



JONES DAY
COMMENTARY

PRC MINISTRY OF CONSTRUCTION ISSUES DRAFT OF QUALIFICATION STANDARDS FOR CONSTRUCTION ENGINEERING GENERAL CONTRACTING SPECIAL GRADE

On May 9, 2006, the Ministry of Construction (“MOC”) for the People’s Republic of China issued a draft of its *Qualification Standards for Construction Engineering General Contracting Special Grade* for public consultation (the “Draft Standards”).

The current PRC qualification system for construction engineering enterprises was established by the Regulation on *Construction Engineering Enterprises Qualification* (Decree 87)¹ and *Qualification Standards for Construction Engineering Enterprises* (Document 82).²

According to Article 5 of Decree 87, qualifications for construction engineering enterprises include general contracting, specialty contracting, and labor service subcontracting. The specific grades of qualification for general contracting include:

- Special Grade
- Grade 1
- Grade 2
- Grade 3

In this *Commentary*, we summarize the differences between the existing standards and the Draft Standards for special-grade general contracting.

1. Promulgated by MOC on July 1, 2001.

2. Promulgated by MOC on April 20, 2001, and effective as of July 1, 2001.

CATEGORIES OF WORK

Both the current and the Draft Standards set out the qualification requirements for special grade for the following 10 categories of work:

1. Building Construction Works
2. Road Works
3. Railway Works
4. Ports and Sea-Route Works
5. Irrigation and Water and Electricity Works
6. Electric Power Works
7. Mining Works
8. Smelting Works
9. Petrochemical Works
10. Public Utilities Works

INTEGRATED AND NEW CAPITAL AND CREDIT REQUIREMENTS

The Draft Standards integrate the capital and credit requirements for each category of work. The requirements for registered capital and net assets remain the same as the current standards set by Document 82. The requirement for no less than RMB 150 million average works income after deductions in the previous three years is replaced by the taxation and line-of-credit requirements. The existing qualification standards provide that the applicant shall achieve “other requirements” set for Grade 1 in order to be qualified as a special grade contractor under Document 82. These “other requirements” include the experience and track record of the applicant as well as the numbers and qualifications of professional personnel in the relevant categories of work, etc., and have been included in the Draft Standards accordingly.

CURRENT STANDARDS	DRAFT STANDARDS
1. Registered capital of no less than RMB 300 million.	1. Registered capital of no less than RMB 300 million.
2. Net assets of no less than RMB 360 million.	2. Net assets of no less than RMB 360 million.
3. No less than RMB 150 million average works income after deductions in the previous three years.	3. Business tax paid by the enterprise within its own profession of no less than RMB 50 million in the previous three years continuously.
4. Applicant shall meet the other requirements for Grade 1 in relevant category of work.	4. A line of credit of no less than RMB 500 million in the previous three years continuously.

NEW REQUIREMENTS FOR SCIENCE AND TECHNOLOGY IMPROVEMENTS

The MOC places strong emphasis on the technology level of applicants for the general contracting special grade under the Draft Standards. The new requirements for science and technology improvements set out in the Draft Standards are as follows:

1. The applicant must have a technology (research and development) center at the provincial (ministry) level or above.
2. The applicant must have one or more national engineering directions.
3. The science and technology expenditure must be no less than 1 percent of the turnover of the applicant.
4. The applicant must have attended a composition of industry standards at the provincial (ministry) level or have won a related science and technology improvement award at the provincial (ministry) level or above.
5. The applicant must have an established information management system.

INTEGRATED PERSONNEL REQUIREMENTS

Under Document 82, the personnel requirements differ according to the categories of work. The Draft Standards, however, provide a single set of personnel requirements that apply to all 10 categories of work:

1. The manager must have no less than 10 years of works management experience.
2. The chief engineer must have a senior professional title and be qualified as a first-class registered construction manager or registered engineer; he or she must have completed two or more representative projects of engineering general contracting first grade

or representative projects falling into Grade A design qualification; or general contracting projects with a contract value of no less than RMB 200 million.

3. The financial manager must have a senior accountant title and be qualified as a certified public accountant.
4. The applicant must have no less than 50 first-class construction managers (first-class project managers).
5. The applicant must have professional(s) as required by Grade A design qualification according to industry.

Set out below is a comparison between the current and proposed personnel requirements for building construction works:

CURRENT STANDARDS	DRAFT STANDARDS
1. The manager shall have works management experience of no less than 10 years or have a senior professional title.	1. The manager shall have works management experience of no less than 10 years.
2. The chief engineer shall have no less than 10 years' experience in technical management of construction engineering and a senior professional title in his/her specialty.	2. The chief engineer shall have a senior professional title and be qualified as a first-class registered construction manager or registered engineer; shall have completed two or more representative projects of engineering general contracting first grade or representative projects falling into Grade A design qualification; or general contracting projects with a contract value of no less than RMB 200 million.
3. The chief accountant shall have the senior professional title of accountant; the chief economist shall have a senior professional title.	3. The financial manager shall have a senior accountant title and be qualified as a certified public accountant.
4. The applicant shall have no less than 12 first-class project managers.	4. The applicant shall have no less than 50 first-class construction managers (first-class project managers).
5. The applicant shall have no less than 300 professionals with the title of engineer and technology and the title of economic management, and the professionals with the engineer and technology title shall be no less than 200; there should be no less than 10 professionals holding a senior professional title of engineer and technology and no less than 60 professionals holding a secondary professional title.	5. The applicant shall have professional(s) as required by Grade A design qualification according to industry.

STANDARDS FOR EXPERIENCE AND TRACK RECORD

Experience and track-record requirements have also been amended in the Draft Standards. The comparison between

the current and proposed experience and track-record requirements for building construction works is set out below:

CURRENT STANDARDS	DRAFT STANDARDS
The applicant shall have undertaken no less than four engineering general contracting or main components contracting projects of the following six items, and the works quality must meet relevant requirements:	The applicant shall have undertaken no less than four engineering general contracting or works general contracting projects in respect of:
1. Building construction works of no less than 25 floors.	1. Building construction works of no less than 28 floors.
2. Buildings/structures no less than 100 meters high.	2. Buildings no less than 100 meters high.
3. Building construction works of no less than 30,000 square meters for a single building/structure.	3. One building construction project conducted in the PRC or overseas of no less than US\$10 million contract value.
4. Building construction works of a single span of no less than 30 meters.	4. Works general contracting project of no less than RMB 200 million contract value.
5. Residential district or construction series of no less than 100,000 square meters.	5. Residential district or construction series of no less than 100,000 square meters.
6. Building construction project with no less than RMB 100 million single construction and installation contract.	6. Building construction project with no less than RMB 100 million single construction and installation contract.

CONCLUSION

The Draft Standards are part of the MOC's move to standardize the regulations relating to construction and design qualifications required to implement the PRC Administrative Licensing Law. While this standardization is to be welcomed, the Draft Standards will be of relatively little interest to foreign contractors, given that the high capitalization (RMB 300 million) and personnel (50 first-class project managers) requirements remain in place. It is likely that over the coming months, the MOC will issue similar proposed regulations to bring the remaining qualification standards into line with the requirements of the Administrative Licensing Law.

LAWYER CONTACT

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