

Effect of Procurement Agent Mechanism on Standardizing the Market Competition

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Tendering is a kind of selection method to achieve preferential transaction which is organized well by means of technology and economy and market competition mechanism. It is the product of a highly developed commodity economy. Moreover, it is an international convention currently that tendering is implemented in the public procurement. This selection method is applied to procurement of goods, engineering works, services and non-consultative services.

In 1980, the State Council proposed such idea in *Interim Provisions on Developing and Protecting Socialist Competition* that tendering and bidding may be put into trial use for some construction and operation projects which are applicable to contracting. Reference to the model and experience of procurement adopted by international financial organization (the collective name of loan institutions such as the World Bank and Asian Development Bank) and the governments of developed countries, the first batch of procurement agency in China was established in the early 1980s. *Law of the People's Republic of China on Tendering and Bidding* is implemented formally in China from January 1, 2000 and *Government Procurement Law of the People's Republic of China* is implemented formally from January 1, 2003. Following the implementation of these laws and related regulations, awareness of the community for bidding activity improves. Moreover, economy grows rapidly in China over the past decade, investment in all walks of life booms and engineering work develops prosperously. Thus, the blowout growth occurs in the procurement agent market. Accordingly, procurement agent institution appears like mushrooms after a spring rain. Industry of procurement agent develops quickly.

This shows that procurement agent mechanism develops with bidding activities in China. Bidding activities in China began from the loan and donation projects provide by the international financial organizations and foreign governments. And it is one of the necessary conditions that procurement by bidding (there are many types of bidding) for goods, engineering works, non-consultative and consultative services in these projects is required by above organizations. But, project office or other institution (collectively called project owner) which is established for obtaining the loan or donation is not familiar with the procedures and conditions regarding with bidding procurement formulated by above organizations. Thus, it is necessary and urgent to establish specialized agent to familiar with related rules and carry out

tendering of these projects and provide services thereof. Therefore, procurement agent in China is independent from project owner to provide specialized agent services since it comes into existence. It is proved in practice that this kind of projects, especially loan or donation project provided by the international financial organization, is implemented smoothly and the preliminary goals is achieved. In 2006, Seminar on 20 Years of MOF-ADB Partnership is held in Beijing between China and the Asian Development Bank. Therein one topic is that loan projects in China are implemented with good achievement. It is demonstrated intensively that preparation period and procurement time are short and implementation of contract and payment is smooth. Haruhiko Kuroda, the president of ADB, praised that China is one of the best countries in the implementation of the ADB loan projects and debt-service reputation. As we all know, the Asian Development Bank is a multilateral financial organization, only their working language, English, is a major problem for the implementation institution and their staff, let alone that many rules in Procurement Guidelines are much difference from our existing rules. It is agreed in the meeting that our procurement agent mechanism promoted greatly the implementation of these projects.

To sum up, the procurement agent mechanism develops along with the development of bidding activities in our country. It is the inevitable product of economic development, accompanied by one of the achievements of China's economic construction by utilizing foreign investment. Reviewing the history of this mechanism and analyzing its reasonableness of existence shall impact positively on the improvement of this industry. We believe that the procurement agent mechanism shall standardize the market completion on the following aspects:

1. Professional services from procurement agent turn scattered point demand into concentrated demand which is good for concentrated management

In China, engineering projects invested totally by government or invested by enterprise but mainly guided by government adopt organizational forms mostly. The biggest attributes is one time off, that is, every project is not the same exactly. Most project owners who are responsible for the implementation of projects are established temporarily. Even if these agents already exist, their staffs need to be hired temporarily or be improved on their capacity. Project owners focus on the industry characteristics firstly from a technical point which is multi-dimensional and complex. Besides, management fee of these projects which is controlled by budget can not be added infinitely. Thus, tendering may be considered secondarily by project owners for they take it short of specialization. However, without regard to the complexity of technology in each project, consider the tendering only, the complexity of which is not second to that of technology for its procedures, conditions and business practice, let alone the business practice need to be associated with industry practice as well as the specific conditions of the project. It needs to learn these procedures, conditions, and business practice and combination skills constantly for they are specialized knowledge. With the increase of bid projects, the demand for such knowledge increases. A large amount of such professional persons are required to provide such services, which bring market demand of a professional third party agent to act specific invite procurement activities. This

meets a basic principle of economics: procurement agent turn scattered demand in each project into concentrated market demand, which derives a specialized agent industry to provide value-added services for project owners through professional services. In this way, the impact of each project on market turns into that on industry. Therefore, specialized procurement agent plays an important role on standardizing the market competition order objectively for it turns decentralized control into industry control, which is achieved through the market mechanism.

Article 12 in *Law of the People's Republic of China on Tendering and Bidding* rules: the purchaser shall have the right to choose, on its own, a procurement agent. It is explicit that procurement agent should have professional property when it provides such agent services. Specifically, its professionalization is reflected through the following aspects:

(1) Professional Organizational Structure

Procurement agent is an independent legal entity with a more flexible corporate structure and institutional settings in order to meet market demand. For example, it could set corresponding services according to the industry management system and policies and regulations of project or according to the fund management requirements of project. Meanwhile, its internal organization is flexible and personnel allocation is convenient. Thus, it is more effective and preponderant on coordination of units and formation of project team.

