

Order of the State Council
(No.527)

The Administrative Regulation on Contracting Foreign Projects, which was adopted at the eighth executive meeting of the State Council on May 7th, 2008, is hereby promulgated, and shall come into force as of September 1, 2008.

Premier: Wen Jiabao
July 21, 2008

Administrative Regulation on Contracting Foreign Projects

Chapter I General Provisions

Article 1 This Regulation is formulated to regulate the administration of the contracting of foreign projects and enhance the healthy development of the contracting of foreign projects.

Article 2 For the purpose of this Regulation, the term “contracting foreign project” refers to an activity of a Chinese enterprise or other entity (hereinafter referred to as entity) of contracting an overseas construction project.

Article 3 The state encourages entities to contract foreign projects and improve the quality and level of such projects.

The relevant departments under the State Council shall formulate and improve the policies and measures favorable for contracting foreign projects, and set up and improve the service system and risk prevention mechanism for contracting foreign projects.

Article 4 In contracting foreign projects, entities shall safeguard national interests, public interests and the legitimate rights and interests of their persons sent abroad.

A foreign project contractor shall abide by the law of the country or region where the construction project is located, stick by the contract, respect the local customs and habits, protect the ecological environment and promote the local economic and social development.

Article 5 The competent department of commerce of the State Council shall take charge of the supervision and administration of the foreign project contracting activities held nationwide, and the relevant departments under the State Council shall take charge of the relevant administrative work within their respective scope of duties and functions.

The competent department of construction of the State Council shall organize and arrange construction enterprises to participate in contracting foreign projects.

The competent department of commerce of the people’s government of a province, autonomous region or municipality directly under the Central Government shall take charge of the supervision and administration of the foreign project contracting activities held in this administrative region.

Article 6 Any association or chamber in contracting foreign projects shall provide information and training services thereabout for its members according to its articles of association, work out industrial norms according to law, give play to its role of coordination and self-discipline, safeguard fair competition and protect the interests of its members.

Chapter II Qualification for Contracting Foreign Projects

Article 7 To contract foreign projects, an entity must get the foreign project contracting qualification in accordance with this Regulation.

Article 8 To apply for the said qualification, an entity shall satisfy the following requirements:

1. having the status of a legal person, and, for a project constructing entity, having the special grade or grade A qualification certificate issued by the competent department of construction or other relevant department;
2. having the capital and technical professionals required for contracting foreign projects, and having at least two managers who have engaged in contracting foreign projects for two years or more;
3. having the security maintaining capability required for contracting foreign projects;
4. having the rules and regulations for guaranteeing project quality and production safety, and having no big project quality problem or any relatively serious safety accident or more serious ones in the last two years; and
5. having a good business reputation, and having no material breach of contract or serious illegal operation in the last three years.

Article 9 To apply for the foreign project contracting qualification, a central enterprise or any other entity directly under the Central Government (hereinafter referred to as central entity) shall file an application form together with the certifications specified in Article 8 of this Regulation with the competent department of commerce of the State Council, while any other entity shall file an application form together with the certifications specified in Article 8 of this Regulation with the competent department of commerce of the people's government of the province, autonomous region or municipality directly under the Central Government of the place where it is located. The competent department of commerce of the State Council or the competent department of commerce of the people's government of the province, autonomous region or municipality directly under the Central Government shall, within 30 days after receiving the application form and certifications, examine the application materials together with the competent department of construction at the same level, and make a decision of approval or disapproval. In the case of approval, the competent department of commerce of the State Council or the competent department of commerce of the people's government of the province, autonomous region or municipality directly under the Central Government that accepts the application shall issue a foreign project contracting qualification certificate; and in the case of disapproval, it shall notify the applicant and give reasons therefor in writing.

The competent department of commerce of the people's government of a province, autonomous region or municipality directly under the Central Government shall file the situations about its issuance of foreign project contracting qualification certificates with the competent department of commerce of the State Council for archival purposes.

Article 10 Where the competent department of commerce of the State Council or the competent department of commerce of the people's government of a province, autonomous region or municipality directly under the Central Government finds out in supervision and inspection that any foreign project contractor no longer satisfies the requirements prescribed in this Regulation, it shall order the contractor to rectify within a certain time limit, and, if the contractor still fails to satisfy the prescribed requirements upon the expiration of the time limit, it shall revoke its foreign project contracting qualification certificate.

Chapter III Foreign Project Contracting Activities

Article 11 The competent department of commerce of the State Council shall, together with other relevant departments of the State Council, set up a safety risk assessment mechanism of foreign projects, publishing the safety evaluation results in the relevant countries and regions on a regular basis so as to provide pre-warning information in a timely manner and guide foreign project contractors to do well the safety protection.

Article 12 No foreign project contractor may contract any project at an illegitimate low price or engage in collusive tendering or commercial bribery.

Article 13 A foreign project contractor shall conclude a written contract with the project employer to clarify the

rights and obligations of both parties, and both parties shall fulfill their obligations in accordance with the written contract.

Article 14 A foreign project contractor shall strengthen the administration of project quality and production safety, and set up, improve and put into effect the rules and regulations on project quality and production safety administration.

