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**Module Title: Commercial and Contractual Management of Projects
Assignment**

Case Study: Critical referenced evaluation and discussion of current academic thinking on how commercial and contractual issues related in construction projects in CHINA are managed and the techniques used when tendering for contract.

Introduction

Due to China's fast growing economy, there has been a growing interest to ally with international countries in the search of oil and natural resources. The assessment of tendering and contractor selection process continues to be a meaningful area of importance and attraction to organisations responsible for delivering project outcomes, (Watt et al., 2010), the contractors' skill and ability to meet time and budget within an acceptable standard should be a criteria that should be looked into also during the selection process, (Topcu, 2004).

China is involved in a large amount of international (African) countries.

Due to the complexity of major projects a well defined legal and written contract that covers all areas including the financial terms between the parties involved is required, (Branconi and Loch, 2004). The construction sector is wide and has broad range of subs; infrastructural, residential, environmental, etc, the sector involves two or more members / organisation that are bound by contractual arrangements, (Cheah and Chew, 2005).

As a means of solving problems such as delay, procurement and other related construction problems the introduction of partnering was used to solve such issues, (Smith et al., 2004; Hong et al., 2012; Zuo et al., 2013).

Contract

To achieve a successful business deal when making contract arrangements proper use of intelligence should be applied, (Richards, 2014), also (Von-Branconi and Loch, 2004) in their research work indicated that contract has a major impact on the success of a project by influencing how the parties involve behave.

Due to cultural differences, there is likely to be misunderstanding among contractors and client when contracting internationally, (Richards, 2014), cultural differences and also the distinction in values should be recognised, in China the tender and bidding law made provisions for international contracts, making the interest of the Chinese a priority.

Richards, (2014) describes China to be cooperative, having their business and social activities built on networks of relationships, rather than the common method of negotiating, unethical competitiveness accustomed with other countries, China interact based on cooperation and also due to the fact that business deals likely happen based on introduction or family connections, Lu and Tuo, (2009) identified that contract enforcement is not strong due to family's control over business. Richards, (2014) in his research argued that that based on the Chinese cultural background of placing the rule of man before the rule of law, some countries perceive them as corrupt.

Contractor selection / bidding

Contractors are considerably involved in projects this being the reason why contractor selection is established as a necessary decision for clients, (Topcu, 2004). Selecting and assessment of contractors appear to be a test and is faced with many challenges; it involves complex individual decisions, (Watt et al., 2009). In choosing contractors, there are various

criteria clients look into, these criteria are based on reputation, experience, price, schedule (Watt et al., 2009), this is also in line with Topcu, (2004) research where past performance and standard of quality was suggested as a criteria in selecting contractors. Topcu, (2004) in his research mentioned that part of the criteria used by clients in selection of contractors is based on the lowest bidder, and these criteria often times results in problems associated with project delivering.

Selection of contractors varies depending on the country and the type of project, when contractors apply for contracts the clients screens them based on the proposal and personal decision, in some cases when the projects requires a particular specialty, the contractors' application and screening would be based on the contractor that meets the requirement, if there are no application due to high complexity of the project there would be negotiations among the parties, (Topcu, 2004).

Chinese government keeps introducing different competitive bidding approach to improve construction industry efficiency, their purpose for these is to change the financial arrangement and project procurement, (Lai et al., 2004). The current bidding procedure in China is to choose the bidder that has a reasonable price, this process according to them prevents corruption and see to a high quality of construction, (Liu et al., 2011).

The contractor's assets / resources gives an insight as to the ability of the contractor, (Tan et al., 2008), this also determines how the contractor is ranked during the contract bidding when competitiveness is being assessed.

