

Analysis on Advantages of Tendering Agents in Bidding Procurement

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In China, Bidding Procurement is categorized as two organization forms: the Self-bidding and the Agent bidding. The former means the employer who is capable of preparing the bidding documents and organizing the bid evaluation, can carry out the bidding procedure by itself after approved by or registered with the relevant authorities. The latter refers to that the employer entrusts a tendering agent to organize a series of bidding & tendering activities so as to select a desirable winner among all bidders. The tendering company is an agent that is established by law to devote itself to bidding agency business and provide the related services in order to find the satisfactory seller for the buyer based on its advantages in profession and information. For the time being, The Agent Bidding is more and more popular with China's market economic development. Especially for the projects of governmental procurement and state investment, the Agent Bidding is specified as the major organization form in procurement by China's laws and regulations.

I. Theoretical Basis

In the market economic context, there are the asymmetric information and incomplete relation of covenant between the buyer and the seller. In the strict economic sense, the buyer and the seller have a consignor-agent relationship each other.

The theory of information economics tells us that the scientific decision is made on the basis of a lot of information collected and analyzed. However, the information is collected at some costs, which is called the information collection cost. Due to the existence of such cost, persons acquire the information by different means according to its target and strength, which causes the uneven information distribution among different groups, and such unevenness is more remarkable in particular among different industries and departments, and such information asymmetry mainly reflects in the transactions on that each party is lack of some needed information.

In reality, the information asymmetry is ubiquitous and unavoidable. Therefore, the parties, to obtain more benefits, may have corruption or demoralization behaviors in their transaction, which results in negative influence on the market. Provided one party is able to benefit from its application of more information and lead the loss to the other in the transaction, the party with inferior information will be hard to make decision on the transaction, and then the price

will be distorted and lose its functions of balancing the supply and demand relation and promoting the transaction accomplishment, and thus reducing the market efficiency. Adverse selection refers to the cases of the same kind. The adverse selection theory indicates that failure to establish an effective mechanism to crack down the false products will cause the rampant run of such products, and even cause the market paralysis.

Therefore, we believe that bidding procurement executed by tendering agents provides a set of effective mechanism that is capable to prevent the adverse selection market from arising.

II. Tendering agent is a Product of Socialized Division of Labors & Trades in Market Economic Context and is Required by Optimum Allocation of Social Resources

The tendering agent is the product of socialized division of labors and trades. Since China adopted the reforming and opening-up policy, the market has played an increasingly important role in allocating the social resources as the market economic continues to develop profoundly. In 1980, a university project that China launched with the support of loans from the World Bank for the first time is also the first project that employed a tendering agent to invite bids in international scope. Due to the institutes', enterprises' and companies' lack of knowledge and information on the bidding procurement, as well as the experts and competencies, the agent specializing in tendering arose to meet the demand of those units. After that, the tendering agent in China has drawn more and more attention in the field of bidding procurement, and is widely used and popularized, too. On August 30, 1999, the 11th session of the ninth meeting the NPC standing committee has adopted the *Law of the People's Republic of China on Tenders and Bids*, which is a basic law to standardize the activities of bidding procurement. Its promulgation and implementation signifies that the tendering agent has its due position and function.

In the past 30-odd years, China has witnessed the rapid development and the increasing coverage of the tendering industry, and the bidding procurement has been diversified increasingly day by day, the bidding system has come into mature step by step, and some extinguishing achievements in economy has been made in one by one. The tendering agent plays a positive role in standardizing the market competition order, optimizing the resource allocation and promoting the development of the productivity, etc. via the competitively procurement activities conducted according to the principle of justice, fairness and openness.

