

LEGAL FRAMEWORK OF OVERSEAS CONTRACTING SERVICES SECTOR

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Abstract

Overseas contracting services constitutes indispensable element of construction sector which is called as the leader sector of Turkish economy. Overseas constructing sector concept is used to express all the activities executed such as construction, engineering, consulting, project, installation, operation, maintenance and repair in foreign countries. In Turkey, foreign currency earning services can be counted as exports and tourism sectors, as well as contracting services. Because of chronic political crisis in Turkey parallel to the growing economic recession in the 1970s, a few contractors who have entrepreneurial spirit, have taken the first step in undertaking construction work in Libya in 1971 and this step has paved the way for other the Contractors. In a sense, Libya, for the Contractors who want to open up abroad service, has provided a good training center. After Libya, Turkish contractors have provided services to Arab Countries in Middle East and after 1990 and have headed towards the Commonwealth of Independent States Countries and Eastern European countries.

Key Words: FIDIC, Conditions of Contract, International Standart Forms of Contracts, Specifications, Applicable Law, Dispute Settlement, Employer, Contractor, Sub-Contractor.

Introduction

Before starting to examine the legal framework of foreign contracting services sector, we can sum, the sector's current status, problems and solution recommendations by referring the INTES Construction Sector Reports one of the representative professional organizations of the sector. ¹

A. CURRENT SITUATION OF THE SECTOR

In Turkey, even today generally accepted definition of the construction the Contractor could not have been done yet. In practice, the The Contractor is defined as "the person undertakes a work for someone else". According to this definition, not only a person commits to build dams, bridges, highways and power plants but also a person who commits to provide cleaning services in public institutions are called "The Contractors". Construction Sector still maintains its leading feature in many countries. Production of hundreds types of goods and services directly linked to this sector, intensive use of labor force and contribution to the level of socio-economic prosperity, are adequate to demonstrate the share of the construction sector in a country's economy.

When considered secondary-sectors which provide input to the construction industry in Turkey, The construction industry which employs 1 million people, the total direct and indirect shares are approximately 33 percent level in Gross National Product (GNP) and sector's contribution to employment is around 15 percent. Because of this feature of the construction sector, a lot of country have provided the strengthened their economies primarily through stimulating the construction sector during recession periods. The most striking example of this situation is, burned down after the Second World War, Germany, by giving priority to construction sector, has strengthened the economy and reached its current level. Construction sector, therefore, continue to be regarded the leading sector of economy. The most important issue of the construction sector in Turkey, the overall share of the budget allocated to investments in real terms is decreasing each year. Moreover, construction sector encounters too many problems such as increases of construction costs over inflation rate, troubles in finding credit and bank letter of guarantee, administrative and financial problems of the public procurement system, progress payments for construction and repair works extending over years and 5 percent deduction of withholding from advances (high-rate application of advance tax).

¹ See INTES İnşaat Sektörü Raporları, www.intes.org.tr.

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Turkey's current inventory of overseas construction industry has reached a business volume in 51 foreign countries, amounting to 45 billion dollars. , While overseas construction revenues were at the level of \$ 10 billion in 1975, the total turnover in construction work undertaken by contracting companies operating overseas in 2007 has reached about 17 billion dollars. The total volume of construction work undertaken so far abroad has exceeded 75 billion dollars. Overseas construction services gain a special importance when both private and public sector investments are paused. After all, by the contractors undertaking construction work abroad, or in the form of transfer of profit or through workers transferring foreign currencies they provide currency input to our country, also they provide a major contribution to the balance of payments through construction materials, machinery and equipment by exporting. In addition, due to the overseas contracting works causing positive contributions such as employment, technology accumulation, and the rise of the quality and standard of construction materials, the overseas construction activities has a significant importance for Turkish economy.

Construction sector is supported by foreign governments in every country in the world. Because this sector provides the country foreign exchange and employment, ensure operability of the economy, is the best tool to combat inflation and recession, and also an effective foreign policy honour. Therefore, the credit easeness provided by their states to construction companies in western countries to, legislative and tax facilities also benefiting the same facilities Turkish companies is important for Turkish contracting services abroad increase competitiveness in the market. Indeed, a recent law amendment, provided revenues by contracting and consulting services overseas entering among earnings exempt from corporate tax permanently. Although number of construction the contractors active in the sector in Turkey is currently around 200.000, 90 percent of construction works abroad is carried out by the members of professional organizations such as The Contractors'Association of Turkey and/or the Construction Industrialists Employers Association and number of these construction companies does not exceed 250. Therefore in professional organizations related to construction works, for construction the Contractors with a serious organization, powerful machine park, a solid financial structure and the ISO standards, it is preferred to use the name "Construction Industrialists".

The difference of the construction industry products from industrial products is that they are produced on a project basis and depending on entirely the order. Product specification is re-carried out with each construction contract. A certification system certifying qualifications of the workforce in Turkey is still missing, lack in this area leads to adverse consequences for employment of Turkish people in the overseas projects. Overseas contracting sector is very important to many countries in terms of service exporting in foreign markets and creating employment abroad. However construction works undertaken in many countries compels qualified and certified workingmen. In this case, the overseas construction industry can not create local labor force employed abroad, which negatively affects the employment of the country as a result. Therefore, creating an internationally recognized certification system, increasing in the employability of the workforce should be provided by training and certification in international standards.

