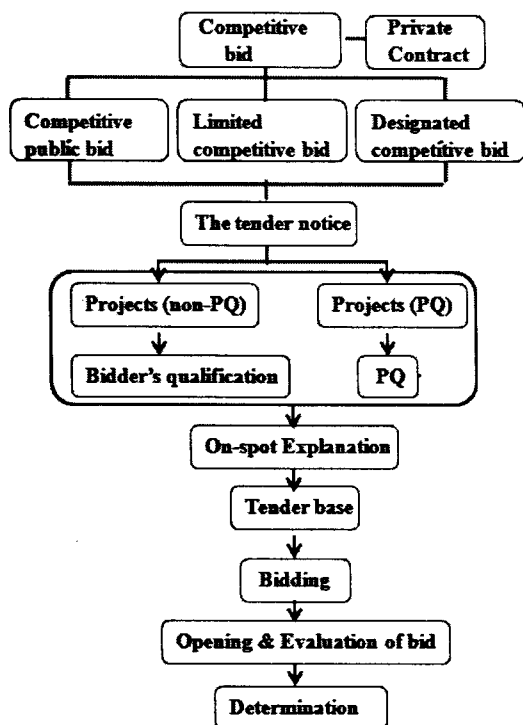


Fig. 2. The competitive tendering and bidding process in Korea

Besides, there are another two kinds of bidding method in Korea, Alternative Bid and Package Bid. Alternative Bid is bidding for the project which has the approval of the alternative along with the original bid according to the bidder's wish. The definition of Package Bid is that refers to the bidding where one submits upon bidding, along with the tender, the design for the construction as well as the blueprint for other constructions, and documents based on the basic bidding plan and the guidelines for package construction.

3.2 Comparison of Fig.1 and Fig. 2

3.2.1 The tender notice and the invitation letter

In China, in case of open bid, the tender notice shall be published in the newspapers and periodicals and information networks designated by the state in case of selective bid, the tenderee shall issue the letters of bid invitation to 3 or more specified legal persons or other organizations with the capacity to undertake the project of construction bid invitation and with good credit

standing.

In Korea, the tender notice shall be posted 7 days prior to the deadline for submission of bids set in the tender documents. In case of the bid without the on-spot explanation, there is a regulation on the days prior to the deadline for submission of bids set in the tender documents as listed in Table. 2.

Table. 2. The time for the tender notice

The presumed value of the project	Days
X<1 billion won	7
1 billion won<X<5 billion won	15
X>5 billion won	40

3.2.2 The on-spot survey and on-spot explanation

In China, the tenderee may, according to the concrete situations of the bid invitation project, organize the potential tenderers to make on-spot surveys for the project, and introduce to them the information about the project site and the relevant environment. So on-spot survey is not necessary. The tenderers shall be responsible by themselves for the judgment and decisions made by the potential tenderers based on the introduction by the tenderee. The tenderee may not organize only one tenderer or separately organized the tenderers to make on-spot surveys.

In Korea, in order to ensure the proper engineering method for the project, the on-spot explanation is organized to explain the character, scale and the relevant environment of the project. And the project over 30 billion won must have on-spot explanation. With regard to projects of different scales, there is a regulation on days prior to the deadline for the submission of bids set in the tender document as listed in Table. 3.

Table. 3. The time for on-spot explanation

The presumed value of the project	Days
X<1 billion won	7
1 billion won<X<5 billion won	15
X>5 billion won	33

3.2.3 The PQ and Post-qualification

In China, Pre-qualification examination refers to the qualification examination made on the potential tenderers before the bid invitation. Post-qualification

examination refers to the qualification examination made on the tenderers after opening the tender. As a general principle, no post-qualification examination will be made where a pre-qualification examination has already been made, except as otherwise provided for by the tender documents. The qualification examination shall mainly examine whether the potential tenderers or tenderers meet the following conditions:

(1) Having the independent right to conclude the contract;

(2) Having the capacity to perform the contract, including professional and technical qualifications and capacity, fund, equipment and other material facilities, management capacity, experience, reputation and corresponding practicing personnel;

(3) Having not been stopped from business, or deprived of the qualification for bid invitation, the property not being taken over or frozen, and having not been bankrupt;

(4) Having no record of winning bids by fraudulent means or serious breach of contract or serious quality problems within the recent 3 years;

(5) Other qualifications and conditions set forth by laws and administrative regulations.

In Korea, in order to prevent the improper project, the non-compulsory PQ on potential tenderers is required before bidding. And there is a complicated system to check the qualification. The projects which meet the following conditions shall carry out PQ:

(1) The project over 20 billion won;

(2) The bridge construction project in which the distance of adjacent column is more than 50 meters or the span length is more than 500 meters;

(3) The airport construction project;

(4) The other 20 kinds of projects.

The examination standard includes four aspects:

(1) The construction experience (30 points);

(2) The technology skill (35 points);

(3) The management status (35 points);

(4) The credit (± 10 points).

The total score of first three aspects is 100 points. Anyone who gets more than 50 points in the first three aspects and more than 60 points as a total score can be chose as a proper tender. And only the proper tender can attend the on-spot survey. There is no need to undertake PQ again for a tender who has passed the examination to the same kind of project within the recent accounting year. With regard to small and medium building construction enterprises, they enjoy a policy to gain additional points when they form a joint-company for bidding.

8. Conclusion

Based on the Chinese and Korean construction laws, this research examined the tendering and bidding procedure in both countries, and then analyzed differences such the tender notice, on-spot explanation and PQ and so on. The major analytical findings and corresponding implications are summarized as follows:

(1) The construction grading and categorization system in China are more complicated than that of Korea, which means that there are more law to obey. Obtaining approval construction certification is quite difficult for foreign construction enterprises.

(2) There is a detailed regulation on the bidding methods in Korea, so it is easy to follow the tendering and bidding process. Many aspects in Chinese tendering and bidding process should be improved, especially in PQ. Without the relevant laws, the tendering discrimination always takes place.

(3) Many differences exist in the tendering and bidding process between China and Korea because of different bidding methods and regulations.

The future research will concentrate on the case study to explain the practical difficulties and conflicts that foreign construction enterprises confront with in tendering and bidding process.

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