III. Tendering agent is a Consultancy Organization Acceptable to World Bank and Asian Development Bank

Founded in 1984, the China International Tendering Company, CNTIC (hereinafter referred to as CITC-CNTIC) is the first tendering company in China. Approved by the former Ministry of Foreign Trade and Economic Cooperation, P.R.C., and accepted by the Ministry of Finance, P.R.C., the People's Bank of China, as well as the World Bank and the Asian Development Bank (ADB), CITC-CNTIC, CMC International Tendering Corp. (CITC), Instrimpex International Tendering Company (ITC) and CNCCC International Tendering Co.,

Ltd. are the four earliest agents in China to have the qualification of international bidding & tendering.

It is stipulated by China's relevant laws and regulations that the bidding procurement for projects financed by the loans from international financial organization and foreign government shall be consigned to the tendering agent to do so. It is also specified in the procurement guidelines of the World Bank and ADB that the employer may select and employ a tendering agent; such employment could be incorporated in the procurement plan, and corresponding costs and expenses arising in such employment could be borne by the ADB.

During more than thirty years' activities in implementing the projects financed by the World Bank and ADB, the procurement agent has accumulated rich experience, and has a profound and accurate grasp of the requirements of the project. Therefore, at present some tendering agencies in China are trying to provide the World Bank and ADB the intensive project management, including project planning, project audit and technical assistance, and successful examples has been made in the past. Therefore, the competence of the tendering agent has withstood the test by the market and is accepted and approved by the international financial organizations.

IV. China has made requirements for the tendering agent in market accession, qualification, personnel, competence, supervision and other areas

In accordance with *the Law of the People's Republic of China on Tenders and Bids*, the tendering agent shall meet the following conditions: (I) It shall have the business place and related capital to accomplish the bidding procurement operation; (II) It shall have the competence to prepare the bidding documents and organize the bid evaluation, as well as have a required number of professional staff who has the qualification of bidding and cost estimate, and the title of medium technician or above level; (III) It shall have the expert group, each member of which will be legally, technologically and economically qualified to be the member of the bid evaluation committee.

As a service agency, the tendering agent shall not be subordinate to the administrative authority or other governmental department, nor can it provide consultancy or service to the bidders.

China has categorized the tendering agents into three levels of Level A, Level B and Level B-2 (temporarily) for projects invested by the Central Government, engineering construction projects, importing electrical & mechanical products, the government procurement projects etc. These agents are managed by level, and strict provisions have been made for their capital, personnel and achievements at each level.

As is established by law, the tendering agent shall be supervised by: 1) administrative departments subordinated to the State Council and by the local government, which is called

the administrative supervision; 2) by the judicial organs (judicial supervision); 3) the employer and the bidders who participate in the bidding activities, shall be entitled to make supervision; and 4) the public, the society and the media who, acting as the third party, also have the right to supervise the tendering agent.

V. Advantages of Agent Bidding in Transaction Quality and Efficiency

Experiences summarized from the long-term practices indicate that the Agent Bidding has the remarkable advantages over the Self-bidding, those advantages are reflected in the following areas:

AA. Minimize Information Asymmetry and Promote Market Development

As mentioned above, the person who has acquired more information will play an active role in the transaction between the seller and the buyer in the information asymmetric context. Therefore, the parties engaged in the transaction usually hard to reach an agreement due to the information asymmetry and the party with inferior information cannot make the judgment and decision rapidly. Consequently, it has to spend a lot of costs, time and efforts to collect the relevant information, which reduces the quality and efficiency of the transaction, and thus leading to an increase in the social transaction cost and even the distortion & malfunction of the market.

Take the engineering project as an example, the contractor's information advantages include the advantages obtained before and after the contract signing, the former exists before signing the contract, and the contractor has more information than the owner in project construction experience, technological strength, managerial competence and its real resources, etc. while the latter occurs after signing the contract, and the contractor has more information than the owner in the project schedule, construction quality, accomplishment or variation of technological parameters, as well as the predicted completion time and the gains in the future.

As the contractor has the information advantages, the owner has to overcome two difficulties, the first is how to select the appropriate contractor in a rapid and effective way, that is, in the condition that the real capacity of the contractor cannot be assessed, by what kind of mechanism that the owner selects the most competent contractor to build the project; the second is the stimulation made to the contractor after signing the contract, i.e., how to encourage the contractor to work hard without jerry-building in the case that it is difficult to measure the contractor's efforts.