Being unable to invest in Turkey where due to resource shortages of the public sector, the contractors, doing business abroad, create employment from the investment budgets of other countries. Turkish construction companies have undertaken works for primarily housing, then infrastructure, road, bridge, tunnel, irrigation works are seen, but constructions of the dams, pipelines, hotels, trade centers, airports and petro-chemical plants also present themselves as diverse business areas which require a high level of specialization, project management skills and advanced technology, has increased, differently from previous period. With joint ventures with foreign companies, Turkish construction companies today have come to the forefront, undertaking investment and operation of the major projects in the countries where once they had worked as the contractors for the construction projects. After 1990s, the geography where competitiveness of Turkish contractors steadily had the highest level has been, Commonwealth of Independent States countries and Middle Eastern countries and these regions was followed by North African countries.

Among the causes of competitive advantage in these areas are Turkish contractors taking more risk than western competitors, more affordable prices than competitors who can deliver services in international quality standards, being familiar with local culture and business environment and logistical advantages resulting from Turkey's geographical situation. Today, the total amount of construction works that Turkish contractors undertaken abroad is less, in terms of transfer the amount that they can transfer and the employment, than real potential. If the problems of providing the letter of guarantee to contracting companies abroad, are solved, doubling of the employment is possible with already generated a net foreign exchange input. The process of the European Union will make contractors face a much stronger international competition in the domestic market in the future. After all, in this process the contracting companies survive who can employ a skilled workforce through restructuring and can submit service in international standards with high efficiency in order to be able to use new technologies by investments to increase productivity.

In recent years, for the contractors doing business in international standards, to open up foreign countries because the works in domestic market narrowed too much, to accept low profit margins has become a necessity. Also, the contractors who make no concessions on quality are forced to seek works abroad due to encountering extreme price reducing race in domestic tenders in domestic construction contracting industry which is not subject to any qualification and certification of competence. Construction sector is number one sector that can produce a solution with high employment potential and competitiveness abroad both for the current account deficit of Turkey and problems of unemployment. On the other hand, the construction sector is one of the few sectors that Turkey can compete with own production abroad. Moreover, in this competitiveness of the contractors undertaking contract works abroad are not on the basis of state support, cheap credit or cheap labor, but capital, technology, knowledge, dynamism and high risk-taking capacity are the fundamentals. Indeed, any country's construction contracting sector which is at the same level of Turkey's national income per capita in the world is not developed in foreign competition like Turkey's contracting service.

To further improve the competitiveness of overseas contracting sector, strengthening the capital structure of companies, mitigating especially in the current burden of employment costs and implementing financial and legal incentives encouraging mergers are the priorities. In spite of all the limiting conditions, 22 Turkish construction/contracting companies were selected for the Top International Contractors List in 2007; which made the Turkish construction/contracting industry the world's 3rd largest in that year, ranking behind those of the USA (51 companies) and China (49 companies). Turkish companies on the list of that year are: ENKA, GAMA, Renaissance Construction, Yüksel, Tekfen, Yapı Merkezi, Baytur, Nuro, Cengiz, STFA, Hazinedaroğlu, GAP, Kolin, Mak-Yol, DoğuÇ, Summa, Soyak, Alarko, Rasen, Kayı, Eser, Aska. Japan (15 companies) and Italy (11 companies) follow Turkey.²

B. PROBLEMS OF OVERSEAS CONTRACTING SERVICES SECTOR

1. OVERVIEW

Mainly the problems are given in the construction sector abroad in Ninth Five-Year Development Plan covering the years 2007-2013. Within the frameworks plan preparations for, that declining in overseas contracting services undermine economic stability by increasing the foreign trade deficit is pointed in the report prepared by the Special Commission for Construction, Engineering, Architecture, Engineering Consultancy and Contracting Services. In the report, moreover, it is emphasized that exports of goods for many years while supported by different systems, foreign contracting services are never received and this problem is one of the factors preventing the real performance of the sector, if the sector is supported significantly and the obstacles before the sector are removed, settling this will provide the deficit in foreign trade and reducing the unemployment with its capacity of creating employment.

According to the report, the most fundamental problem that the sector experienced in recent years, in a lasting and stable to increase the sector's international commitments way is a matter of lack of necessary effective coordination. According to the report, some companies that perform contracting services arrival abroad without any evaluation sometimes cause problems and these companies create unfair competition for Turkish companies abroad and their inappropriate attitudes and behaviors can cause diplomatic problems even. This situation has as well as extremely negative impact on the overall image of the Turkish companies abroad. According to the report, Undersecretariat of Foreign Trade continues works towards the development of a regulatory system for the sector and it is aimed with "the Regime of International Contracting and Technical Consulting Services", to have the powers and responsibilities of institutions in private and public sector

² See Hürriyet, 23.08.2007.

defined clearly, executing the activities regarding the sector within strategical and policies framework designated by public and private sector and forming the Professional Institutions or Accreditation Systems. For this aim, determining financial and technical standards regarding the companies in the Sector, it is planned to execute all these activities with in the framework of these standards.

