

Regulations on the Administration of Foreign Contracted Projects of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com
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Chapter I — General Provisions

Article 1 — These Regulations are formulated to standardize foreign contracted projects and promote the sound development of foreign contracted projects.

Article 2 — For the purposes of these Regulations, "foreign contracted project" means the activity of Chinese enterprises or other units (hereinafter collectively referred to as "units") contracting construction engineering projects outside the territory of China (hereinafter referred to as "engineering projects").

Article 3 — The state encourages and supports the carrying out of foreign contracted projects and the improvement of the quality and level of foreign contracted projects.

The relevant departments under the State Council shall formulate and improve policy measures to promote foreign contracted projects, and establish and improve the service system and risk safeguard mechanism for foreign contracted projects.

Article 4 — In carrying out foreign contracted projects, the interests of the state and the public interest shall be safeguarded, and the lawful rights and interests of dispatched personnel shall be protected.

In carrying out foreign contracted projects, the laws of the country or region where the engineering project is located shall be complied with, contracts shall be honored, local customs and practices shall be respected, ecological and environmental protection shall be emphasized, and local economic and social development

shall be promoted.

Article 5 — The commerce department under the State Council shall be responsible for the supervision and administration of foreign contracted projects nationwide, and the relevant departments under the State Council shall, within the scope of their respective duties, be responsible for the administration related to foreign contracted projects.

The construction department under the State Council shall organize and coordinate construction enterprises to participate in foreign contracted projects.

The commerce departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for the supervision and administration of foreign contracted projects within their respective administrative regions.

Article 6 — Associations and chambers of commerce related to foreign contracted projects shall, in accordance with their charters, provide their members with services related to foreign contracted projects such as information and training, formulate industry norms in accordance with law, play the role of coordination and self-discipline, and safeguard fair competition and the interests of members.

Chapter II — Foreign Contracted Project Activities

Article 7 — The commerce department under the State Council shall, in conjunction with the relevant departments under the State Council, establish a safety risk assessment mechanism for foreign contracted projects, regularly publish the assessment results on the security situation of relevant countries and regions, provide early warning information in a timely manner, and guide units carrying out foreign contracted projects to do a good job in safety risk prevention.

Article 8 — Units carrying out foreign contracted projects shall not contract engineering projects at improperly low prices or engage in collusive bidding, and shall not engage in commercial bribery.

Article 9 — Units carrying out foreign contracted projects shall conclude written contracts with the employers of overseas engineering projects, specify the rights and obligations of both parties, and perform their obligations in accordance with the contracts.

Article 10 — Units carrying out foreign contracted projects shall strengthen the management of engineering quality and work safety, and establish, improve and strictly implement rules and systems for the management of engineering quality and work safety.

Where a unit carrying out a foreign contracted project subcontracts the engineering project, it shall conclude a special agreement on the management of engineering quality and work safety with the subcontractor, or stipulate in the subcontract their respective responsibilities for the management of engineering quality and work safety, and shall uniformly coordinate and manage the engineering quality and work safety of the subcontractor.

A unit carrying out a foreign contracted project shall not subcontract the engineering project to a unit that does not have the corresponding qualifications prescribed by the state; the building construction portion of the engineering project shall not be subcontracted to a domestic building construction enterprise that has not obtained a work safety permit in accordance with law.

A subcontractor shall not sub-subcontract or further subcontract the engineering project. A unit carrying out a foreign contracted project shall clearly stipulate in the subcontract that the subcontractor shall not sub-subcontract or further subcontract the engineering project, and shall be responsible for supervision.

Article 11 — Institutions providing intermediary services for personnel dispatched abroad for foreign contracted projects shall obtain the permission of the commerce department under the State Council and provide intermediary services for personnel dispatched abroad for foreign contracted projects in accordance

with the provisions of the commerce department under the State Council.

Where a unit carrying out a foreign contracted project recruits dispatched personnel through an intermediary institution, it shall select an intermediary institution that has lawfully obtained permission and operates lawfully, and shall not recruit dispatched personnel through an intermediary institution that has not obtained permission in accordance with law or has committed major illegal acts.

Article 12 — Units carrying out foreign contracted projects shall conclude labor contracts with the dispatched personnel they recruit in accordance with law, provide working conditions and pay remuneration to the dispatched personnel in accordance with the contracts, and perform the obligations of employers.

Article 13 — Units carrying out foreign contracted projects shall have specialized safety management institutions and personnel responsible for protecting the personal and property safety of dispatched personnel, and shall, based on the specific circumstances of the contracted engineering project, formulate schemes for protecting the personal and property safety of dispatched personnel and secure the necessary funds.