The Agent Bidding provides a high performance and quality scheme to solve the above mentioned problems. Comparing with the owner who focuses on its own benefit while ignores or avoids procurements rules and guideline stated in the national administrative agency and foreign Loan organizations, and even impairs the benefit of the bidders in the one-time deal, the tendering agent has the self-evident advantages in the expertise and consistency of the tendering organization, exact and diversified information channels,

accurate understanding of policies, familiarity with the process, as well as the smooth communication with the lenders, the competent state authorities, the owner and the bidders, etc.

2B. Tendering Agent Has Complete Information Advantage

While involving in the bidding procurement projects, the tendering agent has accumulated rich information on both domestic and foreign suppliers, prices of equipment and materials, and is familiar with the relevant market situations, knows well the development trends of the advanced equipment and technology. At the same time, the agent can upgrade the state laws and regulations in real-time manner to learn the latest changes and trends in law and policy. Some agents have also established the supplier assessment system that provides a dynamic management on the technological strength, qualification and reputation of suppliers. The agencies have also establish the experts database as all sorted specialties of civil works, equipment and service, etc. they can select the appropriate experts in the concrete project where necessary to provide the constructive suggestions from different prospects, appropriately control the technological yields and economic results, those experts will give advices and suggestions in the whole process of bidding, from the sub-contracting, working out the bidding documents, bids assessment, contract negotiation and conclusion, etc. which not only shortens the bidding period, but also ensures the entire bidding to be accomplished as planed according to the relevant standards in high-level and high-quality manner. In addition, the tendering agent has establish good communication channels with institutes and consultancy firms, so it can learn the industrial and technological trends at the first time in face of technologically difficult and complex projects. The above mentioned advantages help the employer have a well thought plan in the whole process of bidding without walking on the wrong track.

With continuous development of information technology in recent years, tendering agents have established in succession the information system and the database relating to the transaction situation in the bidding procurement market, etc. The agencies have some business at regular interval with authoritative websites, newspapers and magazines, etc. which have the widely-built channels for information release, therefore, the tendering agent can release the bidding information timely and accurately in accordance with the relevant regulations. Bidders may know the bidding information at the first time and contact the employer rapidly. The widely-released bidding information plays a significant role in the competition of more bidders, which will maximize the benefit of the employer in the end.

3C. Reduce Legal Risks

China started to introduce the bidding procurement system in the engineering construction area since 1980s. On January 1, 2000, the *Law of the People's Republic of China on tenders and Bids* was put in implementation, which signifies that China has officially established the laws and regulations for bidding procurement operation.

The behaviors of both the buyer and the seller are limited and protected by law during the bidding procurement activities. Any behavior that infringes the legal requirements will be punished. The above-mentioned law and system has played a significant role in promoting the market competition, standardizing market behavior and preventing the corruption and fraud since they were established.

Owing to years' operations of invitation for bids, the tendering agent has the remarkable advantages over the owner in the extent to which it is familiar with the relevant laws and regulations and in the competence of applying those laws and regulations, therefore, it can better meet the requirements as specified by laws and regulations, ensures the bidding procurement activities are in compliance with the laws and regulations. Therefore, the agent not only helps the owner to evade the legal risks, but also safeguards the legal rights and interests of the owner and the bidder, and makes the bidding procurement activities be more fair and just.

The owner is easy to focus on its own benefit and impair the benefits of the bidders, evade or ignore intentionally or non-intentionally the requirements as specified by the laws and regulations during its Self-bidding process, in which, not only the quality and effect of bidding cannot be safeguarded, but also the owner will face a huge risks caused by the infringing the laws and regulations in case the Administrative authority makes inspection or the bidder makes complaints.