Published in the Official Gazette on June 9, 2004, with “ the communiqué 2004/5 on Grants-in Aid to be Provided to Technical Consulting Companies for their Abroad Activities”, statement aids for the technical consultant companies opening Office abroad, market researches, and introduction activities are provided for;with this regulation, in market countries, master planning, pre-feasibility, feasibility, project studies, preparation of tender specifications, tender and contract coordination and other consulting services are provided to be done by Turkish Technical Consulting Companies without compensation. Thanks to this communiqué, even in thought process, the projects in target markets will be provided to be followed by the Turkish contractors. In addition, the standard and quality components that will provide to Turkish contractors to receive the work in the tender specifications prepared by Turkish consulting firms and that Turkish contracting companies will receive the work is expected to be provided in.

2. THE NEED FOR POLITICAL RISK INSURANCE PROGRAM IN CONTRACTING SERVICES ABROAD

The report states that the Turkish construction companies work in mainly most risky geographical regions of the world in terms of political, administrative risks and the threat of terrorism, the risk is still completely had by the company. In 1970s events due to political risks were in dramatic extent, in those years when a country declared its independence or after a civil war, foreign investors' assets generally were seized. Today seizure and expropriation occur less, but today political risk is caused due to host government actions who aim to make foreign investors far away from them rarely. Today's main political risks encountered by contracting companies abroad are as followed:

- Developing countries' legal systems have anti-foreign pro-nature; the scope and boundaries of property rights generally are well-defined in these legal systems and that international standards have not been adopted is possible in the contract system. In countries, such as Russia, with a history of communist regime, such problems arising from the legal system has been experienced previously.

- Today, central government transferring a part of powers to the states, cities and other local authorities may lead to some difficulties for international contractors. For example, their construction contracts of investors with local governments may be often invalidated by China's central government.

- As a result of democratization, risk of military coup and intense revolutions, which cause seizure, expropriation and nationalization reduce. However, frequent change of governments in some developing countries and re-negotiation of already signed contracts the new governments who come to power, increase the likelihood of contract termination. Indeed, according to the World Economic Forum's Global Competitiveness Report, the governments of Ukraine, Russia, Ecuador and Hungary default at least on the agreements made by their predecessors.

- In recent years, often occurred suicide bombings and other terrorist events are among the factors discouraging foreign investors to stay these countries.

- By parliaments and courts of the host country, the unfair competition applied under influence and in their favor of these large companies against new foreign investors entering markets of the large multinational companies previously located in the markets of developing countries has discouraging influence in terms of new foreign companies like Brazil, China, Russia, the Philippines.

- In addition to them, today's political risks are resulting from risks such as legal regulatory amendments, cancellation of import permits, environmental standards, currency exchange risks.

A lot of political risk insurance company recommends political risk insurance against political risks which could negatively affect the profitability, for construction the Contractors not to have any loss.

Political risk insurance is the general name of insurance for guaranteeing companies doing business in foreign countries, mainly in the country of work against the negative consequences resulting from the government's political activity or passiveness.

Political risk insurance is made by an insurance company in another country elsewhere the country in which the risk is in question.

Political risk insurance guarantees the following three basic matters:

1. As a result of abandonment of the country where the work is executed, compensation for losses arising from leaving business machines in that country,
2. Base laying of the construction work without fault of the contractor after a certain point compensation for the loss caused by aborting the work due to force majeure
3. Compensation for the loss arising from unduly liquidation of letter of guarantee by the contractor.

The Contractor, in return of the work, has to give a letter of guarantee as much as certain percentage of the work. Guarantee letter is a fixed amount between the contracting authority and the contractor. Letter of guarantee is given under a bank guarantee to the relevant the contracting authority. If the contracting authority malevolently asks from the bank to liquidate the letter of guarantee, the bank may take recourse against the contractor because of his defects. Here, political risk insurance at this stage steps in and compensates the loss arising from this liquidation of letter of guarantee. In case letter of guarantee issued by a Turkish bank is liquidated unduly, that bank has to pay this letter guarantee according to conditions. However, if the seizure of the letter of guarantee is due to malevolent decision of the government in that country contrary to international policy, not due to the contractor's malpractical performance of the work, there is political risk. This is in reality not due to the bank's financial risk. The bank, to avoid this risk, should have transferred this risk to a political risk insurer. In this way, the bank will be able to collect the amount that it paid as letter of guarantee from the insurance company.

Political risk insurance is valid for new investments as well existing investments. This insurance can be a single project base, it may be different for investments in many countries. However, political risk insurance, will never provide 100 percent guarantee. Political risk insurance is usually implemented by both government bodies and private companies. A public institution, U.S. Overseas Private Investment Corporation (OPIC) and the World Bank's Multilateral Investment Guarantee Agency (MIGA) are examples of public organizations engaged in political risk insurance. Private sector companies even though are more flexible in preparation of the scope of insurance policies, there are several advantages of the acquisition of political risk insurance by OPIC or MIGA. Because, in many cases, that OPIC or MIGA are involved in the project, is sufficient in discouraging against local governments to seize letters of guarantee with political decision. Furthermore, a body of the World Bank, MIGA, can help solving problems between local governments and the Contractors.

