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Regulations on Administration of Contracting for Overseas Projects

(Adopted at the 8th Executive Meeting of the State Council on May 7, 2008,
promulgated by Decree No.527 of the State Council of the People's Republic of
China on July 21, 2008, and effective as of September 1, 2008)

Chapter I General Provisions

Article 1 These Regulations are formulated for the purpose of regulating the contracting for overseas projects and promoting its sound development.

Article 2 The term "contracting for overseas projects" in these Regulations means the contracting for construction projects overseas (hereinafter referred to as projects) by Chinese enterprises or other units (hereinafter, both are referred to as units).

Article 3 The State encourages and supports contracting for overseas projects and improves the quality and raises the level of such contracting.

The relevant departments of the State Council formulate and improve the policies and measures for promoting contracting for overseas projects, and establish a sound service system and a mechanism for guarding against risks involved in such contracting.

Article 4 In contracting for overseas projects, it is required to safeguard the national interests and social and public interests, and to ensure the lawful rights and interests of the persons dispatched abroad.

In contracting for overseas projects, it is required to observe the laws of the

countries or regions where the projects are located, adhere to the contracts, respect the local customs and habits, protect the ecological environment, and promote the local economic and social development.

Article 5 The competent commerce department of the State Council shall be responsible for supervision and administration of contracting for overseas projects nationwide, and the relevant departments of the State Council shall be responsible for administration related to contracting for overseas projects within their respective functions and duties.

The competent construction department of the State Council shall organize and coordinate the construction enterprises in participating in contracting for overseas projects.

The competent commerce departments of the people's governments of the provinces, autonomous regions, and municipalities directly under the Central Government shall be responsible for supervision and administration of contracting for overseas projects within their own administrative areas.

Article 6 The associations and chambers of commerce involved in contracting for overseas projects shall, in accordance with their articles of association, provide their members with information, training and other services related to contracting for overseas projects, formulate norms for the trade in accordance with law, play the role of coordination and self-regulation, and safeguard fair competition and the interests of their members.

Chapter II Qualifications for Contracting for Overseas Projects

Article 7 A unit for contracting for overseas projects shall, in accordance with the provisions of these Regulations, obtain qualifications for contracting for overseas projects.

Article 8 A unit applying for qualifications for contracting for overseas projects shall meet the following conditions:

(1) having the status of legal person, and in the case of a construction project unit, obtaining in accordance with law a Special Grade or Grade I (Grade A) qualification certificate issued by the competent construction department or other relevant departments;

(2) having funds and professional technicians commensurate with the contracting for overseas projects, and among its management personnel, having at least two members who have two or more years of experience in contracting for overseas projects;

(3) having the ability to take safety precautions commensurate with the contracting for overseas projects;

(4) having the rules and systems for ensuring project quality and work safety, and having had no major project quality problems or work safety accidents more serious than the relatively serious ones over the recent two years; and

(5) having goodwill, and having committed no serious breach of contract or serious unlawful business operation over the recent three years.

Article 9 To apply for qualifications for contracting for overseas projects, the central enterprises and other units under administration of the Central Government

(hereinafter, both are referred to as central units) shall submit applications to the competent commerce department of the State Council, and the units other than the central units shall submit applications to the competent commerce departments of the people's governments of the provinces, autonomous regions, or municipalities directly under the Central Government where they are located; written applications and the documents certifying that the conditions specified in Article 8 of these Regulations are met shall be submitted at the same time. The competent commerce department of the State Council or the competent commerce department of the people's government of the province, autonomous region, or municipality directly under the Central Government shall, within 30 days from the date of receipt of an application and the certifying documents, examine the application together with the competent construction department at the same level and make a decision to approve or not to approve the application. If it decides to approve the application, the competent commerce department of the State Council or the competent commerce department of the people's government of the province, autonomous region, or municipality directly under the Central Government, whichever processes the application, shall issue a qualification certificate for contracting for overseas projects; if it decides not to approve the application, it shall notify the applicant and explain the reasons in writing.

The competent commerce department of the people's government of the province, autonomous region, or municipality directly under the Central Government shall submit a report on its issuance of the qualification certificates for contracting for overseas projects to the competent commerce department of the State Council for the record.

