

高等学校工程管理专业规划教材

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国际工程合同管理(双语)

Contract Management for International Construction

韦 嘉 主 编
刘 艳 副主编

中国建筑工业出版社

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前 言

随着我国建筑企业“走出去”的步伐日益加快，我国对国际建筑市场通用的合同管理知识的需求也愈加迫切。近年来，我们从高校毕业生就业导向的调研中也发现：目前愈来愈多的中国涉外建筑企业迫切需要工程管理专业的高校毕业生到国外去从事合同管理的工作，因此，工程合同管理尤其是国际工程合同管理作为一种知识体系对将来从事涉外建筑工程管理的高校毕业生或研究生应该是一门日益重要的必修课。本书不仅适用于工程管理和工程造价专业的本科生及研究生，而且对从事国际工程承包管理的合同管理人员也具有一定的参考价值。

为适应双语教学的要求，同时考虑到该课程的性质比较适合双语教学，因此本书以英文编写。同时，为了更好地帮助读者更深入地理解本书内容，书中对重要的概念、术语以及较难理解的句子进行了详细解释，并有译文。

本书介绍了国际建筑市场常用的合同管理的主要内容，其中包括建筑业的概况；建设项目的参与方；建筑工程的采购方式；招标及合同构成；合同条款；承包商的合同义务；雇主的合同义务；时间；支付；合同管理者的角色；分包；合同的暂停和终止；合同纠纷的解决方法；仲裁与诉讼。

本书在编写过程中得到了中国建筑工业出版社牛松编辑的大力支持和帮助。同时，东南大学李启明教授也在百忙中为本书提出了宝贵的意见，谨在此表示衷心的感谢。

本书由青岛理工大学管理学院副教授韦嘉主编，刘艳任副主编。

由于作者水平有限，书中不当之处在所难免，敬请各位读者和同仁指正。

编 者

2009 年 12 月

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Chapter 1 Introduction to Construction Industry

“To form by assembling parts” is the dictionary definition for construction, but the phrase also is a metaphor for the construction process itself. Just as different materials come together to form a structure, so, too, does a diverse group of people come together to make the project possible. To bring together numerous independent businesses and corporate personalities into one goal oriented process is the peculiar challenge of the construction industry. The organizational cultures of architects, engineers, owners, builders, manufacturers, and suppliers may seem to work against the real need to forge a partnership that will ensure the success of a project. Yet, despite these very real challenges in the industry, construction projects do get completed. In fact, it is difficult to think of an industry that is more basic to our economy and to our daily lives. The highways we drive on, the bridges we cross, the water we drink, the fuel we burn; all are made possible by the activities of the construction industry. Likewise, where we shop, where we work, where we worship and learn, and where we live all exist because of the industry. Designers have visions; but until the contractor builds, those visions are just dreams on a sheet of paper.

Construction is also very intertwined with other aspects of our lives. It affects and is affected by developments in technology, computers, government policies, labor relations, and economic and political practices. Take, for instance, the technological leap of the skyscraper. Until the late 1800s, most buildings were four or five stories high. Masonry supported the structure from the ground. As the height of the building increased, the massing at the ground level also increased to support the additional load. Thus, if the building were built too high, the mass at the bottom would be too thick. Another limitation to height was that people could only practicably climb four or five stories. Because floors on the upper levels were difficult to rent, owners had no economic incentive to build any higher. But with the development of cheap methods of producing iron and steel and the invention of the elevator, architects began designing higher buildings. This spurred construction activity; landowners were motivated to develop these new buildings because the return on their investment was higher. Over time, as technological advances have allowed, the skyscraper has gotten taller.

Innovations in robotics and computer modeling have also affected the construction industry. By using computers for modeling structures and imitating wind and seismic loads, architects and engineers can better anticipate nature’s constraints and create

better designs to counteract them. With robots directing equipment during construction, contractors can gain more control over processes that require precision for success, such as the construction of the underwater tunnel between France and England. The desire for such projects leads to the development of technologies to make them possible, which in turn encourages similar projects to go forward.