Risks can be included in the scope of political risk insurance, combined with the following threats:

1. Discrimination, expropriation, activity restriction, import-export restrictions,
2. Currency inconvertibility and exchange restrictions,
3. Having to leave the country, due to compulsory reasons such as forced abandonment, war, rebellion, revolution, insurrection,
4. physical damage that may occur as a result of military, political violence and civil unrest,
5. Termination of contracts,
6. License revocation,
7. Forced deprivation, failing to fulfill letter of guarantee of the investor's his own country,
8. Insurance against losses of business interruption that may occur due to above-mentioned guarantees,
9. The insurance against failure to following the letter of guarantee, the host country's against a default on letter of guarantee,

In Ninth Development Plan of the Specialization Commission Report, that construction projects undertaken by companies abroad should be covered by the Turkish Eximbank in political risk insurance constitutes one of the important subjects; with this insurance program, guaranteeing seizure nationalization, preventing or limiting foreign currency transfers and similar political risks and non-payment of progress payments, increasing Turkish construction companies' ability to act in high-risk countries is highlighted. In Turkey, political risk insurance is not an active branch of insurance in the international construction services. In Iraq, Afghanistan is, such as to produce the service in this area due to this deficiency intensely is felt because construction companies serve in extremely politically risky countries such as Iraq, Afghanistan.

Insurance should be made against to risks such as Cancellation of the Project or the construction, loss of legitimacy of the official interlocutor, stop or suspension of progress payments, radical modifications in the Project, not remaining safety in the construction site, referral, or the restriction of supply of material and workman, intentional punishments of the contracting authority, payments not being made in the currency specified in the contract, the restriction of transfer of profits from the country.

So far because not having had risk insurance a lot of construction companies have experienced serious problems including the danger of bankruptcy. That Eximbank's policy had not have commercial risk option put on agenda in 1990, has been objected, but so far no progress has been made.

3. SURETY INSURANCE PERFORMANCE BOND

Surety is a guarantee system is ensuring performing and completion a project in certain criteria and conditions of a contract. In order to open up in western markets construction companies, they need performance bond. This issue is very new in Turkey, since, so far before the Turkish construction companies doing business with Eastern countries performance bonds were not necessary. Performance bonds are the bonds that guarantee construction companies comply with the conditions of contracts and perform according to certain criteria. Back-to-back guarantee is a surety that could be written on bonds of banks. It is a surety providing application by insurance companies the remaining part, where the letter of guarantee or amount of bond is inadequate issued by the bank.

Surety insurance criteria are as follows:

-Assets of the company, consolidated financial statements and accounting standards need to be analyzed.

-The size of a company must be acceptable, i.e. the company's balance sheet must be above the limit of certain minimum size.

-Existence of consolidated financial statements audited by international audit firms are needed. That is, while a foreign bank or a foreign insurance company requiring the criteria related to the construction company, they require the company's financial statements audited by a third party.

- In the balance sheet, debt ratio needs to be low and the company's debt ratio should be below 60 percent.

-The company having assets abroad is preferred (since in case of malicious intentions seizure of the assets of the company is more difficult in Turkey).

-Giving detailed information about project is important.

-The company's past experiences of physical engineering in the projects will be reference.

-There are strict criteria, such as the project should be in countries that guarantors accept to give surety.

-The request for surety, to initiate the following action is required:

-Submission of financial and managerial skills of the construction company and their underwriter will be analyzed by the credit committees,

-Detailed presentations of the contract-related liabilities,

-Surety will be signed with a compensation-related institutions (indemnity) agreement,

-The presentation of the company's past performance.

In procurements in some of the European Union countries and in joint projects with and construction companies from the U.S., main causes of performance bonds required instead of bank letters of guarantee are as follows:

-Cost of surety performance bonds is lower than letters of guarantee costs,

- In procurements in some of the European Union countries surety/performance bonds are required. Generally, surety / performance bonds are used by 90 percent in the Anglo-Saxon countries such as the UK, USA, Ireland, Australia, New Zealand, not a letter of guarantee. In Germany this percentage is around 29%.

- Allow to use customers' bank credit lines (credit line) in other areas,

-Negative influence on company balance sheetlike letter of guarantees,

-Bond cost is evaluated not concerning balance sheet, but according to performance in past projects of the company (if the company has a good capital structure physically and has a good engineering capability the price is determined so.)

- Banks, due to considered as non-cash loan with the aim of making ratios unaffected, their avoid giving a letter of guarantee.

Depending on the development of Turkey's financial structure, it is expected to provide this opportunity to use these modern instruments. Surety bonds are not accepted in risky regions such as Iraq, Afghanistan. Letter of guarantee is generally used in the countries where Turkey has high possibility to get business. Because providing letter of guarantee is easier. In order to becoming widespread use of surety bonds among Turkish construction companies, these companies should tell that these bonds are more useful and lower cost to their costumers. On the other hand, when joint construction work is executed in some risky contries such as Afghanistan, Iraq with a American or British company, for example, a work carries out with 40 – 60 percentage partnership shares, for a 40 percent share of U.S. company may request surety bond about 15 percent. In other words, in these countries U.S. companies prefer or even require surety bonds from the sub-contractor. However, this bond is not required to be used against the concerned authority, but to partners in these countries. Again, the foreign partner in Turkey may request the surety bond at the rate of the work from a Turkish contractor in the construction projects undertaken together.

