Application Research on “the Evaluated Lowest Bid Price Method” in Bidding

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Abstract. This paper analyzes and discusses the “winning the bid at a low price” and the “the evaluated lowest bid price method” which have been widely concerned and discussed in recent years. Through the analysis of “the evaluated lowest bid price method”, it is concluded that “the evaluated lowest bid price method” is not equal to “the lowest bid price method”, nor is it the essential reason for the phenomenon of “winning the bid at a low price”. It further points out the problems existing in the application of “the evaluated lowest bid price method” in bidding practice, and puts forward corresponding countermeasures and suggestions.

1. Introduction

The “Problem Cable” of Xi’an Metro, the “Blood” case caused by Hefei Snow in Anhui Province, and the winning bid of 0 yuan for Shanghai’s e-government cloud service project have attracted wide public attention in recent years. A series of events have concentrated on a key word, that is, “winning the bid at a low price” in the bidding process [1]. The serious consequences of these incidents have also aroused heated discussions among professionals and relevant experts and scholars. During the NPC&CPPCC in 2017, some delegates suggested that the “the evaluated lowest bid price method” should be abolished. The people’s daily also issued a number of criticisms on winning the lowest price. On August 29 of the same year, the Law Division of the National Development and Reform Commission issued a notice for public consultation on the decision to amend the Tender and Bidding Law and the Regulations for the Implementation of the Tender and Bidding Law (draft for soliciting opinions), and for public consultation on the revision of the Tender and Bidding Law and the Regulations for the Implementation of the Tender and Bidding Law. After the 31st meeting of the Standing Committee of the 12th National People’s Congress on December 27 adopted the Decision on Amending the Law of the People’s Republic of China on Bidding and Bidding and the Law of Measurement of the People’s Republic of China, the media quickly announced the title that “the state officially announced that the owner can directly designate the winning bidder. End of the era of low bid!” From this we can see that the phenomenon of “winning the bid at a low price” has been seriously abhorred by society. And in this series of social criticism and discussion it is also triggered a new topic of thinking, that is, is the phenomenon of “winning bid at a low price” the same thing as the “the evaluated lowest bid price method”? Is it necessary to abolish the use of the “the evaluated lowest bid price method” in order to eliminate the phenomenon of “winning the bid at a low price”?

Here the “low bid” should refer to malicious low price, abnormally low price or lower than the cost of the tender offer. Wang Honghai and Qiang Maoshan wrote a paper entitled “Correct the name of low-price bid-how is low-price bid stigmatized?” [2]. This paper analyzes the reasons why the “lowest
price wins the bid” which is widely used in the international project procurement field is not feasible in China, and puts forward that the bidding system should be established and improved to justify the name of the low price law. In his article “Some pots should not be recited by the evaluated lowest bid price method”, Dr. Wang Jiangjun pointed out that the phenomenon of “winning the tender at a low price” is not necessarily due to the adoption of “the evaluated lowest bid price method” through the analysis of specific bidding cases in various fields, such as drug bidding, network service bidding and subway construction bidding[3]. Liu Qinzhi also pointed out that the “malicious low price” and “reasonable low price” should be treated differently through the analysis of the relevant concepts, and the adoption of comprehensive evaluation method may also lead to “low price bid”[4].

The author agrees with the author’s viewpoint that the phenomenon of “winning the bid at a low price” can not be entirely attributed to the use of “the evaluated lowest bid price method”. Facing all kinds of strange phenomena of “winning the tender at low price”, the most urgent thing to do at present is to explore deeply the evaluation methods such as “the evaluated lowest bid price method” and to consider how to effectively avoid a series of serious problems brought by the “winning the tender at low price” and “winning the tender at low price” from different angles in combination with the practice of tendering and bidding.

2. The meaning and analysis of “the evaluated lowest bid price method”

2.1. The meaning of “the evaluated lowest bid price method”

Article 41 of the Law on Bidding and Tendering clearly stipulates that “the winning bidder’s bid shall meet one of the following conditions: (1) ... (2) Substantive requirements of the tender documents can be met, and the assessed tender price is the lowest, except that the tender price is lower than the cost.” The Interim Provisions of the Bid Evaluation Committee and the Methods of Evaluation (amended by Decree No. 23 of 2013) states that “the methods of evaluation include the lowest bidding price method, the comprehensive evaluation method or other methods permitted by laws and administrative regulations.” At the same time, it is further pointed out that “according to the evaluated lowest bid price method, the tender which can meet the substantive requirements of the bidding documents and the lowest bidding price evaluated shall be recommended as the successful candidate.” It can be seen from this that the bidding of the successful bidder listed in the Tender and Bidding Law should meet one of the second conditions, that is, corresponding to the evaluation method of “the evaluated lowest bid price method” adopted in the evaluation stage. In Article 32 of the Provisional Provisions on the Bid Evaluation Committee and the Method of Bidding Evaluation, it is also proposed that “if the lowest bid price method is adopted, the Bid Evaluation Committee shall make necessary price adjustments according to the method of price adjustment stipulated in the bidding documents, with the bid quotations of all bidders and the commercial part of the bidding documents.”

