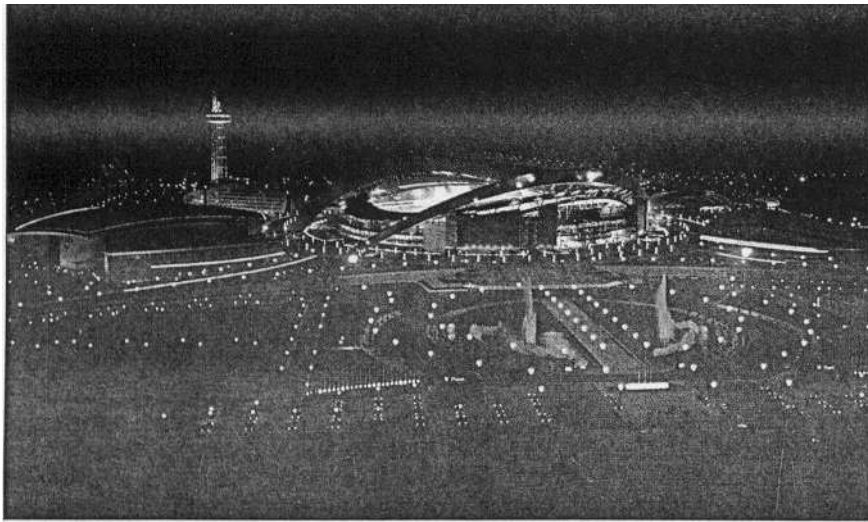


INTERNATIONAL WORK

China's Project Management Rules Have Foreigners Fuming



International construction and engineering firms vying for a piece of the building boom in China are still grappling with the Nov. 16, 2004, Circular 200 rules from China's Ministry of Construction. The measure is designed to protect Chinese firms from foreign competition, but some say it goes too far.

Circular 200, Trial Measures Concerning Construction Project Management, took effect Dec. 1, 2004, and changed the project management landscape. "Decree 200 essentially says that no firm is allowed to perform project management and construction management services without a license in any of six categories including construction, design, costing, tendering, supervision or surveying," says David Rosamond, vice president and managing director of Lockwood Greene Asia Pacific (Shanghai) Co., Ltd. The firm's business in China is mainly project and construction management, "so this would essentially put us out of business," he says.

In the past, some foreign firms overcame the difficult requirements for setting up construction or design operations and competing directly with Chinese

16 .ENR .October 24, 2005 enr.com

A Building Boom. Recently completed Nanjing Sports Park and its 50,000-seat stadium symbolizes the blistering pace of China's market.

construction companies by forming project management consultancy firms that did not need a qualification from MaC. Any foreign entity established for project management consulting business now must meet the requirements of Decree 113 for construction or Decree 114 for engineering design.

Under China's old design and construction rules, Decree 32 allowed for a project-by-project licensing scheme which worked well in China for over a decade. The industry became more regulated by Decrees 113 and 114, which were introduced in September 2002 and took effect April 1, 2004.

The hurdles to qualify as a construction or design entity are high under both decrees. "The construction regime in China permits foreign-invested enterprises (FIE) to qualify under the domestic construction qualification regime which is based on a classes, grading and categorization system," says John Cole, an attorney with Simmons & Simmons, Shanghai. "The three classes are general

contracting, specialized contracting and labor subcontracting. Each class is graded into Supergrade, Grade A, B, and C and there are fourteen different general contractor industry categories."

There also are experience, personnel, limits to scope of work and capitalization requirements to be met by the FIE. "For example, a Grade B construction enterprise in the Homes and Buildings category must have a registered capital of \$2.4 million. The MOC requires construction enterprises to have paid the registered capital in full prior to obtaining the construction license," says Cole. Earlier this month, MOC aired new draft rules for FIEs that establish a timetable for firms to progress through the various grades and classes.

The American Chamber of Commerce in China late last year sent a letter to MOC "requesting an indefinite suspension" of Decree 200 based on the timing, lack of international norm and long-term damage to foreign investment in China. On Jan. 12, 2005, MOC replied, "Some foreign enterprises neither collaborate with any Chinese professional organization nor establish any joint ventures in doing the project management business in the past, which is not in compliance with our commitment to the World Trade Organization."

Rosamond believes that "the rules continue to change to protect China's state-owned enterprise design institutes and construction companies." He adds, "It will be almost impossible for new design or construction firms to enter the Chinese market with the exception of forming a joint venture with a local firm. In the meantime, we have spent the last nine months plus lots of money to apply for our construction license under Decree 113." He hopes to have a construction license by the end of the year.

"Lockwood Greene will become one of the first American engineering and construction companies with a construction license to legally offer project management services in strict compliance with Decree 200," claims Rosamond. 8

By Robert L. Wallack in Shanghai