Words, Phrases and Expressions

assembling *adj.* 组合的, 装配的 (combinational, assorted)
metaphor *n.* 比喻, 隐喻 (trope)
diverse *adj.* 不同的 (various)
corporate *adj.* 公司的, 法人的
oriented *adj.* 导向的
peculiar *adj.* 奇怪的 (strange)
forge *vt.* 锻造, 打造 (establish)
intertwine *vt.* 纠缠, 紧密联系 (connect)
labor relation 劳资关系 (relation between employer and employees)
skyscraper *n.* 摩天大楼 (tower)
mass *n.* 基石 (foundation block)
incentive *n.* 诱因, 动机 (motive)
spur *vt.* 激励 (inspire)
robotics *n.* 机器人技术
model *vt.* 制作模型, 建模 (construct a model)
seismic load *n.* 地震力
counteract *vt.* 对抗, 抵消 (withstand)

疑 难 词 句

1. The organizational cultures of architects, engineers, owners, builders, manufacturers, and suppliers may seem to work against the real need to forge a partnership that will ensure the success of a project.

译文: 建筑师、工程师、业主、建筑公司、制造商以及供货商的组织文化与打造一个确保项目成功的合作伙伴关系的实际需要看起来可能有些背道而驰。

2. It affects and is affected by developments in technology, computers, government policies, labor relations, and economic and political practices.

译文: 建筑业影响了技术和计算机的发展、政府的政策、劳资关系以及经济与政治的惯例, 同时也被这些因素所影响。

Chapter 2 The Parties To The Contracts

Most standard form building contracts are based on the assumption that the employer, the first party, who has decided to have certain works carried out for the implementation of a project, and is sponsoring the works, has decided to select a suitably qualified contractor, the second party, to execute the works.

It is also assumed that the selection of the contractor will have been made through competitive tendering based on tender documents prepared for the project by a consulting engineer.

Most building contracts cannot apply without a contract administrator (or referred to as engineer in some contracts) being appointed by the employer to administer the contract. Usually this would be the consulting engineer who has designed the project and prepared the tender documents. The contract administrator is not a party to the contract, but he plays an important role in the development process of the works. The duties that the contract administrator has to perform are defined under the contract and he must have the necessary delegated authority from the employer if he is to be able to perform them. The delegation of this authority is usually to be found in the agreement between the employer and the contract administrator.

The agreement will stipulate as the primary duty of the administrator that he carefully observes the requirements of the employer in the execution of the project. It is important to note, however, that the conditions of contract between the employer and the contractor stipulate that where, under the contract, any of the administrator's duties are discretionary, the contract administrator shall act fairly between the employer and the contractor and apply the contract in an unbiased manner. The conditions are based upon this fundamental principle and this requirement applies even if the administrator is a member of the employer's staff.

Words, Phrases and Expressions

execute *vi.* 执行, 实施 (to perform, implement, or carry out a scheme, a proposal, or a project)

competitive tendering 竞争性招标 (selecting a contractor by means of choosing among many competing bidders)

apply *vi.* 使用, 应用, 适用 (to fulfil, to serve its purpose, to put into use)

contract administrator 合同管理者, 合同管理人员

administer *vi.* 管理, 给予 (to manage, to give)

consulting engineer 咨询工程师 (the professional consultants advising and supervising the tendering, designing, and execution of a project)

tender document 招标文件 (a request for proposal issued to the bidders who prepare and submit a tender accordingly for the sake of being awarded a project)

perform *vt.* 执行, 履行 (to fulfill or execute a proposal)

delegation *n.* 委托, 授权 (entrusting or appointing an authority or power to an organization or individual)

discretionary *adj.* 任意的, 自由决定的 (having one's own decision power, free to act according to one's own judgment)

unbiased *adj.* 没有偏见的 (impartial)

2.1 Employer

At the end of the tendering process, the employer notifies the successful tenderer that he has been awarded the contract by issuing a letter of acceptance which records any changes to the tender documents as submitted by the contractor, resulting from agreement between the employer and the contractor, and the contract price.

The employer consents to, or declines, requests by the contractor to assign any portion of the works, prepares the contract agreement (if any) for execution by both parties, approves the performance security and the insurers as well as the terms of the insurance policies submitted by the contractor. The employer will wish to ensure that the contract works insurance is in accordance with the laws and regulations of the country in which the works are to be executed and that the policy adequately covers the employer's risks and the deductible limits are acceptable. Provided it is acceptable to the employer the contractor will normally use his customary sources for the provision of securities and insurance.