4D. Tendering agent is Very Professional

With the continuous development of China's socialist market economy, it is necessary to adopt the bidding procurement system not only in prospecting, designing, constructing and supervising the engineering project, the important equipment and materials, but in such areas as the governmental procurement project, import of electromechanical equipment, procurement of medical machinery and medicines, procurement of services for scientific research projects, and transfer of the right to use the state land, etc. The tendering system has been widely used in all trades and areas of the national economy in China. In addition, there are different procurement projects in China according to the loan sources, including the loan from the International Financial Organizations, from the government of other countries and from Chinese governments, etc. As different procurement projects have different subjects and capital sources and trade practices, those projects have different requirements either in the procurement process and regulations, or in terms of economy and technology.

Therefore, the tendering agent has accumulated rich experience and unparalleled advantages in fully and effectively collecting and analyzing market information, appropriately sub-contracting, working out the complete and workable tendering documents, organizing the activities of tender opening and assessment, etc. In particular, the tendering agent plays a significant role in the projects of international multi-lateral funds and bi-lateral funds that must be strictly in compliance with the policies as those funds involve in the loans of international financial organizations or the government of other countries.

Thanks to the long-term work at the frontier, the staff of the tendering agent has accumulated rich experience of bidding procurement, are very familiar with the procurement process and regulations. Their experience and professional advantages can help the employer to get two-fold results with half the effort.

As the tendering is a kind of procurement project in strict compliance with the law, it must conform to not only the provisions as specified by Chinese laws but also the different regulations and rules formulated by different authorities in different trades. The tendering agent has the legal expert who is familiar with the tendering activity and can provide the professional legal consultancy, which ensures the tendering activity to be in compliance with the provisions of laws and regulations.

The international tendering projects, especially those involving in the loans from the international financial organizations or the government of other countries, need the professional talents with the capabilities of foreign language and foreign trade. What's more, if the tendering project involves in the importing of equipment, it is necessary that the experts of international trade, English language and laws to participate in the project jointly to avoid the unnecessary dispute on international trade.

At present, some employers who involve in bidding operation year in and year out for many years have accumulated enough technological strength to independently grasp bidding. However, most employers, due to lack of experience of tendering operation, cannot and need not establish a professional organization for tendering. The tendering agent, as mentioned above, due to its professional experience, can ensure the quality of bidding, enhance the efficiency and ensure the bidding procedure to be conducted in accordance with the principle of openness, justice and good faith, therefore, the tendering agent plays a significant role in reducing the under-table operation and eliminating the corruption, etc. Meanwhile, it also decreases the wasting of resources in manpower and materials caused by the duplicate establishment of the tendering team by the employer, so Agent Bidding has a better effect than Self-bidding.

5E. Spread advanced managerial concepts and system for employer

The management experience of the tendering & bidding in China is originated from projects financed by World Bank and Asian Development Bank. The two banks have a set of complete and scientific procedure on project appraisal, approval, negotiation with the lender, signing lending agreement, project implementation, procurement, disbursement, supervision, inspection, acceptance and post evaluation of the project. The tendering agents are the first batch of people who not only have received and accepted the global leading managerial experience and system, but also have spread and benefited from it. After absorbing and digesting the WB or ADB's advanced project management experience, the agents teach it to the Employer in the way of providing consulting service. In the years of bidding activity and practice, China has explored and summarized highly effective management system with Chinese characteristic by drawing on the experience of advanced concept and system. This

system covers trade, law, finance, cost estimate, project management, and other areas of expertise.

VI. Misunderstanding for tendering agent

aA. First misunderstanding: Increase the procurement cost.

The agent tendering will cause the payment for cost in a certain amount, and such payment, either made by the employer or by the successful bidder, will lead to an increase in the cost of tendering project.

The cost paid to the agent in the bidding process is limited, and the upper threshold of the cost is strictly specified by China National Development and Reform Commission.. Take the service fee standard of Shanghai Engineering Construction Administration for the engineering construction tendering as an example, the agent service fee shall not be more than 0.31% of the project cost for the small construction and installation project, or 0.18% of the project cost for the big project, therefore, the percentage of the agent cost in the procurement fund of the project is very small.