Units carrying out foreign contracted projects shall, based on the security situation of the country or region where the engineering project is located, provide dispatched personnel with targeted safety prevention education and emergency knowledge training, and enhance the safety prevention awareness and self-protection capability of dispatched personnel.

Article 14 — Units carrying out foreign contracted projects shall purchase overseas personal accident insurance for dispatched personnel.

Article 15 — Units carrying out foreign contracted projects shall promptly deposit reserve funds in accordance with the provisions of the commerce department under the State Council and the finance department under the State Council.

The reserve funds prescribed in the preceding paragraph shall be used to pay the following expenses that the unit carrying out the foreign contracted project refuses to bear or is unable to bear:

- (1) the remuneration of dispatched personnel;
- (2) the expenses required for dispatched personnel to return to China or receive other emergency assistance due to the occurrence of emergencies; and
- (3) the expenses required to compensate the losses of dispatched personnel in accordance with law.

Article 16 — After concluding a contract with the employer of an overseas engineering project, a unit carrying out a foreign contracted project shall promptly report to the Chinese embassy (consulate) in the country where the engineering project is located.

A unit carrying out a foreign contracted project shall accept the guidance of the Chinese embassy (consulate) in the country where the engineering project is located in respect of emergency prevention, engineering quality, work safety and the protection of dispatched personnel.

Article 17 — Units carrying out foreign contracted projects shall formulate emergency plans; when an emergency occurs overseas, they shall handle it promptly and properly, and immediately report to the Chinese embassy (consulate) in the country where the engineering project is located and the relevant domestic competent departments.

The commerce department under the State Council shall, in conjunction with the relevant departments under the State Council and under the principle of attaching equal importance to prevention and handling, establish and improve mechanisms for the early warning, prevention and emergency handling of emergencies in foreign contracted projects, and formulate emergency plans for emergencies in foreign contracted projects.

Article 18 — Units carrying out foreign contracted projects shall regularly report their carrying out of foreign contracted projects to the commerce departments, and submit business statistics to the relevant departments in accordance with the provisions of the commerce department under the State Council and the statistics department under the State Council.

Article 19 — The commerce department under the State Council shall, in conjunction with the relevant departments under the State Council, establish a system for the collection and notification of information on foreign contracted projects, and provide information services to units carrying out foreign contracted projects free of charge.

The relevant departments shall, in respect of customs clearance of goods and the entry and exit of personnel, provide swift and convenient services to units carrying out foreign contracted projects in accordance with law.

Chapter III — Legal Liability

Article 20 — Under any of the following circumstances on the part of a unit carrying out a foreign contracted project, the commerce department shall order rectification and impose on it a fine of not less than RMB 100,000 but not more than RMB 200,000, and impose on its principal person in charge a fine of not less than RMB 10,000 but not more than RMB 20,000; where it refuses to rectify, the commerce department may prohibit it from contracting new engineering projects overseas for a period of not less than one year but not more than three years; where it causes major engineering quality problems, a work safety accident above the level of a relatively major accident, or other serious consequences, the construction department or other relevant competent departments may downgrade its qualification level or revoke its qualification certificate:

- (1) failing to establish and strictly implement rules and systems for the management of engineering quality and work safety;
- (2) having no specialized safety management institution and personnel responsible for protecting the personal and property safety of dispatched personnel, or failing to formulate, based on the specific circumstances of the contracted engineering project, a scheme for protecting the personal and property safety of dispatched personnel and secure the necessary funds;
- (3) failing to provide dispatched personnel with safety prevention education and emergency knowledge training; or
- (4) failing to formulate an emergency plan, or failing to handle an emergency occurring overseas in a timely and proper manner.

Article 21 — Under any of the following circumstances on the part of a unit carrying out a foreign contracted project, the commerce department shall order rectification and impose on it a fine of not less than RMB 150,000 but not more than RMB 300,000, and impose on its principal person in charge a fine of not less than RMB 20,000 but not more than RMB 50,000; where it refuses to rectify, the commerce department may prohibit it from contracting new engineering projects overseas for a period of not less than two years but not more than five years; where it causes major engineering quality problems, a work safety accident above the level of a relatively major accident, or other serious consequences, the construction department or other relevant competent departments may downgrade its qualification level or revoke its qualification certificate:

- (1) contracting an engineering project at an improperly low price, engaging in collusive bidding or engaging in commercial bribery;
- (2) failing to conclude a special agreement on the management of engineering quality and work safety with the subcontractor, or failing to stipulate in the subcontract their respective responsibilities for the management of engineering quality and work safety, or failing to uniformly coordinate and manage the engineering quality and work safety of the subcontractor;

(3) subcontracting the engineering project to a unit that does not have the corresponding qualifications prescribed by the state, or subcontracting the building construction portion of the engineering project to a domestic building construction enterprise that has not obtained a work safety permit in accordance with law; or

(4) failing to clearly stipulate in the subcontract that the subcontractor shall not sub-subcontract or further subcontract the engineering project.