Article 10 Where, in the course of supervision and inspection, the competent commerce department of the State Council or the competent commerce department of the people's government of the province, autonomous region, or municipality directly under the Central Government finds that a unit for contracting for overseas projects no longer meets the conditions specified in these Regulations, it shall order the unit to rectify within a time limit; if the unit fails to meet the said conditions at the expiration of the time limit, the said department shall revoke its qualification certificate for contracting for overseas projects.

Chapter III Contracting for Overseas Projects

Article 11 The competent commerce department of the State Council shall, together with the relevant departments of the State Council, establish a safety risk assessment mechanism for contracting for overseas projects, regularly publish the assessment results with respect to security of the relevant countries and regions, and provide timely early-warning information as a guide to the units for contracting for overseas projects to guard against safety risks.

Article 12 A unit for contracting for overseas projects shall not contract for a project at an unfair low price, collude with others in bidding, or resort to commercial bribery.

Article 13 A unit for contracting for overseas projects shall enter into a written contract with the overseas contract awarding party, in which to define the rights and obligations of both parties, and shall fulfill the obligations agreed upon in the contract.

Article 14 A unit for contracting for overseas projects shall exercise strict

control of project quality and work safety, and establish sound rules and systems in this regard and strictly observe them.

Where a unit for contracting for overseas projects subcontracts a project, it shall conclude a special agreement on management of project quality and work safety with the subcontractor, or specify their respective responsibilities in this regard in a subcontract, and shall conduct unified coordination and management for project quality and work safety on the part of the subcontractor.

A unit for contracting for overseas projects shall not subcontract a project to a unit that does not have the necessary qualifications as prescribed by the State; it shall not subcontract the construction part of a project to a domestic construction enterprise that has not obtained a safe work permit in accordance with law.

A subcontractor shall not transfer the contract of or re-subcontract a project. A unit for contracting for overseas projects shall make it clear in the subcontract that the subcontractor shall not transfer the contract of or re-subcontract the project, and the unit shall be responsible for supervision thereof.

Article 15 An agency providing intermediary services in dispatching persons abroad for contracted overseas projects shall obtain a license issued by the competent commerce department of the State Council, and shall provide such services as prescribed by the said department.

When recruiting persons for overseas projects through intermediary services, a unit for contracting for overseas projects shall select an intermediary agency that has obtained a license in accordance with law and operates lawfully, and it shall not approach an intermediary agency that has not obtained the license in accordance with law or has committed serious illegal acts.

Article 16 A unit for contracting for overseas projects shall, in accordance with law, conclude a labor contract with the persons recruited for such projects, provide working conditions and pay remunerations to them as agreed upon in the contract, and fulfill its obligations as an employer.

Article 17 A unit for contracting for overseas projects shall have a specialized safety control office and staff to be responsible for ensuring the personal and property safety of the persons dispatched abroad, work out plans for the purpose in light of the specific conditions of the contracted projects, and guarantee the funds needed.

A unit for contracting for overseas projects shall, in light of the security conditions of the countries or regions where the projects are located, provide education in safety precautions and training in knowledge about emergency response, which are specifically designed for the persons to be dispatched abroad, with a view to enhancing their awareness of safety precautions and their ability to protect themselves.

Article 18 A unit for contracting for overseas projects shall purchase overseas personal accident insurance for the persons dispatched abroad.

Article 19 A unit for contracting for overseas projects shall, in a timely manner, deposit reserve funds as prescribed by the competent commerce department and the finance department of the State Council.

The reserve funds specified in the preceding paragraph shall be used to pay the following expenses that a unit for contracting for overseas projects refuses to or is unable to bear:

- (1) remunerations to be paid to the persons dispatched abroad;

(2) expenses to be paid to the persons dispatched abroad for returning to their country or accepting other emergency aid, due to unexpected incidents; and

(3) expenses needed to compensate the persons dispatched abroad for their losses in accordance with law.

Article 20 After concluding a contract with the contract awarding party of an overseas project, the unit for contracting for overseas projects shall make a timely report to the Chinese embassy (consulate) in the country where the project is located.