4. EXIMBANK CREDITS IN FINANCING OF OVERSEAS CONTRACTING SERVICES

Turkish Eximbank not only financially supports exporting sector but also in significant amounts overseas contracting sector constantly. Indeed, the Turkish Eximbank has undertaken many important roles in constantly supporting the construction sector which is highly dynamic in new projects and the entry into new markets so far. According to Eximbank data, the Turkish construction sector has reached an important position in the world contracting services industry so far in 65 countries with 3500 over project amounting to U.S. \$ 89 billion. Eximbank provides financial support to Turkish contractors executing construction projects abroad within the framework of insurance program against unfair converting country credit guarantees, letters of guarantee program, credits and letter of guarantee, foreign exchange earning services credit.

a. COUNTRY CREDIT GUARANTEE PROGRAMS

The aim of the Credit / Guarantee program, having the nature of buyer credits applied by Country Eximbank since 1989 is to allow Turkish exporters and the contractors to work under security in the markets which have commercial and political risk, enhancing their competitiveness of in international markets. Thus, it is aimed to support the contractors, as well as increasing the share of existing markets abroad in opening of new markets. Within the scope of this credit program, mainly the projects carried out abroad, official support is provided either in cash or non-cash financing for more than two years long-term. Purpose of country credits is providing financial support, the projects carried out by Turkish contractors in foreign countries, with a bank credit to open to that country or a bank in that country which will be accepted by Eximbank. Examples of this occurred in Russia and the Turkic Republics.

Eximbank allocates limits certain countries within the framework of the annual program each year and if a request comes from relevant countries in line with the limits, through necessary analysis and examining of the project and can supply financing to the construction company on condition that it is acceptable. EximBank gives importance to receive government guarantee where the project is to be executed. However, a number of developments has shown that receiving the government guarantee for some of the projects is more difficult. Therefore, in case a bank with appropriate financial structure and of which risk is acceptable in the related country gives guarantee for a specific project, on the condition that the goods and services shall be limited to be exported from Turkey, country or project credit could be provided. The first application of this kind of credit is provided to the USSR in 1989, then to other Commonwealth of Independent States countries, some Eastern European and North African countries and Central-West Asian Republics. Following Central-West Asian republics have gained independence, programs such as "Produce Loans" and "Project Credits" have been implemented for the countries of the region.

Credit guarantee programs which Eximbank started to work on after 1992, have special importance both for free market transition with economic development of the countries whom credit opened and achieving the purpose of creating lasting business relationships in subject countries in terms of Turkish contractors. Porject credits of Eximbank have facilitated Turkish contractors to enter in specially Russian Federation and other Commonwealth of Independent States countries. Because as a result of having reference the features of the projects carried out with Turkish Eximbank support for the countries in the region, many new projects have been given to Turkish The Contractors who had executed projects with Eximbank credits. Today there are so many construction works carried out by Eximbank financial support in the above mentioned countries.

Initially, a market everyone saw too risky, thanks to Eximbank, for Turkish contractors have become a great extent a risk-free. Today Turkish contractors sign significant construction projects without Eximbank support. In the projects which will contribute multi-faceted relations between Turkey and the related country it is essential to receive government guarantee as security.

However, by Eximbank administration, it is evaluated to issue a credit with banks determined by the inter-governmental protocols and the banks considered as reputable by Eximbank or customers under guarantee of these banks. Eximbank pays attention the construction contract between the employer and the contractor to be according to FIDIC rules in terms of executing the project without problem. In addition, within the scope of the Country Credit / Guarantee Program, in favor of the contractors who plan to get new construction work abroad or aim to participate in international tenders, on condition that the project in question which Eximbank financing must be according to the basic principles and the final assessment, considering economic conditions and conjuncture on the date of the application for credit, by EximBank, and "Letter of Intent" can be given, without including "fixed commitment."

In the letter of intention, it can be issued that financial support up to 85 percent of the goods and services to be exported from Turkey, shall be provided. Letter of intentions are issued for 6 months. Project information form including general information on project which are necessary in the application of the Letter of Intention, can be obtained from the website of Eximbank. EximBank, in order to provide financial support within the Country Program in a wider dimension, builds relationships with international financial institutions.

In order to facilitate the financing of the parts of projects supported within this framework, to be provided by third countries. Eximbank signed cooperation agreements of jointly finance and insurance with the world's reputed credit agencies, export credit insurance agencies and international financial institutions. Among these, there are U.S. EximBank, EDC (Canada), COFACE (France), Hermes (Germany), OND (Belgium), IFTRI (Israel), Exim Bank of China (China), MECIB (Malaysia), NEXI (Japan), SEC (Slovenia), Küken (Poland), EGFI (Iran), ECGE (Egypt), Eximbank SR (Slovakia), Eximbank, Romania, Eximbank of Russia, KEIC (South Korea), EKF (Denmark), HBOR (Croatia), MBDP (Macedonia), TEBC (Taiwan), MIGA, ADB and the European Bank for Reconstruction and Development (EBRD).