2.2. “The evaluated lowest bid price method” is not equivalent to “the lowest tender price method”

It can be seen from the explanation of “the evaluated lowest bid price method” that when the “the evaluated lowest bid price method” is adopted, the bidder with the lowest bidding price after evaluation meets the substantive requirements of the bidding documents wins the bid, not the bidder with the lowest bidding price, and the bidder’s bidding price. Moreover, the bidder’s bid price below the cost will be excluded from the winning bid. The term “assessed tender price” here refers to the conversion of non-price factors in commercial tenders, such as advance payment, progress payment, omission and deviation of comprehensive unit price, and quality guarantee period, into a fixed price on the basis of the tenderer’s tender quotation according to the pre-determined tender evaluation criteria in the tender documents. And then enter the price above the tender price. Therefore, the tender price after evaluation is not equal to the tender price, and the bidder with the lowest tender price may not be the final winner. The essence of “the evaluated lowest bid price” is “the lowest evaluated tender price”, which is also a general rule in international project procurement.
2.3. The evaluated lowest bid price method is not the essential reason for “winning the bid at a low price”

“The evaluated lowest bid price method” is a legal method of bid evaluation. It is clearly stipulated in the law that the winning bidder’s bidding shall meet the requirements of “the bidding price is lower than the cost” and “the substantive requirements of the bidding documents can be met”. It can be inferred from this that if the requirement of “the evaluated lowest bid price method” is really implemented in the bidding practice, the ultimate winner will not have the problem of “winning the bid at a low price”, that is, the phenomenon of malicious bidding at a price lower than the cost. In addition, since the winning bidder’s bid must be able to meet the substantive requirements of the tender documents, it means that the contract signed by both parties must also contain such clauses, which means that in the performance of the contract, the contractor of the project must not appear because of the “low-price winning bid” procurement of substandard materials leading to problems such as problems in the quality of the project and other behaviors that do not meet the substantive requirements. Therefore, it can be seen that the existence of the “the evaluated lowest bid price method” is not the most essential reason for the phenomenon of “low bid winning”.

3. Problems in the practice and application of “the evaluated lowest bid price method”

3.1. The individual cost of bidders is hard to identify

The law stipulates that the bidding price of the winning bidder shall not be lower than the cost when the lowest bidding price method is adopted. The cost here refers to the individual cost of bidders, rather than the average cost of society. In engineering practice, due to the differences in construction experience, technical level, management ability and procurement channels of materials and equipment, the cost of each bidding enterprise will be different. In addition, as the most basic elements of enterprise construction costs, labor, materials, machinery, because of its rapid fluctuation in the market price, so it is difficult to identify the cost of parts of the project. In addition, in the tender evaluation process, the limitation of the evaluation time and the expert’s grasp of the professional content of the project under evaluation leads to that even if there is a tender offer below the cost, it will not be found or required to give a reasonable explanation of the quotation or provide relevant proof materials, and it is not easily recognized as a bid rejection. Therefore, “except that the tender price is lower than the cost” is difficult to be fully implemented in the bidding practice.

3.2. The tenderer considers unreasonably when setting up the evaluation criteria beyond the price

In the evaluation of tenders by the “the evaluated lowest bid price method”, in addition to the need to accurately determine that the bidder’s bid price cannot be lower than the cost price, there is also a very important link in the preparation of the evaluation factors and evaluation criteria for bidding documents, the commercial part of the bidding documents of non-price elements are reasonably set up. And a reasonable price conversion standard should be worked out. In the practice of bidding, the tenderer or the bidding agency may compile the bidding documents and set the evaluation elements and standards by referring to the model documents such as the Standard Construction Bidding Document. However, when considering the characteristics of bidding projects and the impact on bidders, it is often limited to one’s own experience and ability to formulate the most reasonable quantitative standards. Therefore, it may lead to that the bid evaluation price after the price conversion is not the most reasonable “bid quotation after evaluation” on the basis of the bidder’s bid price, or that the “lowest bid price after evaluation” is essentially the “lowest bid price”. In the end, only the lowest price theory, and it naturally can not really select the best bidder.

3.3. The poor contract management ability of tenderers is an opportunity for bidders

Based on the above two problems in the practical application of the “the evaluated lowest bid price method”, some bidders have taken advantage of the opportunity to drill holes. Some bidders will hold the mentality of winning the tender at a lower price and getting the right to contract the project, even at
a lower price. Anyway, it is less likely to be identified as a scrapped bid, and once the tender offer is low, the tender price after evaluation will be relatively low, relying on a low bid to win the bid, and then with the “low bid, high price claims” strategy to recover profits, or to reduce profits by cutting corners and reducing costs. In view of this situation, if the tenderer has sufficient contract management ability, can strictly supervise and manage the performance of the tenderer’s contract, strictly control the project changes and site visa, strictly control the quality of the project, find quality problems and promptly require the tenderer to rework or rectify, resolutely block the bidder after winning the bid price. The defect of price claim and the gap of quality problem, bidders will not try to think about the bidding price, but will focus more on how to improve the technical level and management ability of the enterprise, so that the “low-price bid” brought about by a series of adverse consequences will be effectively avoided.

