

The Accreditation of China's Tendering Agencies

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The agent system is a result of the development of commercial economy. It allows civil entity to do business through the know-how and abilities of the agents. This kind of system not only significantly reduces the cost of business operation and increases the competitiveness of the above-mentioned civil entity, it also provides a better means for the civil entity to exercise its rights. The tendering agent system is a symbol of deepened social division of labor within the field of tendering and bidding. Since the introduction of tendering system into China in 1979, Chinese people have made lots of meaningful explorations to better understand the meaning, function and status of tendering. At the same time, tendering agents in China are increasing rapidly, each with their own characteristics. They play an active role in providing professional services in various tendering projects. Then, in 2000, the Chinese government promulgated 《The Tendering and Bidding Law of the People's Republic of China》, which is the first of its kind. It was not until then, that the legal status, nature and requirements was established.

Section I: The legal status, nature and requirements of the tendering agency in China

1. The legal status of the tendering agency. A tendering agency is a social intermediary organization which is established according to Chinese laws and provides tendering or related services.

2. Basic requirements of the tendering agency. (1) It should have fixed sites and funds for business operation. (2) It should have professional teams who are capable of formulating the tendering documents and hosting the bid evaluation meeting. (3) It should have a data base of economical and technical experts, who has enough expertise for bid evaluation.

3. Requirements for the member of the bid evaluation committee. All experts on the bid evaluation committee should have eight years or more working experience in relative areas and have senior or equivalent title.

4. The nature of the tendering agency. The tendering agency is neither an administrative institution, nor a company engaged in production. It provides professional tendering services with its knowledge and expertise. It shouldn't be subsidiary to or has any benefits relationship with the administrative or executive bodies of the Government. It should be enterprise in nature.

Section II: The necessity of accreditation of the tendering agency

Tendering agencies are organizations specialized in executing tendering projects on behalf of the tender. It is also the performer of the tendering agent system. According to Chinese laws, tendering agencies specialized in certain areas must obtain relative certifications before entering business, because:

1.The accreditation process safeguards the publicity, equality and impartiality of the tendering projects. Tendering is a legal act of agent service. It embodies a legal process of contract binding, and thus requires the performer of the tendering project, namely the tendering agency to operate under various laws and regulations. During the tendering process, the tendering agency should not only allow itself to be supervised by the tender, bidder and administrative bodies of the government, but also conform with the professional norm. A tendering agency is a social intermediary organization, which act as a bond between government, market and enterprises. Its main pursuit should be the equality of social competition and the founding of a fair playing field. It should not pursue to maximize the individual gain of itself or the tender at the cost of national or social interests.

2. The accreditation process serves as a test for the ability of the tendering agency to provide professional services. Projects in railway, communication, power, oil, chemical, mechanic, urban construction, health, agriculture and environmental protection industry, which require compulsory bidding by the Chinese law are often playing important roles in public security and national interest. In order to provide quality services for these projects, tendering agencies must be equipped with reasonable expertise and knowledge, which makes accreditation necessary.

3.The accreditation process serves as a test for the professional ability of the talent team of the tendering agency. The tendering industry is knowledge intensive. It requires a trans-disciplinary talents team with affluent knowledge and rich experience in legal, technological, economic, project management and foreign language areas.

4.The accreditation process meets the need of strengthening executive supervision. On one hand, it is important for controlling the total number of tendering agencies and fighting against vicious competitions. On the other hand, it helps in the endeavour of strengthening the management of the tendering agencies and improving service levels. Meanwhile, the annual examination system can help the government to realize dynamic management of the tendering agencies, and enable timely suspension of dis-qualified agencies.

Section III: The accreditation of the tendering agency in China

1.The qualification of the tendering agency in China is often authorised by relative government bodies defined in the decree issued by the State House or in the law:(1)the tendering certificates(class A, B and pre-B) for central investment projects are issued by the the National Development and Reform Commission.(2)The tendering certificates(class A) for

construction projects are issued by the Ministry of Housing and Urban-Rural Development, while certificates of class B and class Temporary are issued by the department of construction at provincial levels. (3) The tendering certificates (class A, B and pre-B) for electric & mechanic equipments are issued by the Ministry of Commerce. (4) The tendering certificates (class A) for government purchasing are issued by the Ministry of Finance, while certificates of class B are issued by the department of finance at provincial levels. Besides, telecommunication and medicine industry also have their own accreditation process.