The Employer makes the advance payment (if any) against a suitable guarantee from the contractor and authorises the contractor to move on to the site. During the period of the contract the employer makes payments to the contractor as certified by the contract administrator to be due under the contract.

The employer takes over sections of the works as they reach substantial completion, if this is required under the contract, and ultimately takes over the whole of the works following the issue of certificates by the administrator. In the event of the contractor becoming liable for liquidated damages, the employer may deduct an amount in accordance with the conditions of contract.

The employer may authorise work to be completed by others if the contractor is in default. The employer can terminate the contract in the event of the contractor failing

to perform or in certain other circumstances defined in, and subject to, the law governing to the contract. The employer, if he defaults, can also be subject to cancellation of the contract by the contractor or to suspension of work by the contractor.

The employer and the contract administrator should maintain such contact with each other as will facilitate smooth and unhindered progress of the works. The employer should respond, without delay, on all matters for which the administrator is required by the contract to consult the employer before issuing an instruction, determining an amount to be added to or deducted from the contract price or granting an extension of time.

Words, Phrases and Expressions

tenderer *n.* 投标者 (a bidder who prepares and submits a tender)

letter of acceptance 中标函 (a letter accepting the tender)

performance security 履约担保 (a guarantee to ensure the contractor will fulfil the contract)

insurance policy 保险单 (a written statement of the terms of a contract of insurance)

deductible limit 免赔额 (an insurance term meaning a sum which the insured must pay by himself when settling a claim)

advance payment 预付款 (a sum of money the employer pays to the contractor at the outset of a project as a loan for the contractor to mobilize the execution of the works)

substantial completion 基本竣工 (practical completion which enables the employer to issue the taking-over certificate to the contractor)

liquidated damages 误期损害赔偿金 (a penalty which is paid by the contractor to the employer when the time for completion is delayed by the contractor's default)

conditions of contract 合同条款 (terms or provisions of a contract)

default *n.* 违约 (breach of contract)

suspension *n.* 暂停 (stop for the time being)

facilitate *vi.* 使便利, 有助于 (to help)

extension of time 延长工期 (extending the time for completion)

疑 难 词 句

1. The employer will wish to ensure that the contract works insurance is in accordance with the laws and regulations of the country in which the works are to be executed and that the policy adequately covers the employer's risks and the deductible limits are acceptable.

译文: 业主将希望能确保合同工程的保险符合工程所在国的法律和规定, 保险单能足以涵盖业主的风险, 并且免赔额也能够被接受。

2. The employer should respond, without delay, on all matters for which the adminis-

trator is required by the contract to consult the employer before issuing an instruction, determining an amount to be added to or deducted from the contract price or granting an extension of time.

译文：业主应该对合同要求合同管理者发出指令前必须与业主商量的所有事宜，以及对合同价的增减的确定，或给予延长工期的决定等事宜立即答复，不得延误。

Notes:

1. **substantial completion** 基本竣工 This term stands for a practical or basic completion of the works under a contract. In this case, the contractor has completed the entire works in the way that all the functions of the works have been completed to the specifications of the contract and the employer can take over and use it. This so-called substantial completion, however, is different from 'absolute completion' or 'full completion' in that the works of substantial completion leaves some trivial or slight outstanding work unfinished which does not hinder the employer from using the works.
2. **extension of time** 延长工期 This term means extension of the time for completion which is granted to the contractor by the employer or the contract administrator on behalf of the employer as a result from occurrence of any events which has affected the contractor's process of executing the works provided that such events are not caused by the contractor or not because of the contractor's default.

2.2 Contractor

The obligation of the contractor is to execute and complete the works, for which he has submitted his tender, within the time specified in the contract. In addition he has obligation to remedy any defects which appear during the defects liability period.

As soon as is reasonably possible after receiving notification from the contract administrator, the contractor shall submit the securities, guarantees and insurance policies required by the contract and shall commence the works. He prepares the construction programme, provides all necessary materials, contractor's equipment, temporary works, management, superintendence and labour and selects the method of carrying out the works. The contractor is not responsible for the design and specification of the permanent works unless expressly provided for in the contract nor for any temporary works not designed by him.