Where a foreign project contractor subcontracts a foreign project, it shall conclude a special agreement on project quality and production safety administration with the subcontractor or specify their respective responsibilities for project quality and production safety administration in the subcontracting contract, and shall coordinate and administer the project quality and production safety of the subcontractor in a unified way.

No foreign project contractor may subcontract a foreign project to any entity without the qualification required by the state laws, or subcontract the construction part of a foreign project to a domestic construction enterprise which has not obtained the safe production permit according to law.

No subcontractor may further subcontract a project. A foreign project contractor shall expressly forbid in the subcontracting contract the subcontractor to further subcontract the project, and shall take the responsibility for supervising the subcontractor to make sure that it abides by the contract clause.

Article 15 To provide intermediate service of employing persons to be assigned abroad for foreign project contractors, an entity shall get the permit of the competent department of commerce of the State Council, and provide such intermediate service in accordance with the provisions of the competent department of commerce of the State Council.

When necessary, a foreign project contractor shall employ persons to be assigned abroad through an intermediate agency which has the required permit and has been operating legally instead of one which has not obtained the permit or has committed any gross violation.

Article 16 A foreign project contractor shall conclude labor contracts with all its persons assigned abroad, provide work conditions and pay remunerations to them in strict accordance with such contracts, and properly fulfill its obligations as an employer.

Article 17 A foreign project contractor shall have a specialized safety management institution and workers to protect the personal safety and property safety of the persons assigned abroad, and, in light of the specific situations of the project contracted by it, work out a plan for protecting the personal safety and property safety of the persons assigned abroad and put the funds needed in position.

A foreign project contractor shall, in light of the safety situation of the country or region where the contracted foreign project is located, educate and train its persons assigned abroad about security and emergency knowledge so as to improve their security awareness and self-protection capability.

Article 18 A foreign project contractor shall buy overseas life accident insurance for its persons assigned abroad.

Article 19 A foreign project contractor shall pay or deposit contingent funds in accordance with the requirements of the competent department of commerce and the public finance department of the State Council.

The contingent funds prescribed in the preceding paragraph shall be used for paying the following expenses when the contractor refuses or becomes unable to pay:

1. remunerations to the persons assigned abroad;
2. expenses needed by a person assigned abroad for coming back to China or accepting other emergency rescue in the case of emergency; or
3. expenses needed for making compensation for the losses suffered by a person assigned abroad.

Article 20 A foreign project contractor shall, after concluding a foreign project contract with a project employer, report to the Chinese embassy (consulate) in the country where the project is located in a timely manner.

A foreign project contractor shall accept the guidance provided by the Chinese embassy (consulate) in the country where the project is located in terms of emergency prevention, project quality, production safety and the protection of persons assigned abroad.

Article 21 A foreign project contractor shall make an emergency response plan, and, in the case of any emergency occurring in a foreign country, timely and properly treat it and immediately report it to the Chinese embassy (consulate) in that country or the relevant competent department in China.

The competent department of commerce of the State Council shall, together with other relevant departments of the State Council, set up a foreign project emergency pre-warning, preventing and handling mechanism and improve it and make a foreign project emergency response plan under the principle of attaching equal importance to pre-event prevention and post-event disposal.

Article 22 A foreign project contractor shall report its foreign project contracting work to the competent department of commerce on a regular basis, and file the business statistics with the relevant department in accordance with the provisions of the competent department of commerce of the State Council and the statistics department of the State Council.

Article 23 The competent department of commerce of the State Council shall, together with other relevant departments of the State Council, set up an information collecting and reporting system on foreign project contracting so as to provide information service for foreign project contractors free of charge.

The relevant departments shall provide express services for foreign project contractors in customs clearance of cargos and the entry and exit of their workers in accordance with the law.

Chapter IV Legal Responsibility

Article 24 Where any entity contracts foreign projects without the foreign project contracting qualification, the competent department of commerce shall order it to correct, impose a fine of not more than 1 million yuan but not less than 500,000 yuan upon it, confiscate the illegal gains if any, and impose a fine of not more than 100,000 yuan but not less than 50,000 yuan upon the chief person-in-charge.

Article 25 Where any foreign project contractor falls under any of the following circumstances, the competent department of commerce shall order it to correct, impose a fine of not more than 200,000 yuan but not less than 100,000 yuan upon it and impose a fine of not more than 20,000 yuan but not less than 10,000 yuan upon the chief person-in-charge. If it refuses to correct, the competent department of commerce may forbid it to contract new foreign projects in a certain time (from one year to three years). If it has any big project quality problem, has any relatively serious safety accident or more serious ones or has caused other serious consequences, the competent department of commerce may revoke its foreign project contracting qualification certificate. For a project constructing entity, the competent department of construction or other relevant competent department may degrade its qualification or revoke its qualification certificate:

1. failing to set up or abide by the rules and regulations on project quality and production safety administration;
2. having no specially established safety management institution and persons to protect the personal safety and property safety of the persons assigned abroad, or failing to work out a specific plan for protecting the personal safety and property safety of the persons assigned abroad in accordance with the specific situations of the foreign contracted project and failing to put in position the funds needed for effecting the plan;
3. failing to educate and train the persons assigned abroad about security and emergency knowledge; or
4. failing to make an emergency response plan, or failing to timely and properly handle an emergency occurring abroad.