2. Tendering agencies with qualification (total number: over 6000): (1) No. of agencies with certificate for central investment projects: Class A: 157; Class B: 309; pre-Class B: 228 (data from 2012) (2) No. of agencies with certificate for construction projects: Class A: 1116; Class B: 2312; Class Temp: 1366 (data from 2010) (3) No. of agencies with certificate for electric & mechanic equipment: Class A: 110; Class B: 27; pre-Class B: 64 (data from 2012) (4) No. of agencies with certificate for government purchasing: Class A: 409; Class B: 832 (data from 2008).

3. The basic requirements of the tendering agency accreditation in China. Various departments of the state house have formulated the requirements, standards, accreditation procedure, scope of business, punishment and annual examination of their own accreditation process to conform with the characteristics of their own industry. Now I'll take the certificate for central investment projects as an example to give you a brief introduction on the accreditation process:

(1) Basic requirements: A tendering agency should:

- ① be established according to the law, and have independent legal status
- ② not be subsidiary to or have benefis relationship with any administrative or executive bodies of the Government
- ③ have fixed sites and working conditions for the operation of tendering services
- ④ have sound organizational structure and efficient internal management system
- ⑤ have talents and expertise needed for formulating tendering documents and bid evaluation
- ⑥ have an expert base with relative scale
- ⑦ have a clean slate in terms of law or decree violation in the past three years
- ⑧ have a clean slate in terms of major person-in-charge criminal sanctions in the past three years
- ⑨ comply with other requirements set forth by the NDRC.

(2) Accreditation Standards: Central investment projects are divided into three levels: Class A, Class B, Class Temp. Tendering agencies with Class A can engage in all central investment projects agency businesses; tendering agencies with Class B can engage in central investment projects agency businesses no more than RMB 500 million; tendering agencies with Class Temp. can engage in central investment projects agency businesses no more than RMB 200 million. So the accreditation standards are different. For example, the accreditation standards

for agencies with Class A are:

- ①Registered capital should be greater than or equal to RMB 10 million.
- ②No. of staff should be greater than or equal to 60 (The percentage of staff with medium title or above should be greater than or equal to 50%, registered bidding staff should be greater than or equal to 30%)
- ③No. of bid evaluation expert should be greater than or equal to 800
- ④years of operation should be greater than or equal to 5 years
- ⑤No. of projects over RMB 50 million should be greater than or equal to 60, or accumulated sum of winning bid price greater than or equal to RMB 6 billion.

For agencies with Class B & Class Temp. the relative accreditation standards reduce step by step. For instance, registered capital of agencies with Class B should be greater than or equal to RMB 5 million. No. of staff should be greater than or equal to 30, years of operation should be greater than or equal to 3 years, etc.

(3)Accreditation process:

- ①The NDRC will publish a notice, which contains the requirements and materials needed to apply for the certificate, on its official website two months before the accreditation.
- ②Major application materials includes: copies of business license, constitutional documents, organizational structure, staff overview, business achievements overview, bid evaluation expert overview, proof material for business site, etc.
- ③The application materials will first be examined by departments for development and reform at provincial levels, which will issue and submit an approve letter to the NDRC.
- ④The NDRC will then call on an expert team to re-examine the application materials and publish the result on its official website
- ⑤If no complaint arises during the publication period, the NDRC will approve the application and issue the certificate within ten working days.

(4)Regulations on upgrading, downgrading and annulling of the qualification

(5) Measures to be taken when a qualified tendering agency modifies its business registration items

(6)Annual examination: The NDRC will call on expert teams to examine the qualification of the tendering agency each year. All tendering agencies should submit their annual re-examination materials to the NDRC every year before Feb. 28th, which includes:

- ①A report on business performance and organizational changes.
- ②A report on staff changes.
- ③Tendering projects overview.
- ④A report on the implementation of tendering and investment management related regulations.
- ⑤A report on punishments and complaints received.

⑥A report on business achievements.

(7) Measures to be taken when a tendering agency fails the annual examination.

(8) Punishments on tendering agencies which fail to conform with the regulation and the law.