

How to carry out project settlement in invalid construction contract

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Keywords: Invalid construction contract, Contract settlement, Contract.

Abstract. Based on the principle of invalid construction contract, this paper mainly discusses how to correct the legal basis of invalid construction contract settlement, and puts forward to the change of design, and some other aspects like subcontracting for invalid construction contract. According to the discussion of how the situation was settled when the analysis was carried out. It is further clarified that the legal basis for the construction of the invalid construction contract is that the contractor will have the right to request the payment of the project price according to the contract as long as the construction project is qualified for acceptance by completion of the project. The legal basis does not give the contractor the choice of the method to settle the bill, and it generally should be in accordance with the contract-agreed price to pay the project.

1. Introduction

In project practice, it is worthwhile to discuss how to carry out contract settlement when the construction contract is invalid while the labor and materials in the construction process have been put into the project.

2. Under what circumstances the construction contract is invalid

According to the provisions of *the Contract Law*, construction contract has one of the following circumstances, identified as invalid: The contractor did not obtain the qualification of the construction enterprise; the workers did not have the statutory qualification level of the construction requirements; the actual unqualified construction workers borrowed the name of the qualified construction enterprise; the construction project had to be tender but it didn't bid or the bid is invalid; the contractor subcontracted the project to other non-qualified contractor, the subcontract is invalid; the contractor subcontracted construction of the main structure of the project, the subcontract is invalid.[1-3]

3. Principle of treatment on invalid construction contract

Article 58 of *the Contract Law* states: "If the contract is invalid or is withdrawn, the property acquired by the contract shall be returned; if it can not be returned or is not necessary to be returned, it shall be discounted and compensated." The wrong party should compensate the other party for the loss suffered, and if both parties are at fault, they shall bear the corresponding responsibilities.[4-5]

4. How to carry out the contract settlement when the construction contract is invalid

4.1 Legal basis for settlement

Article 2 of *the Interpretation of the Supreme People's Court on the Application of Legal Issues in the Trial of Construction Contract Disputes* (hereinafter referred to as the "Interpretation of Construction Contracts") stipulates: "If construction contract is invalid, but the construction project completed by

the acceptance of qualified, the contractor who request the payment of the project price according to the contract should be supported.

4.2 Prerequisite of "referring to the contract to pay the project price"

Article 2 of " Interpretation of Construction Contracts "establishes the invalid contract settlement principle of referring to the contract agreed to pay the project price, whose prerequisite is construction project was accepted qualified. The nature of the construction contract determines that it cannot apply the principle to restore the original status when the contract is invalid, which can only be discounted and compensated.

For example: The contractor asked the project price shall not to be supported when the contractor does not have the qualifications for construction contract nor the corresponding qualifications in the construction project resulted in the construction contract invalid, and the project has not been completed, nor checked. In other words, the employer shall not pay the used labor, materials, machinery and equipment costs included in the project price.

4.3 Necessity of "referring to the contract agreed to pay project price"

Article 2 of the "Contract for Construction Contract" establishes that "may" be settled by reference to the contract and is not "necessary", so it is not appropriate for the contractor to advocate that he has the right to choose not to refer to the contract. This is because the current construction market in China is the contractor market, the contractor's power is weak in bargaining when signing contract. Moreover, the contractor in order to take the project, often win the bid by a low price. Therefore, the contract price is often much lower than the project quota standard and market information price published by government. If the invalid contract is settled in accordance with the fixed price market price, may induce the contractor to maliciously claim the contract is invalid.

For example: both sides signed a "construction contract" before putting construction out to tender, which belongs to the string behaviors, violated the relevant provisions of the Construction Law and the Tender Bidding Law, whose contract should be invalid. When construction contract is invalid, but the project is completed and accepted by the acceptance, the contractor's request of "referring to the contract agreed to pay the project price" should be supported. In principle, the price of the project should be calculated in the manner agreed upon in the contract, and the contractor should not be supported if the claim is settled at the actual cost.

In addition, for whether the contractor's profits and taxes formed in the construction should be deducted in the project price? Contractor's profits and taxes formed in the construction work is legitimate income. If deducted, will lead to the contractor's profits and taxes in the engineering products taken by the employer based on invalid contract, which is inconsistent with the settlement principle of invalid contract and contrary to the principle of fairness, so the employer should pay the project price and shall not deduct the contractor's profits and taxes.

4.4 Treatment of invalid construction contracts in the case of design changes

Construction Contract Interpretation article 16 provides: " the construction project or quality standards change caused by design changes, the parties to the part of the project price can not be agreed, which can refer to the construction contract construction contract with the local construction administrative departments issued pricing method or pricing standard settlement project price to settle.

For example: a residential project, the structure of 28 layers of shear wall, contract form for the package of materials, the implementation of one-time package of square meters, contracted by the construction area of 1,500 CNY/square meter. 4 months after the start, the design changes to 18 layers. 10 months after the start of the project, due to lack of formalities and construction permit, the construction department issued a notice of suspension. At this point the project has been built to 13 layers, the contractor exit, the contractor received the unfinished project, and agreed to pay the project has been completed. In accordance with the fixed calculation, the project cost of 19 million CNY, the project cost of 14 million CNY; in accordance with the contract price, completed the

project cost of 13 million CNY. The project did not actually fulfill the bidding process, resulting in construction contract is invalid. Then it should be 19 million or 13 million CNY settlement?