In the context of market competition, the tendering agent, while collecting the agent service fee, not only offers preferential measures, but also actively undertakes many other fees arising in the tendering and procurement processes, such as expenses of compiling bidding documents, paying to experts for bids evaluation, conference fee, traffic and liaison expenses, etc. Those fees will also arise during the process of Self-bidding.

It is worth to mention the employer and the tendering have formed the common benefit target when reaching an agreement each other. The target will drive the agent by using its advantages, to doing its best to take the actions that are promoting competition in the procurement transaction and reducing the quotation of bidders in the final bids submission. The funds saved in the process will be much more than the agent's service fee.

2B. Second misunderstanding: Agent bidding may not reach the same obvious effect as Self-bidding.

As mentioned above, Agent Bidding system is the product of socialized division of labors and trades in the conditions of market economy, and such division will enhance the efficiencies of the employer and the tendering agent in procurement process.

The tendering is a high professional activity that involves the integrated application of technology, economy and law, etc. It has not only the strict procedure but also professional skills, which requires the party who undertakes the tendering work to have abundant knowledge and skills in many fields. Tendering agent possesses the strongly professional competence and rich experience of project management, which are the shortcomings of the employer. How to well utilize these features to solve the problem of information asymmetry

between the buyer and the seller is the key to realize the bidding effect, i.e., reduce cost and promote the efficiency of the project.

To maximize the profit, the marginal investment and yield will reach an equilibrium point when the enterprise or organization develops into a certain scale. The tendering team that undertakes charge of the time-consuming, heavily-loaded and high-risk procurement activity, if temporarily established by the enterprise for Self-bidding, will constrain the work efficiency of the staff, and the equilibrium point will be broken and the yield of the enterprise will be gotten decreased gradually.

3C. Third Misunderstanding: Employer will lose the decision-making power and be out of control over the project.

The employer worries about that it will lose right of decision making and the control over the project after it assigns the bidding to an agent.

The tendering agent conducts the bidding activities on behalf of the employer and solves relevant affairs within the range authorized by the latter. The employer and the agent have the entrusting relation in between in terms of law, and the power of agent is the basis for the former to engage in the agent tendering activities. The power of agent is confined to the operation scope within which the agent takes the bidding activities in the name of the principal.

The employer is still entitled fully with the right of decision making and can use such right in more effective manner after it entrusts the agent to engage in the bidding, the agent action is not in conflict with the right of decision-making. After entrusted, the agent will focus its major work on organizing the bidding process by fully utilizing the competition mechanism in the bidding procurement process, so as to transfer the market controlled by the seller to another market by the buyer, and create the situation of competition among bidders, so that the contractor with powerful construction technology strength, advanced machinery and good reputation will be successfully selected by the employer. The entire process of the bidding will be participated in and supervised by the employer. As long as the employer are abided by the relevant laws and regulations and have a all-around awareness with the bidding, it will be entitled with the right of final decision making at all the time.

DD. Fourth Misunderstanding: Tendering agent will reduce the privacy of procurement process.

After 30-odd years' practices of bidding procurement activities, the legal system of bidding procurement becomes complete day by day in China, and a set of managerial system for tendering agent and its staff has taken shape, which:

1. Ensures the privacy of the procurement process from the prospect of legislation. The confidentiality obligations and legal responsibilities of parties participating in the bidding

procurement have been expressly stipulated in the Article 50 of the *Law of the People's Republic of China on Tenders and Bids*;

2. The confidentiality clauses will be stipulated under the agent bidding agreement, which determines the confidentiality obligations of the agent. any party who breaches the confidentiality clause under the agreement has to make economic compensation and assume the legal obligations; and

3. Compliance with the confidentiality principle must be the basic occupation ethics of the tendering agent and its staff.