Eximbank tends to give priority to the projects that can be issued financing with such organizations jointly. EximBank, in co-financing relationships with these organizations, just participate in the financing of goods and services to be exported from Turkey, the financing of goods and services to be exported from such foreign countries is provided by relevant financial institutions in cooperation with EximBank. On the other hand, to create co-financing opportunities for the projects to be implemented by Turkish firms with foreign companies banks or other exporting support organizations, it is tried to achieve parallelism on the credit conditions.

Framework of financial support regarding Country Credit / Guarantee Program is determined within the annual programs of Eximbank. EximBank, through the mechanism of cash loans or guarantees, provides financial support to projects. Having been a company established under the Turkish Commercial Code and / or the provisions of relevant legislation, having a solid financial structure and high business reputation with experience of similar projects are expected from a The Contractor. The contractor, may be the general contractor as well as the partner or sub-contractor of the international consortium to be formed for the project.

In principle, at the stage of the financing in the evaluation of projects, OECD Norms are implemented. Financing conditions are determined according to properties of the project and within Eximbank's funding cost boundaries in accordance with the OECD Consensus rules, and No. 96/12, "Communiqué on the Official Supported Export Credits". Total due, including a grace period, does not exceed 8 years. Grace period is determined by adding up six months to investment period. For the use of the above-mentioned financial support processes are carried out under letter of credits mainly determined by the Turkish Eximbank are opened before commercial banks can not be transferred and re irrevocable. Within the framework of Country Credit / Guarantee Programs, since 1989 the program put into practice and 23 country 2.2 billion dollar credit has been provided to 23 countries; approximately \$ 1 billion was used by foreign contracting services sector.

b. LETTER OF GUARANTEE PROGRAM FOR OVERSEAS CONTRACTING SERVICES

It is aimed with this program to provide permanence of the contractors working abroad in existing markets and to support the contractors with letters of guarantee for the construction projects undertaken abroad, opening up new markets. With this program, contracting companies of which credibility and project undertaken or to be undertaken by them are eligible for Turkish banks, for their participation in tenders and / or commitments, in return for counterguarantees of Turkish commercial banks counterpart to Eximbank, bid bond in favor of Turkish contracting companies, the foreign bank counterpart the office of the employer or employers procurement authority; performance bond and letter of guarantee demands are provided. In case of tender is won by the contractor, a guarantee of repayment of advance payments to the firm done by the employer. Under the program, in return for contra-guarantee of Turkish banks, the total guarantee amount in favor of a company does not exceed U.S. \$ 25 million. In determination of certain risk of any company, the contractors' shares form a consortium under the project are taken into account undertaken.

Not to exceed the limit of the company, up to a maximum of 25 percent letter of guarantee of the amount specified in the contract concluded with the contracting authority or bid price can be issued. Letter of guarantee allocation on country basis, does not exceed 20 percent of the total program limit. The amount and due of the letter of guarantee, will be limited to specified amounts of company, project and country limits, the type of the requested letter, is determined by Eximbank on the basis of the contract text or the tender specification b as transaction. Within limitations set forth above for any project, the amount of letter of guarantee to be issued by Eximbank in no way shall not exceed the amount of counterguarantee addressed to the Eximbank by Turkish commercial banks. For drawee letters of guarantee to be issued for employer procurement authority or bank the contracting authority, an annual commission of 1 percent is received by Eximbank. Such amount of commissions, on behalf of the contractor on a quarterly basis are charged by Turkish banks in advance. The Contractor or representative of the consortium who want to benefit from such program; should apply to Eximbank to receive letter of guarantee with the information regarding the contracting authority, the type of the required letter of guarantee, the sample of the letter, the requested amount of guarantee letter, the guarantee duration, whome is addressed, the bank of the contracting authority, summary information and necessary documents of company.

c. FOREIGN EXCHANGE GENERATING CREDIT SERVICES

This program is implemented for financing of foreign currency generating services to be realized abroad and the project software, project planning and consulting services having the nature of projects to be exported abroad. If the projects in above-mentioned areas are found appropriate by EximBank, the conditions for credit on transaction basis, whether Turkish Lira or foreign currency, are also determined by Eximbank.

d. INSURANCE PROGRAM FOR UNFAIR LIQUIDATING OF CONTRACTING SERVICES BOND ABROAD

The purpose of this program which was put into effect in 2004, in the bidding process to undertake work or after undertaking the work abroad, is to assure Turkish contractors with insurance policy for unfair liquidating of contracting services overseas bond againsts unfair liquidating of letter of guarantees such as bid bonds, advanced letter of guarantee and performance bonds issued to public contracting authorities or as contraguarantee issued to bank of contracting authority. Eximbank, provided that without the Turkish contracting company's defect, error or negligence and, the events and circumstances occurring completely beyond the control of the contractor after the date of the policy, as a result of liquidating the letter of guarantee unfairly, in favor of letter of guarantee issuing the contractor firm under the general loan agreement signed with the Turkish commercial bank, Eximbank compensates certain proportion of the amount pursuant to amount obliged to pay the bank subject to compensation within the terms and the limits specified in the insurance contract.