The contractor receives and complies with instructions from the contract administrator acting on behalf of the employer and is responsible for the care of the works throughout the construction period until the works are officially taken over by the employer or are deemed to be taken over by the employer.

The contractor is responsible for his own staff and work force and for taking out

social and other insurances in respect of his personnel. He must comply with all applicable laws, by-laws and regulations and ensure that all those for whom he is responsible also comply.

Under normal circumstances the contractor designs all temporary works and submits his proposals, with supporting calculations, to the contract administrator for comment. If, during the construction period, he encounters unforeseen physical obstructions or conditions on the site he notifies the administrator who issues relevant instructions. The contract administrator will review the circumstances and after consultation with both parties will determine to what extent, if any, the contractor may be reimbursed for additional costs or granted an extension of the time for completion.

In the event of default by the employer the contractor may suspend progress of the works or reduce the rate of work and claim an appropriate extension of time and/or additional payment.

Normally there will be one main or principal contractor who signs the contract and has overall responsibility for the execution and completion of the project. There will usually be a number of subcontractors working on the site undertaking specialist contracting activities. The subcontractors are responsible to the contractor for material, workmanship, performance and progress and the contractor is responsible under the contract for each subcontractor's work and behavior.

On occasions the employer will wish to have a particular subcontractor engaged because of his knowledge of that subcontractor's skills or because of his knowledge of some process, materials or plant particularly required by the employer. A subcontractor selected in this way is known as a nominated subcontractor. Once he has been accepted by the main contractor the latter is responsible for the work of the nominated subcontractor to the same extent as applies to the work of all other subcontractors. For this reason it is important that nomination is not misused by the employer. Failure to perform satisfactorily by a nominated subcontractor can cause many difficulties on site. The particular conditions applying to the appointment of nominated subcontractors are dealt with in the relevant clause of the conditions of contract. The contractor may object to the nomination for good and sufficient reasons (e. g. lack of experience or financial strength) and engagement against the wishes of the contractor will probably disturb harmony on the site. There would have to be very exceptional reasons for such a thing to happen.

In very large or complex projects a number of contractors may form a joint venture to act as the contractor. In such cases the same principles apply as in the situation with only one contractor. In the case of a joint venture the employer would normally require that all the parties to the joint venture have joint and several liability.

In projects where several contractors are operating on a single site under individual

contracts, each contractor must give the other contractors reasonable cooperation and opportunities for carrying out their work and this should be reflected in terms of the contracts and in the respective programmes.

Words, Phrases and Expressions

remedy *vt.* 修复 (to make good, put right)

programme *n.* 计划, 安排 (schedule, scheme)

temporary works 临时设施 (site facilities used for execution of a project which are to be removed after the project is completed, such as site office, dormitory, dining hall, batching plant, etc.)

specification *n.* 技术要求, 技术规范 (technical requirement the workmanship of the works, including the works' materials, permanent plant, parts, and etc.)

expressly *adv.* 清楚地, 明白地 (clearly, explicitly, opposite to 'impliedly')

take over 接收 (to receive a project when it is substantially completed)

comply with 服从, 遵从 (obey)

review *vt.* 审查, 回顾 (examine)

reimburse *vt.* 偿还 (repay)

main or principal contractor 总承包商 (a general contractor who signs an agreement with the employer directly and who may sublet parts of the works to a subcontractor)

subcontractors *n.* 分包商 (a specialty contractor who subcontracts a part of a project from a main contractor)

nominated subcontractor 指定分包商 (a subcontractor who is appointed by the employer directly)

engagement *n.* 约定, 雇佣 (employment)

joint venture 联营体 (a consortium composed of several firms to tender a project as one bidder)

疑 难 词 句

1. The contractor may object to the nomination for good and sufficient reasons (e. g. lack of experience or financial strength) and engagement against the wishes of the contractor will probably disturb harmony on the site.

译文: 承包商可以凭合理充足的理由 (如缺乏经验或财力) 反对该指定, 无视承包商的意愿的雇佣可能会扰乱现场的和谐。

Notes:

1. **programme** 施工计划 This word stands for a work schedule which the contractor shall submit to the contract administrator within a specified period after receiving the notice of commencement. This programme should be updated by the contractor whenever it is inconsistent with the actual progress.