Where a subcontractor sub-subcontracts or further subcontracts the engineering project it has contracted, the construction department shall order rectification and impose on the subcontractor and its principal person in charge a fine of the amount prescribed in the preceding paragraph; where it causes major engineering quality problems or a work safety accident above the level of a relatively major accident, the construction department or other relevant competent departments may downgrade its qualification level or revoke its qualification certificate.

Article 22 — Under any of the following circumstances on the part of a unit carrying out a foreign contracted project, the commerce department shall order rectification and impose a fine of not less than RMB 20,000 but not more than RMB 50,000; where it refuses to rectify, a fine of not less than RMB 5,000 but not more than RMB 10,000 shall be imposed on its principal person in charge:

(1) failing to promptly report to the Chinese embassy (consulate) in the country where the engineering project is located after concluding a contract with the employer of the overseas engineering project;

(2) failing to immediately report to the Chinese embassy (consulate) in the country where the engineering project is located and the relevant domestic competent departments when an emergency occurs overseas; or

(3) failing to regularly report its carrying out of foreign contracted projects to the commerce department, or failing to submit business statistics to the relevant departments in accordance with the provisions.

Article 23 — Where a unit carrying out a foreign contracted project recruits dispatched personnel through an intermediary institution that has not obtained permission in accordance with law or has committed major illegal acts, or fails to purchase overseas personal accident insurance for dispatched personnel in accordance with these Regulations, or fails to deposit reserve funds in accordance with the provisions, the commerce department shall order rectification within a prescribed time limit, impose a fine of not less than RMB 50,000 but not more than RMB 100,000, and impose on its principal person in charge a fine of not less than RMB 5,000 but not more than RMB 10,000; where it fails to rectify within the time limit, the commerce department may prohibit it from contracting new engineering projects overseas for a period of not less than one year but not more than three years.

Where, without obtaining the permission of the commerce department under the State Council, a person engages in intermediary services for personnel dispatched abroad for foreign contracted projects without authorization, the commerce department under the State Council shall order rectification and impose a fine of not less than RMB 100,000 but not more than RMB 200,000; where there are illegal gains, they shall be confiscated; and a fine of not less than RMB 50,000 but not more than RMB 100,000 shall be imposed on its principal person in charge.

Article 24 — Where staff members of the commerce departments, construction departments and other relevant departments abuse their powers, neglect their duties or engage in malpractices for personal gain in the supervision and administration of foreign contracted projects, and a crime is constituted, criminal liability shall be pursued in accordance with law; where no crime is constituted, sanctions shall be imposed in accordance with law.

Chapter IV — Supplementary Provisions

Article 25 — Matters such as the import and export of goods, the import and export of technology, the entry and exit of personnel, customs, taxation and foreign exchange involved in foreign contracted projects shall be handled in accordance with the relevant laws, administrative regulations and state provisions.

Article 26 — Where a unit carrying out a foreign contracted project participates, by way of bidding or negotiated bidding, in an engineering project with a quoted amount above the standard prescribed by the commerce department under the State Council, the finance department under the State Council and other relevant departments, matters such as the issuance of its bank guarantee shall be handled in accordance with the provisions of the commerce department under the State Council, the finance department under the State Council and other relevant departments.

Article 27 — Where a unit carrying out a foreign contracted project contracts a specific engineering project, or contracts an engineering project in a specific country or region determined by the commerce department under the State Council in conjunction with the Ministry of Foreign Affairs and other relevant departments, the matter shall be subject to the approval of the commerce department under the State Council in conjunction with the relevant departments under the State Council.

Article 28 — Units in the Chinese mainland contracting engineering projects in the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region shall implement the matter by reference to the provisions of these Regulations.

Article 29 — The implementation and administration of engineering projects built with Chinese government foreign aid shall be carried out in accordance with the relevant state provisions.

Article 30 — These Regulations shall take effect as of September 1, 2008.

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