In Hong Kong, only contractors that have good financial status, experts in their field, good management skills and history of completing contracts are eligible to apply for contracts, (Topcu, 2004). Included in the TKE contract 604 partnership contract was cooperation, quality in service and completion in time (Bayliss et al., 2004). In the Hong Kong housing authority foundation project, the client's interest in the contractors was based on experience, the contractors were selected based on selective tendering (where suppliers / contractors apply based on invitation), although there seem to be an increase in the cost of the tender through this method, clients can achieve low risk and high performance in project outcome, the client introduced a tendering reward scheme (preferential tender award system), (Tam et al., 2007).

In a regular bidding procedure, project clients regularly characterize numerous project goals in tender documentation, contractors then submit tenders in accordance with the requirements in the tender documents. An individual contractor will ordinarily submit a bid in a competitive manner as could be expected under the circumstances. This bid serves as the ideal distribution of the builder's assets for gathering the various goals characterized in the tender document, hence it permits the contractor to present its utmost level of competition, (Tan et al., 2008), however (Shafahi and Haghani, 2014) also indicated the steps that are involved in the bidding procedure,

these processes are; selection of project, decision, bidding documents preparation. The bidding contract selection process committee comprises expert and representative of the

construction middle agent if it is necessary, the bidder with the maximum is usually awarded with the contract, the bids are supervised under the administration office for inviting and submitting bids for construction projects in Beijing and are clear, assessed and selected under this body, (Lai et al., 2004).

Lia et al., (2014), research mentioned six (6) criteria looked into during the bidding the bidding assessment process in Beijing; design of the construction organisation, the price and amount of the materials being used and the price of the bid, integrity of the firm, bid feedback, ability to reduce cost and proper, intensive evaluation, in Tianjin during the assessment of bids, seven criteria are used; design of construction organisation, design, price, quality, integrity of the firm, time, project manager expertise and experience, company's previous record (ethical and safety issues), Shafahi and Haghani, (2014) in their research mentioned price to be seen as the only criteria for bidding evaluation.

The contract terms included in the Shaw group inc. for the nuclear power plants in Hubei province of China consisted of project management, project controls, technical support services, managing construction, environmental management and health and safety, (market prospects, 2010).

Tendering and bidding law of China

The tendering and bidding law of the people of China was developed so as to take care of government and public interest, also to regulate the tendering and bidding processes including all legal rights and interest of those involved, promote quality projects and improve the economy's profit, only tendering activities within the bounds of china are liable to put the law in use. Although parties involved would have a legal form of supervision, the law restricts involvements of legal body during the process, also the prevention of legal applicants / organisations, transparency, equality and trust are listed as the pros of the law, (Chinabidding.org, <http://www.chinabidding.org/law/860522>, no date).

The organisation tendering should be financially stable and able to fund the project in which is being tendered, a proper documentation should be made available to support claims. If bidding documents are submitted after the deadline, the documents would be rejected by the client, the documents can be modified or withdrawn before the deadline, but proper documentation should be made and submitted to the tenderer, intentions for subcontracting by the bidder should also be mentioned in documentations presented.

The bids would be opened with all parties involved present (tenderer and all the bidders) in the venue that was established when the tender notice was given, the evaluation committee would comprise of representatives of the tenderer and also experts with a minimum of 8 years experience in various related and important fields, the bidding process from the beginning of opening the bids (inspection of the seal) till the end would be recorded. Before a winner is selected certain requirements should be met, and if no bidder is selected from the evaluation the tenderer are allowed to put out another tender notice. If the bidding results are known and the results are sent to participants, if the results are then tampered with by the tenderer or the

bidder that won gives up the bid, they are liable to face the law, (Chinabidding.org, <http://www.chinabidding.org/law/860522>, no date).

The law rejects the transfer of bids, or sharing of bids. The winning bidder is compelled to finish the project as per stated in the contract. A fine ranging from 10,000 Yuan – 50,000 Yuan would be paid by the tenderer if there is discrimination or restrictions on potential bidders, if information about the bidders and documents presented to the tenderer is leaked by the tenderer, there would be a fine also ranging between 10,000 Yuan – 100,000 Yuan.