(2) Professional Practitioners, Enhance the professionalization of the Organization

In the process of long-term professional services, procurement agent cultivates a group of professional persons who are familiar with laws and regulations relating to tendering and good at organizing and managing tendering with rich experience and comprehensive ability. Particularly, a batch of procurement agent which is reformed from foreign trade corporation cultivated a group of elites with rich knowledge on trade, economy, technology and consultant. They are not only familiar with theory but practicing much, not only familiar with technological features but procedures, conditions and business practice of tendering.

The emergence and gathering of such type of people could, for a specialized agent, produce economic effect of scale and provide professional package solution for project owner, to avoid risks such as delaying the implementation of project caused by project owner who lacks of such capacity.

In order to standardize the behaviors of procurement personnel and improve their professional capacity, on April 30, 2007, the National Development and Reform Commission and the Ministry of Personnel jointly issued documents: *Interim Provisions on Evaluating the Occupational Level of Procurement Personnel and Implementing Measures on Examination of Tenderer*. This is a major milestone on implementing procurement agent mechanism. It marks the formal establishment on the evaluation of procurement personnel in China. Evaluation on the level and capacity of tenderer could improve the quality of practitioners

and standardize the access of this industry and market competition order. Accordingly, it is good for the development of procurement agent, to facilitate the entire bidding market develops orderly.

(3) Professional Management mechanism And Management Rules

With the development of this industry, procurement agent began to focus on their service level and formed its own characteristics in some fields. For example, some institutions passed ISO9001 quality management system which made them more assured on service, more standardized on procedure and more competitive on capacity. Some institutions are provided with professional knowledge in some fields and became the leader of agent in this industry. Some institutions establish incorrupt management system to strengthen supervision. And some institutions establish a sustainable management for the project.

In detail, China International Tendering Company, Instrimpex International Tendering Company and CMC International Tendering Corp. have solid comprehensive ability. China Aviation Supplies International Tendering Co., Ltd. and CATIC TED have outstanding performance in aviation field. Meanwhile, these institutions issued internal management rules and regulations according to their industry characteristics, introducing the source of power for their development and services thereof.

(4) Powerful Information Resource Base Serves as Professional Supporting System

Most tendering agents have built or gradually built various information bases relating to tendering or bidding in the course of services. These advantages are embodied in processing of more extensive information resources and related expert resources, comparing with ordinary project employers. The project employers may acquire appreciation benefits, reduce project transaction cost and project management risks with the help of information bases of professional tendering agents. In addition, tendering agents will improve their service quality and level when summarizing and accumulating these information bases, which drives tendering agents into virtuous-circle development.

Hereinbefore, the decentralized market demand relating to tendering agents shall form centralized demands after gathering through market mechanism, which is to the benefit of forming professional tendering agent who is in favour of not only their own development but also project employers who need such service to acquire appreciation, furthermore changing the control over departments executing market supervision from decentralized dot control into industrial linear control, thereby standardizing market competition order.

The procurement task of ADB Financed Wenchuan Earthquake Reconstruction Project by our company has verified the benefits brought to project employers by abovementioned professional service. This project is divided into 386 contracts valuing nearly RMB three billion, relating to project employers of 23 districts and counties. The project employers are from different regions, maintaining inferior executive capacity and more management layers,

so our company provided professional services in course of tendering procurement and contract management, which, through the professional service achievements, not only improved efficiency and guaranteed the progress and smooth projects, but also provided an appreciation service for project employers of disaster-affected areas, selecting contractors with favorable credit, great capacity, low price and powerful strength.

2. Helping creating open transaction platform between buyer and seller

The tendering agent establishes contract relation with project employer by authorized agency contracts. The tendering agent is an independent legal person who has obtained qualification identification of competent tendering & bidding department. It's independent of government and project employer, serving as a professional agent which provides tendering service. Therefore, the independence may be summarized as being in the employ of employer but independent of employer. As an independent third party, the tendering agent may serve a bridge and link between buyer and seller, creating an open transaction platform. What makes it different from the case under which project employer yields to actual demand for project construction but omits tendering rules is that the tendering agent, as an independent third party, has unconventional position, following laws and regulations and etc constraint conditions more conscientiously and professionally in not only formation of Bidding Documents and setting qualification criteria and evaluation & review factors, but also the control of bid opening and evaluation and etc specific processes and links.

The independence of tendering agent is also embodied in that it must ensure the legality of tendering & bidding activity, procedure, condition, result and related process documents, which is also the most central and basic contents the tendering agent provides for project employer when tendering.

Therefore, tendering must insist openness, fairness and justice from beginning to end. The tendering agent shall accept the supervision of not only employer and bidders but also government and society when organizing tendering. Such fairness shall attract bidders into competition in an objective way, making project employer select works, commodities or services which responds to bidding documents substantially and have lowest price. The tendering agent serves as a platform in this process which is just the process of standardizing market competition order.

3. Development and perfection of tendering industry shall further push the perfection of market competition order

Tendering agent has got sufficient development as an industry in our country. Just as all products which maintain life cycles, tendering agent shall also develop for higher target. Like the consulting industry bearing the duty of transmitting knowledge and experience, tendering agent shall inevitably enrich its service contents, strengthen the capacity of creating value for client and market and promote the further perfection of market competition order.