Construction company to benefit from this program should make application personally to Eximbank. Construction company shall conclude a general loan agreement with a commercial bank at the same time. Commercial bank shall give letter of guarantee to the contracting authority in favor of the contractor. Then when the application is done to Eximbank and the project and the construction company will be examined as well as by which bank letter of guarantee issued will be examined. Although the insured contractor executes the work on time and on time and in accordance with the work program, the risk of the employer's arbitrary liquidation of letter of guarantee wish (the contracting authority) is covered by the Eximbank. In this case, the construction company must prove to Eximbank is that such liquidation is unfair. Therefore, the construction companies must prepare contracts and agreements as much in detail as possible, and settle international arbitration clause in the contract. Thus they can resort arbitration when unfair liquidation of letter of guarantee occurs.

If the construction company proves to Eximbank is that such liquidation is unfair, Eximbank will compensate the loss of the commercial bank making the payment and then it will be available to collect the receivable which will be transferred to him, because having arbitration or judicial sentences or evidences that indicate such liquidation is unfair, from the employer.

e. POLITICAL RISK INSURANCE PROGRAM FOR OVERSEAS CONTRACTING SERVICES WHICH SHALL BE PUT INTO EFFECT BY EXIMBANK

Political risk insurance, is a comprehensive policy to provide a better working environment to construction companies abroad. Political risk includes mainly two risks. First case is occurred when a construction company, who was entitled to receive progress payments, can not receive such payments due to political risks, a that it is called "The Contractor Insurance". Second is liquidating of letter of guarantees unfairly due to political risks. Therefore, Eximbank will have two different policies to be applied in the future.

Political risk insurance includes the following types of political risk:

1. The risk that the contractor is unable to collect the amount of progress payment that should be charged according to contract provisions, without fault or negligence of the employer and / or the insured the contractor, because of government putting into force a law or administrative regulations
2. Without the fault of the insured person of the employer the progress, since government's restrictions not being transferred to abroad of the amounts entitled to receive to and collected as in local currency by the insured person or while the parity of which will be is certain, it covers the risk that another parity using for transfers of progress payments against the contractor.
3. It covers the risk that could not be accounted as to be requested from the employer in terms of insured person of the damages occurred in the working site due to incidents such as a war emerging between Turkey and the employer's country or revolution, uprising, rebellion in that country.
4. It covers the risk that stop or eliminating of the import of goods or import permission of those, with a decision taken by the government of that country, which are produced or exported by the insured person in order to execute the work.
5. It covers the risk of any loss emergence or seizure of the insured person's goods in a third country before they reach to the employer's country, during the shipment of such goods necessary for the work.

Covering in an insurance policy of political risk losses referred above, which is expected to be applied by Eximbank, is in question.

5. FOREIGN PROJECTS CREDITS AND PROJECT FINANCE PROBLEM IN OVERSEAS CONTRACTING SECTOR

In Turkey in accordance with the recommendations of "Supreme Advisory and Credit Guidance Committee" regarding the target countries support services are provided for the international construction industry. It is observed that developed rival countries' export credit and insurance agencies similar to Eximbank providing more a variety support to construction sectors, from time to time Eximbank is inadequate in providing this support. It should be noted that long-term loans that will be opened to the construction sector, not only make Turkey recovery as construction revenue, but also demonstrate the importance of export opportunities of many sub-sectors provide input to the construction industry.

Thanks to OFFSET agreements with Russia, it is known that with this country both trade and construction services have been accelerated. A similar agreement also made with Libia. Overseas construction sector recently has made progress with these bilateral agreements. Therefore, especially for crude oil from Iraq, necessary attempts should be made to again for the return to OFFSET. For this purpose, Eximbank must take action with a special loan package for Iraq. Also, technical consulting companies in Iraq should be donated. Thus, in the projects of which the technical consultancy shall be provided by Turkish firms, also Turkish contractors will have an increased possibility of getting work.

6. THE REQUIRED REGULATIONS IN OVERSEAS CONTRACTING SECTOR

To increase market share of overseas contracting services sector, taking the following measures and some legal regulations will be very helpful:

6. For technical consulting abroad, the qualification should be given with no restriction to the firms certified by Association of Turkish Consulting Engineers and Architects (ATCEA).
7. For the engineering, it is essential to adopt, without restrictions, the approval of Turkish universities such as internationally recognized Istanbul Technical University, Middle East Technical University, Bilkent, Bogazici University.
8. It will be appropriate to make the restrictions more flexible set by the country where the construction work is undertaken regarding real person employment, through employing qualified personnel such as workers, engineers, architects.
9. Contracting companies wishing to do construction work abroad, should be required to be a member of a professional organization which will confirm the professional experiences.
10. In terms of standards of workers will be employed in the construction sector abroad, certified staff is requested by many countries.

Certification system for construction workers in Turkey has not begun yet just "Draft Law on the National Occupational Standards Institution" exists. The professional standards in construction sector should be taken into consideration and also training certification of successful graduates is important.