Except it is against the public interest of China, international law would be followed during the tendering and bidding process if the law varies with that of China, (Chinabidding.org, <http://www.chinabidding.org/law/860522>, no date).

Contract issues

Several issues can arise as a result of lack of proper understanding of what is expected of them to achieve either by one or both parties, also if the either of the party is novice to the contract process, when giving out contracts work, the contract should be properly documented, precise, flexible and complete, (Qi and Chau, 2012), improper documented of the terms of the contract can lead to one party taking advantage of the other party, or misunderstanding between the two parties. Although the Chinese government have been seen to be actively involved in international projects in Africa, recent research indicated that the Chinese government rather give out contracts to their local contractors than international bodies; as such there is difficulty in assessing accurate information about the project, Zhang (2011) mentioned risks that are involved with international contractors when working in China; language barrier, discrimination, difference in law and regulation, etc.

Negotiation

China is perceived as one of the most demanding countries when it comes to negotiation, (Zhu et al., 2007). The term negotiation has been defined by so many authors in their research, Al-Khaatib et al., (2007), defined negotiation as a process of possibly opportunistic connection by which two or more parties, with some seeming competition, try to improve by working as a team than they could alternatively, the term was also defined in (Ma and Jaegar 2010) research paper as a process by which two or more members trade products or administrations and endeavour to be in unison upon an exchange rate for them, excluding the ‘competition’ in the definition, both authors included the idea of unity and cooperation among two parties.

China was identified to have a collectivistic culture which influences negotiation outcomes; they place group unity higher than their own personal concern (Ma and Jaegar 2010). The steady negotiation method instead of the monetary profit or loss figures out if the negotiators are contented or not with the negotiation in China, which, all things considered, predicts whether they will proceed with any forthcoming business relationships, (Ma and Jaegar 2010), however Fang, (2006) described the Chinese negotiators as having a three – in – one method which mystifies westerners when conduction business dealings in China, this three –

in – one method comprises of 3 characters; the Maoist bureaucrat in learning (they are clever and resilient, never divides business from governmental issues and also places the china's nation first on the list of priority); Confucian gentleman (they put high esteem on trust and truthfulness on his own part and that of the other party as a person. From the negotiators view, development of nobility is much more valuable than the quest for benefit, they seek a win-win situation); Sun Tzu-like strategist (the Chinese negotiator see negotiation and the marketplace as a battlefield, acquired skills from ancestors, using psychological means he manipulates the party involved into doing things their way).

Stark et al., (2005) listed out the six processes involved during Chinese negotiation; these processes were derived from existing ones developed during the early 90's by a researcher. The six negotiation processes which was discussed in their research includes; the opening stage (the terms and rules of the negotiation are laid); the technical stage (the Chinese uses skills of delay against their foreign party); the terms of contract discussion; contract signing; post - contract negotiation (where the Chinese negotiators would table more demands that was not stated in the previous content of the contract through requested meetings).

Commercialisation

The transformation of China's economy to a market oriented type was brought about by the introduction of China to the world trade organisation, this led to the interest of foreign contractors and experts who were initially limited to projects that has to do with world bank and other foreign projects, (Cheah and Chew, 2005).

The fast commercial development together with a compelling deficiency of base and building space in China has brought about the formation of one of the biggest Construction markets worldwide, (Smith et al., 2004). The construction sector in china is considered as one of the biggest market in the world, (Zuo et al., 2013). Liu and Low (2009) indicated that the Chinese construction had contributed the construction market worldwide.

Partnering and Procurement

When two parties / members or more make an agreement having similar aim of accomplishing a particular business objectives by the proper utilisation of each member of the parties resources is defined as construction partnering, this although is similar to partnering in any other organisation, it was originally defined by the construction industry institute in 1991, (Phua, 2006).