Construction Contract Interpretation article 16 provides that the original contract may be issued with reference to the original contract issued by the administrative department of the project fixed standard or bill of quantities pricing method settlement project, mainly due to the nature of the project, the standard should not apply the original contract Valuation method and the valuation of the settlement of the settlement of the project, or the original contract is not applicable to the case of the settlement of the settlement method. Although the project has been designed to change, but only the number of layers has changed, there is no such situation, it should be agreed to the contract which is 13 million CNY to settle.

4.5 Treatment of invalid construction contract in subcontracting

The contractor embezzles qualification to undertake the project and then subcontract to the unqualified construction workers, the construction workers then subcontract the project, in this case, the subcontracting is invalid due to violation of the law mandatory. The invalid construction project construction contract, which is caused by illegal subcontracting, the actual construction requirements of subcontractors, illegal subcontractors and contractors joint responsibility for the project arrears should be supported.[6]

For example: company A in the name of the company to undertake the project and then subcontract to the unqualified construction company B, which is Mr. Wang, then, Wang subcontracts the project to Mr. Li, this subcontract behavior is in violation of the law regulations, so the construction contract is invalid, but does not affect Mr. Li as the actual construction workers refer to the contract to pay the price of the project interest. So Wang should take the responsibility to pay the contract agreed settlement to Mr. Li's project. Company A should bear the joint liability of Mr. Wang paying to Mr. Li's project, due to the company did the invalid subcontracting behavior. Which means company B should take the responsibility to pay for the agreed settlement to Mr. Li, and company A should also take the joint responsibility to pay to Mr. Li's project as main part of the invalid subcontracting behavior.

4.6 In the case that contract is invalid, the quality assurance period and the quality margin agreement are still legally binding

In the case that a contract is invalid, does the agreement on the quality assurance period and the quality margin are still binding on the parties to the contract?

Construction project quality warranty is very important. Article 62 of the Construction Law stipulates that the quality assurance system for construction projects should be practiced. The minimum warranty period for construction projects is also stipulated in Article 40 of the Construction Engineering Quality Management Regulations.

The construction contract stipulates the quality assurance period and the quality guarantee, whose purpose is to urge the construction unit to ensure that the building can be used normally within a reasonable life time span in order to safeguard the legitimate rights and interests of the users. Therefore, even if the contractor and the contractor signed the construction contract is invalid, the parties are still legally binding on the quality assurance period and the quality of the margin agreement in the contract, the contractor should still bear the warranty obligations.[7]

4.7 The contractor still has the right of first refusal when the contract is invalid

After the contract is invalid, does the contractor still has right of first refusal of the construction project price?

In this regard, laws and regulations and judicial interpretation did not given clear definition, and there are two opposite views in practice. At present, due to the construction market is not standardized, inefficient construction contract accounted for a large proportion. If the contract does not recognize the contractor still have the right of priority, the contractor will be deprived of means of relief for the cost of the project, and may even cause serious consequences for the final failure of its

claims. To this end, in order to balance the interests of both parties to the contract, even for the invalid contract, the contractor's construction project price priority should also be protected as much as possible.

5. Conclusions

The principle of ineffective construction contract is that if the contract is invalid, the faulty party should compensate the other party for the loss suffered, if both sides have fault, they should bear the corresponding responsibility.

The legal basis for the settlement on invalid construction contract is that after the construction contract is invalidated, the contractor shall have the right to request the payment of the project price in accordance with the contract as long as the construction project is completed and the acceptance is completed and accepted qualified. It should be noted that the request for payment of the project price is prerequisite for acceptance of qualified about construction projects.

Acknowledgement

This research was financially supported by the School-level Research Project of Beijing Vocational College of Agriculture (No. XY-YF-17-15).

References

- [1] H. J. Cao, Discussion on disputes over effectiveness of construction contract, *Operation and management*, vol.7, pp. 55-100, 2012.
- [2] H. J. Wang, X. Wang and L. Cao, Study on the settlement of invalid construction contract project, *Construction economy*, vol.1, pp. 80-82, 2013.
- [3] J. L. Wang, Research on the legal effect of loaning construction contract, *Law*, vol.12, pp. 118-123, 2003.
- [4] Y. L. Gao, Discussion on the liability for delay in construction contract of invalid construction project, *Construction economy*, vol. 5, pp. 60-62, 2014.
- [5] J. H. Li, Discussion on priority payment of construction project price, *Construction economy*, vol. 6, pp. 70-72, 2007.
- [6] K. J. Ma, Legal consequences of invalid construction contract, *Construction enterprise management*, vol. 6, pp. 31-32, 2005.
- [7] N. Dai and H. F. Xu, The effectiveness of construction contract of construction engineering, *Construction management modernization*, vol. 4, pp. 73-77, 2008.