A unit for contracting for overseas projects shall accept guidance provided by the Chinese embassy (consulate) in the country where the project is located with respect to guarding against unexpected incidents, project quality, work safety, protection of the persons dispatched abroad, etc.

Article 21 A unit for contracting for overseas projects shall work out an emergency response plan against unexpected incidents; when such an incident occurs abroad, the unit shall handle it in a timely and proper manner, and immediately report the incident to the Chinese embassy (consulate) in the country where the project is located and to the relevant competent department at home.

The competent commerce department of the State Council shall, together with the relevant departments of the State Council and on the principle of attaching equal importance to prevention and handling, establish a sound mechanism for early-warning and guarding against and emergency handling of unexpected incidents involving contracted overseas projects, and formulate emergency response plans against such incidents.

Article 22 A unit for contracting for overseas projects shall regularly report to

the competent commerce department its contracting for overseas projects, and submit its business statistics to the relevant departments as prescribed by the competent commerce department and the statistics department of the State Council.

Article 23 The competent commerce department of the State Council shall, together with the relevant departments of the State Council, establish an information collection and notification system for contracting for overseas projects, and provide information services gratis to the units for contracting for overseas projects.

The relevant departments shall, in accordance with law, provide quick and convenient services to the units for contracting for overseas projects with respect to customs clearance of goods, exit and entry of persons, etc.

Chapter IV Legal Liability

Article 24 Where a unit that has not obtained qualifications for contracting for overseas projects contracts for such projects, the competent commerce department shall order it to make corrections, impose on it a fine of not less than 500,000 yuan but not more than 1,000,000 yuan, confiscate its illegal gains, if any, and impose on its principal responsible person a fine of not less than 50,000 yuan but not more than 100,000 yuan.

Article 25 Where a unit for contracting for overseas projects is found under one of the following circumstances, the competent commerce department shall order it to make corrections, impose on it a fine of not less than 100,000 yuan but not more than 200,000 yuan, and impose on its principal responsible person a fine of not less than 10,000 yuan but not more than 20,000 yuan; if the said unit refuses to make

corrections, the competent commerce department may prohibit it from contracting for new overseas projects within a time period of not less than one year but not more than three years; if a major project quality problem, or a more serious than relatively serious accident endangering work safety occurs, or other serious consequences arise, the competent commerce department may revoke its qualification certificate for contracting for overseas projects; in the case of a construction project unit, the competent construction department or other relevant competent departments may downgrade its qualifications or revoke its qualification certificate:

(1) failing to establish and strictly observe the rules and systems on management of project quality and work safety;

(2) failing to have a specialized safety control office and staff to be responsible for ensuring the personal and property safety of the persons dispatched abroad, or failing to work out a plan for the purpose in light of the specific conditions of the contracted projects and guarantee the funds needed;

(3) failing to provide education in safety precautions and training in knowledge about emergency response for the persons to be dispatched abroad; or

(4) failing to work out an emergency response plan against unexpected incidents, or failing to handle such an incident in a timely and proper manner when it occurs abroad.

Article 26 Where a unit for contracting for overseas projects is found under one of the following circumstances, the competent commerce department shall order it to make corrections, impose on it a fine of not less than 150,000 yuan but not more

than 300,000 yuan, and impose on its principal responsible person a fine of not less than 20,000 yuan but not more than 50,000 yuan; if the said unit refuses to make corrections, the competent commerce department may prohibit it from contracting for new overseas projects within a time period of not less than two years but not more than five years; if a major project quality problem, or a more serious than relatively serious accident endangering work safety occurs, or other serious consequences arise, the competent commerce department may revoke its qualification certificate for contracting for overseas projects; in the case of a construction project unit, the competent construction department or other relevant competent departments may downgrade its qualifications or revoke its qualification certificate:

(1) contracting for a project at an unfair low price, colluding with others in bidding, or resorting to commercial bribery;

(2) failing to conclude a special agreement on management of project quality and work safety with the subcontractor, or failing to specify their respective responsibilities in this regard in a subcontract, or failing to conduct unified coordination and management for project quality and work safety on the part of the subcontractor;

(3) subcontracting a project to a unit that does not have the necessary qualifications as prescribed by the State, or subcontracting the construction part of a project to a domestic construction enterprise that has not obtained a safe work permit in accordance with law; or

(4) failing to make it clear in the subcontract that the subcontractor shall not transfer the contract or re-subcontract the project.