Smith et al., (2004) associated poor quality of construction works with poor management, low quality of materials, and an over ambitious target completion date, also indicating that procurement management was not entirely seen to affect project quality, also low output, poor procurement system and overall project performance was reported in (Zuo et al., 2013) research to be issues associated with Chinese construction industry, and indicated that partnering could be the solution to the afore mentioned problems, Hong et al., (2012) also indicated that partnering improves the project durability and time and also economises cost, but the initial cost of partnering seems to be an among construction contractors also in the

works of Hills et al., (2008), which reported that the Hong Kong construction industry has declined as at 1998 up till 2005 with a steady 50 percent rate, having a low gross domestic product of local construction industries recorded in 2005 compared to the previous years. Due to the challenges encountered in the construction industry in Hong Kong, the housing authority in Hong Kong released a statement expressing support of partnering, output, and skills as a method for improving the industry's efficiency, (Hills et al., 2008). Phua (2006) reported that organisations go into partnering not only for the purpose of competition and profit, but because of the pressure mounted by the industry and also in the quest for high reputation and how having a good reputation is considered in the industry.

Issues resulting from the conventional method of procurement are seen in the form of exceeding budget and rivalry between employer and contractors, (Chan et al., 2011). Assurance from the government is sure for state owned construction organisations, the government has a strong hold through the managerial process as such there is a constrained weight to finish the works in an adequate way and on time, (Smith et al., 2004).

Conclusion

Ways in which contracts are tendered and bided for varies among different countries, in the Chinese construction industry, the previously used method of selecting the bidder with the lowest price was dropped and rather bidder were selected based on reasonable price, competence and competitiveness. The tendering and bidding law of china was developed for the regulation of the bid and tender process in China, and also guide them when negotiating with foreign parties.

When negotiating with the Chinese, they are perceived as hard and demanding, acting upon cultural believes and ancestral knowledge, occasionally the negotiation process is circular due to the fact that after the main negotiation meeting has been concluded the Chinese negotiator request for another meeting where demands in their favour are brought forward.

The introduction of partnering has been used to solve many problems that arise as a result of procurement or any other issues in the construction industry in China, but some firms introduce partnering to boost their reputation and enable them to be able to compete in the market.

REFERENCES

Al-Khatib, J. A. Vollmers, S. M. and Liu, Y. (2007). 'Business – to – business negotiating in China: the role of morality', *Journal of Business and Industrial Marketing*, 22 (2), pp. 84-96.

Bayliss, R., Cheung, S., Suen, H. C. H. and Wong, S. (2004). 'Effective partnering tools in construction: A case study on MTRC TKE contract 604 in Hong Kong', *International Journal of Project Management*, 22 (3), pp. 253-263.

Chan, J. H. L., Chan, D. W. M., Lam, P. T. I. and Chan, A. P. C. (2011). 'Preferred risk allocation in target cost contracts in construction', *Facilities*, 29 (13/14), pp.542 – 562.

Cheah, C. Y. J and Chew D. A. S. (2005). 'Dynamics of strategic management in the Chinese construction industry', *Management Decision*, 43 (4), pp.551 – 567.

Chinabidding.org (no date) Compression Available at: <http://www.chinabidding.org/law/860522> (Accessed: 8 December 2014).

Fang, T. (2006). 'Negotiation: the Chinese style', *Journal of Business & Industrial Marketing*, 21(1), pp. 50-60.

Hills, M. J., Fox, P. W., Skitmore, M., Hon, C. K. H. and Fong, P. S. (2008). 'The role of project managers in construction industry development', In Bridge, Carolyn, Eds. *Proceedings AACE International's 52nd Annual Meeting & ICEC's 6th World Congress on Cost Engineering, Project Management and Quantity Surveying*, pages DEV.14.1 - DEV.14.9, Toronto, Ontario, Canada.

Hong, Y., Chan, D. W. M. and Chan, A. P. C. (2012). 'Exploring the applicability of construction partnering in Mainland China: A qualitative study', *Facilities*, 30 (13/14), pp.667 – 694.