Article 26 Where any foreign project contractor falls under any of the following circumstances, the competent department of commerce shall order it to correct, impose a fine of not more than 300,000 yuan but not less than 150,000 yuan upon it and impose a fine of not more than 50,000 yuan but not less than 20,000 yuan upon the chief person-in-charge. If it refuses to correct, the competent department of commerce may forbid it to contract new foreign projects in a certain time (from two years to five years). If it has any big project quality problem, has any relatively serious safety accident or more serious ones or has caused other serious consequences, the competent department of commerce may revoke its foreign project contracting qualification certificate. For a project constructing entity, the competent department of construction or other relevant competent department may degrade its qualification or revoke its qualification certificate:

1. contracting any project at an illegitimate low price, or engaging in collusive tendering or commercial bribery;
2. failing to conclude a special agreement on project quality and production safety administration with a subcontractor, or failing to stipulate their respective responsibility for project quality and production safety in such a contract, or failing to coordinate or manage the project quality and production safety work of the subcontracting entities in a unified way;
3. subcontracting a project to an entity not having the qualification required by the state, or subcontracting the construction part of a project to a domestic constructing enterprise which has not obtained the safe production permit according to law; or
4. failing to expressly stipulate in the subcontract that the subcontractor may not further subcontract the project.

Where any subcontractor further subcontracts a project, the competent department of construction shall order it to correct, and impose a fine upon the subcontractor and one upon its chief person-in-charge based on the amounts prescribed in the preceding paragraph by analogy. If it has any big project quality problem or any relatively serious safety accident or more serious ones, the competent department of construction or other relevant competent department may degrade its qualification or revoke its qualification certificate.

Article 27 Where any foreign project contractor falls under any of the following circumstances, the competent department of commerce shall order it to correct, and impose a fine of not more than 50,000 yuan but not less than 20,000 yuan upon it; impose a fine of not more than 10,000 yuan but not less than 5,000 yuan upon the chief person-in-charge if it refuses to correct:

1. failing to report a contract concluded with a foreign project employer to the Chinese embassy (consulate) in the country where the foreign project is located;
2. failing to report any emergency occurring in a foreign country where the foreign project is located to the Chinese embassy (consulate) in that country or the relevant competent department in China; or
3. failing to report the foreign project contracting information to the competent department of commerce on a regular basis, or failing to file the business statistics with the relevant department as required.

Article 28 Where any foreign project contractor employs persons to be assigned abroad through an intermediate agency which has not obtained the permit to do so or which has committed any gross violation, or fails to buy overseas life accident insurance for the persons assigned abroad in accordance with this Regulation, or fails to pay or deposit contingent funds as required, the competent department of commerce shall order it to correct within a certain time limit, impose a fine of not more than 100,000 yuan but not less than 50,000 yuan upon it, and impose a fine of not more than 10,000 yuan but not less than 5,000 yuan upon the chief person-in-charge. If it fails to correct within the prescribed time limit, the competent department of commerce may forbid it to contract new projects in a certain time (from one year to three years).

Where any entity provides intermediate services of employing persons to be assigned abroad for foreign project contractors without getting the permit of the competent department of commerce of the State Council, the competent department of commerce of the State Council shall order it to correct, impose a fine of not more than 200,000 yuan but not less than 100,000 yuan upon it, confiscate the illegal gains if any, and impose a fine of not more than 100,000 yuan but not less than 50,000 yuan upon the chief person-in-charge.

Article 29 Where any functionary of a competent department of commerce, a competent department of

construction or any other relevant department abuses his power, neglects his duty or engages in malpractice for personal gains in supervising and administering the foreign project contracting business, and thus a crime is constituted, he shall be subject to corresponding criminal responsibility; if a crime is not yet constituted, he shall be given a punishment according to law.

Chapter V Supplementary Provisions

Article 30 Issues concerned in contracting foreign projects, such as the import and export of cargos and technology, the entry and exit of persons, customs issues, taxation issues and foreign exchange issues, shall be handled in accordance with laws, administrative regulations and other relevant state provisions.

Article 31 Where a foreign project contractor makes an offer for a project valued more than the amount prescribed by the competent department of commerce, the public finance department or other relevant department of the State Council by way of tendering or bid negotiation, issues like the bank's issuance of the letter of guarantee shall be handled in accordance with the provisions of the competent department of commerce, the public finance department and other relevant department of the State Council.

Article 32 To contract a specially appointed project or to contract a project at a country or region specially appointed by the competent department of commerce of the State Council together with the Ministry of Foreign Affairs or other relevant department, a foreign project contractor shall get the approval of the competent department of commerce and other relevant departments of the State Council.

Article 33 Contracting projects in HKSAR, Macao SAR and Taiwan by entities from the mainland of China shall be governed by this Regulation by analogy.

Article 34 The implementation and administration of the projects constructed with aid from the Chinese Government shall be governed by the relevant state provisions.

Article 35 This Regulation shall come into force as of September 1, 2008.