Where a subcontractor transfers the contract of or re-subcontracts a project contracted, the competent construction department shall order it to make corrections, and impose a fine on it and its principal responsible person according to the amount specified in the preceding paragraph; if a major project quality problem, or a more serious than the relatively serious accident endangering work safety occurs, the competent construction department and other relevant competent departments may downgrade its qualifications or revoke its qualification certificate.

Article 27 Where a unit for contracting for overseas projects is found under one of the following circumstances, the competent commerce department shall order it to make corrections and impose on it a fine of not less than 20,000 yuan but not more than 50,000 yuan; if the said unit refuses to make corrections, its principal responsible person shall be fined not less than 5,000 yuan but not more than 10,000 yuan:

(1) after concluding a contract with the contract awarding party of an overseas project, failing to make a timely report to the Chinese embassy (consulate) in the country where the project is located;

(2) when an unexpected incident occurs abroad, failing to immediately report the incident to the Chinese embassy (consulate) in the country where the project is located and to the relevant competent department at home; or

(3) failing to regularly report to the competent commerce department its contracting for overseas projects, or failing to submit its business statistics to the relevant departments as prescribed.

Article 28 Where a unit for contracting for overseas projects recruits persons for the projects through an intermediary agency that has not obtained a license in accordance with law or that has committed serious illegal acts, or fails to purchase overseas personal accident insurance for the persons dispatched abroad, as prescribed by these Regulations, or fails to deposit reserve funds as prescribed, the competent commerce department shall order it to make corrections within a time limit, impose on it a fine of not less than 50,000 yuan but not more than 100,000 yuan, and impose on its principal responsible person a fine of not less than 5,000 yuan but not more than 10,000 yuan; if the said unit refuses to make corrections at the expiration of the time limit, the competent commerce department may prohibit it from contracting for new overseas projects within a time period of not less than one year but not more than three years.

Where a unit that has not obtained a license issued by the competent commerce department of the State Council provides intermediary services in dispatching persons abroad for contracted overseas projects, the competent commerce department of the State Council shall order it to make corrections, impose on it a fine of not less than 100,000 yuan but not more than 200,000 yuan, confiscate its illegal gains, if any, and impose on its principal responsible person a fine of not less than 50,000 yuan but not more than 100,000 yuan.

Article 29 Where a staff member of the competent commerce department, the competent construction department or other relevant departments abuses his power, neglects his duties or commits illegalities for personal gain in supervision and administration of the contracting for overseas projects, he shall be investigated for

criminal liability in accordance with law if a crime is committed, or he shall be given a sanction in accordance with law if no crime is committed.

Chapter V Supplementary Provisions

Article 30 Matters involving the contracting for overseas projects, such as import and export of goods and technologies, exit and entry of persons, customs, taxation and foreign exchange, shall be handled in accordance with the relevant laws, administrative regulations and the relevant provisions of the State.

Article 31 Where a unit for contracting for overseas projects, through bidding or bid evaluation, participates in a project, the offer price of which is above the criteria prescribed by the competent commerce department, the finance department and other relevant departments of the State Council, the letter of guarantee issued by a bank and other matters shall be handled as prescribed by the said departments.

Article 32 Where a unit for contracting for overseas projects contracts for specially designated projects or projects in the countries or regions specially designated by the competent commerce department of the State Council together with the Ministry of Foreign Affairs and other relevant departments, approval shall be obtained from the competent commerce department of the State Council together with other relevant departments of the State Council.

Article 33 Where a unit from the Chinese mainland contracts for a project in the Hong Kong Special Administrative Region, the Macao Special Administrative Region or the Taiwan region, the matter shall be handled with reference to the

provisions of these Regulations.

Article 34 Overseas projects with the aid of the Chinese Government shall be implemented and managed in accordance with the relevant provisions of the State.

Article 35 These Regulations shall be effective as of September 1, 2008.

本译本仅供参考，若有歧义，请以中文版本为准。

The English version is for reference only. In case of any discrepancy or ambiguity of meaning between this English translation and the Chinese version, the latter shall prevail.