Lai, K. K., Liu, S. L. and Wang, S. Y. (2004). 'A method used for evaluating bids in the Chinese construction industry', *International Journal of Project Management*, 22, pp. 193-201.

Liu, D., Xu, W., Li, H., Zhang, W. and Wang, W. (2011). 'Moral hazard and adverse selection in Chinese construction tender market: A case of Wenchuan earthquake', *Disaster Prevention and Management: An International Journal*, 20 (4), pp.363 – 377.

Liu, J. Y. and Low, S. P. (2009). 'Developing an organizational learning-based model for risk management in Chinese construction firms: A research agenda', *Disaster Prevention and Management: An International Journal*, 18 (2), pp.170 – 186.

Lu, Y. and Tao, Z. (2009). 'Contract enforcement and family control of business: Evidence from China', *Journal of Comparative Economics*, 37, pp. 597-609.

Ma, Z. and Jaegar, A. M. (2010). 'A comparative study of the influence of assertiveness on negotiation outcomes in Canada and China', *Cross Cultural Management: An International Journal*, 17(4), pp. 333-346.

Market prospect. (2010). 'Shaw to support nuclear power plants in China', *Pump Industry Analyst*, 8, pp. 4.

Phua, F. T. T. (2006). 'When is construction partnering likely to happen? An empirical examination of the role of institutional norms', *Construction Management and Economics*, 24, pp. 615-625.

Qi, C. and Chau, P. Y. K. (2012). 'Relationship, contract and IT outsourcing success: Evidence from two descriptive case studies', *Decision Support Systems*, 53 (4), pp. 859-869

- Richards, E. L. (2014). 'Contracting from East to West: Bridging the cultural divide', *Business Horizons*, 57 (5), pp. 677-684.
- Shafahi, A. and Haghani, A. (2014). 'Modelling contractors' project selection and mark-up decisions influenced by eminence', *International Journal of Project Management*, 32, pp. 1481-1493.
- Smith, J., Zheng, B., Love, P. E. D. and Edwards, D. J. (2004). 'Procurement of construction facilities in Guangdong Province, China: factors influencing the choice of procurement method', *Facilities*, 22 (5/6), pp.141 – 148.
- Stark, A., Fam, K., Waller, D. S. and Tian, Z. (2005). 'Chinese negotiation practice: a perspective from New Zealand exporters', *Cross Cultural Management: An International Journal*, 12 (3) pp. 85 – 102.
- Tam, V. W. Y., Shen, L. Y., Tam, C. M. and Pang, W. W. S. (2007). 'Investigating the intentional quality risks in public foundation projects: A Hong Kong study', *Building and Environment*, 42, pp. 330-343.
- Tan, Y., Shen, L., Lu, W and Shen, Q. (2008). 'Multiple-objective bidding strategy using goal programming technique', *Management Decision*, 46 (4), pp.656 – 672.
- Topcu, I. Y. (2004). 'A decision model proposed for construction contractor selection in Turkey', *Building and Environment*, 39, pp. 469 - 481.
- Von Branconi, C. and Loch, H .C. (2004). 'Contracting for major projects: Eight business levers for top management', *International Journal of Project management*, 22, pp. 119-130.
- Watt, D. J., Kayis, B. and Willey, K. (2010). 'The relative importance of tender evaluation and contractor selection criteria', *International Journal of Project Management*, 28, pp. 51-60.
- Zhang, X. (2011). 'Social risks for international players in the construction market: A China case study', *Habitat International*, 35(3), pp. 514-519.
- Zhu, Y., McKenna, B. and Sun, Z. (2007). 'Negotiating with Chinese: success of initial meetings is the key', *Cross Cultural Management: An International Journal*, 14 (4), pp.354-364.
- Zuo, J., Chan, A, P. C., Zhao, Z., Zillante, G. and Xia, B. (2013). 'Supporting and impeding factors for partnering in construction: a China study', *Facilities*, 31(11/12), pp.468 – 488.