4. Countermeasures and suggestions for the implementation of the “the evaluated lowest bid price method”

4.1. Further measures should be taken to enhance the operability of the “the evaluated lowest bid price method”

Further measures should be taken to strengthen the confirmation that the tender price is lower than or possibly lower than the cost in the bidding evaluation, so that the “the evaluated lowest bid price method” is more operable in the bidding practice. For example, the Ministry of finance has issued the eighty-seventh administrative measures for bidding and tendering of goods and services for government procurement. It is stated in the document that if the bid evaluation committee considers that the bidder’s quotation is significantly lower than that of other bidders who have passed the conformity examination and are likely to affect the product quality or fail to perform the contract in good faith, it shall require the bidder to provide a written explanation within a reasonable time on the bid evaluation site and, if necessary, to submit relevant supporting materials. If the bidder fails to prove the reasonableness of his offer, the bid evaluation committee shall treat it as an invalid tender. In this case, the tender evaluation committee does not need to directly determine the individual cost of the bidder, so long as it considers that the quotation is significantly lower than that of other bidders who have passed the conformity examination, and considers that the bidder's low quotation may affect the quality of the product or make it impossible to perform the contract in good faith after winning the tender, it may ask the bidder to provide written instructions or submit relevant supporting materials[5]. This method is easier to operate than the direct determination that the bidder's quotation is lower than its cost price, and will largely eliminate the phenomenon of “0 yuan winning the tender” or “0.01 yuan winning the tender” and so on.

4.2. Pay close attention to the setting of evaluation elements and conversion standards beyond price

The tenderer should pay full attention to the setting of quantitative factors besides price and the formulation of price conversion standards in the evaluation of tenders with the lowest bid price method after evaluation. These factors and standards will directly affect the final bid price of each bidder after evaluation and the order of bidders. In considering the setting of evaluation factors, it should be noted that the selected factors can only be those items which are acceptable to the tenderer and can be easily converted into monetary standards. For example, the benefits brought by the bidder’s promise that the project will be completed ahead of the tenderer’s target time limit, and the funds saved by the bidder when the bidder’s requirement is lower than the tenderer’s planned prepayment ratio, etc., can be regarded as the evaluation factors and converted into the amount of influence on the bidder. A certain price is reflected in the bidder’s tender offer.

When setting the price conversion standard, the basic principle should be “if the tenderer is advantageous, the price is reduced, otherwise the price is added”, so as to be consistent with the evaluation principle of “the evaluated lowest bid price method”. In addition, attention should be paid
to setting the maximum allowable deviations from the scope of the price conversion of each evaluation factor to prevent extreme bidding and malicious competition in disguised form.

4.3. Strengthening tenderers’ management of contracts and strengthening contractors’ supervision and restraint through contracts

Firstly, when compiling the bidding documents, the tenderer or the bidding agency should standardize and strengthen the quality of the documents. The tenderer should study the construction drawings carefully, compile the bill of quantities as accurately as possible according to the specific conditions of the bidding project, calculate the quantities of each part of the project accurately, and avoid engineering changes in the construction process to the greatest extent. They should work out the special clauses in the bidding documents strictly and normatively, make clear the reward and punishment standards in the construction, make full preparations before the construction, and avoid the contractor lodging claims in the construction process.

In the process of contract performance, the contractor should strive to strengthen its own ability to implement and manage the contract, and strictly supervise and inspect the performance of the contract by the contractor. By establishing a sound material testing system, the contractor regularly or irregularly inspects the materials purchased by the contractor for conformity. When it is found that the contractor has used substandard materials or the quality of the completed project has been inspected to be substandard, the contractor shall promptly request rework or rectification, strictly control the quality of the project, and always give contractors the warning of engineering quality problems. On the premise of guaranteeing the quality of the project, we should do a good job of minimal engineering changes and claims, and do not give any opportunity to the bidder who wins the tender at a low price, so as to gradually change the bad phenomenon of “winning the tender at a low price”.

5. Conclusion

As a common procurement criterion in the field of international procurement, the core idea of winning a bid at a reasonable low price is to urge bidders to reduce construction cost on the premise of strengthening their own management ability, improving technical level and accumulating advanced experience through competition, and on the basis of meeting the requirements of tenderers for other substantive factors such as quality and time limit of a project. They won the competition by reporting reasonable low prices. The essence of the “the evaluated lowest bid price method” is to win the tender at a reasonable price, not at a low price. It can not be simply equated with the low price, nor can it be attributed to the “assessed lowest bidding price method” entirely. We should think deeply about the causes of the phenomenon of “winning the tender at a low price” and how to take effective and practical measures from different levels, different subjects and different links to avoid unreasonable winning the tender at a low price and avoid a series of serious consequences brought about by “winning the tender at a low price”, which is the fundamental solution to the problem.

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