11. Between Turkey and the foreign countries whose contracting services are provided, the bilateral agreements should be concluded for preventing double taxation and providing reciprocal encouragement and protection of investments.

7. PROBLEM OF PROVIDING LETTER OF GUARANTEE IN OVERSEAS CONTRACTING SECTOR

Because of credit rating of Turkey, narrowing in the banking system, capital qualification ratio and coverage, from commercial banks, getting especially the final and advance letter of guarantee is not possible. This problem becomes more significant depending on the size and duration of the projects. Eximbank Bond Program, regulates that a letter of guarantee can be issued up to 25% percent of contract or tender price and not exceeding U.S. \$ 25 million as total amount for overseas contracting services, for the eligible projects of the Turkish construction companies whose credibility is approved, will have been participated overseas bids and / or commitments, with Turkish commercial banks counter-guarantee. However, while here is again counter-guarantee and time problem.

Construction companies in Turkey generally letters of guarantee cash conversion rate of less than 1 percent. Despite this fact, letter of guarantee is held at a high risk regulation capabilities of such commercial banks for letter of guarantee decrease. In addition, the risks in the counter country are required to be undertaken by the Eximbank. In Turkey, the financial crises in the Turkish banking sector have caused serious difficulties, many factors such as incompatibility with international norms, decrease in the credibility of banks and many private banks being transferred to the Turkish saving deposit insurance fund (SDIF), cause the letter of guarantees from Turkish banks not being accepted abroad.

In terms of attempting to obtain bank letter of guarantee from foreign countries, the high cost and difficulty of getting conditions lead to a variety of problems. Foreign banks with high credit ratings, usually do not want to take the risk of long-term or letters of guarantee more than 12 months Turkish, but when they issue, can provide in return of very high commissions. In the past, letters of guarantee issued by Turkish banks abroad did not fulfill demands of the liquidating, because of the decisions of injunctive relief, is another cause reducing the acceptability abroad today. In this context local banks of some countries do not accept for similar reasons even the letters of guarantee is provided the Turkish Eximbank.

Rapid acquisitions of Turkish banks by foreign banks or foreign banks as a partner entering the Turkish banking system have made short-term solution difficult the problem of letter of guarantee, it also, in medium and long term, may lead to much more serious troubles. On the other hand, with the introduction of Basel II criteria application, capital taking into account the firms without adequate capital and having international auditing can not be supported by the banking sector, it seems that in the contracting sector the existence of a problem of letters of guarantee will strongly continue.

As a result, almost no Turkish bank guarantees are not accepted in tenders abroad, also a foreign bank counter-guarantee is required. This situation limits the possibilities of business opportunities and raises costs. In order to solve the problems of supply guarantees of letter for overseas contracting companies, the activities should be stepped up such as the creation of Bond Guarantee Fund and introducing of political risk insurance program which has been applied by rival countries many years. After all, the Turkish contracting companies in overseas projects, that the employer can not present a letter of guarantee to governments is the most important problem which must be solved urgently.

8. LEGAL FRAMEWORK OF GUARANTEE LETTERS FOR CONSTRUCTION CONTRACTS

With the decision of joint chambers, Court of Cassation has adopted that letters of guarantee has the legal feature as guarantee but not warranty. In the decision of joint chambers, no E.66/16, K.7 on 13.12.1967, has adopted that the letters of guarantee has the nature of the commitment for the act of third person and the commitment of the person issuing the letter is entirely independent from the prime contract entirely.³

At the same time, from another decision of joint chambers on 11.06.1969 and no E.69/4, K96/6, it can be understood that there is no obstacle to define to a letter of guarantee as warranty but not guarantee.⁴

³ Arkan, Sabih: İnşaat Sözleşmeleri, Ortak Seminer, Banka ve Ticaret Hukuku Araştırma Enstitüsü, 2. Tıpkı Basım, Ankara, 2001. p.311.

⁴ Ibid.

Guarantee Agreement is an independent contract causing an obligation of the taking over partial or fully the probable risks bearing a particular proceeding to which someone else is directed by a person.⁵ Thus in cases the bank guarantee letters have the quality of guarantee, as secondary warranty, the benefit is not possible for the beneficiary (debtor) in the primary relationship between the interlocutor and the beneficiary from the defence opportunities.⁶

In guarantee contracts, in order to direct the interlocutor to a certain proceeding, especially to provide to have a relationship with a special person, the guarantor undertakes to compensate risks possible to arise from such relationship in terms of the interlocutor. Each bank letter of guarantee guarantees a certain risk.⁷

In the decision dated on 28.12.1990 and no E.1990/6-1, K.1990/141 of assembly of civil chambers of the Court of Cassation, "...bank letters of guarantee are not securities and not abstract monetary commitment. They always contains a risk that may arise in the future" stated.⁸ "Thus bank letters of guarantee can not be regarded as deeds that contain bill of debt according to Execution and Bankruptcy Law, Article 68 / I."⁹

More widely used in banking sector, is the bank letter of guarantee payable upon first request. In this type of letters of guarantee, if the interlocutor make request to bank as provided for in the letter, it is deemed sufficient to display that the risk has occurred. The bank also can not ask the interlocutor to prove the risk which has occurred and can not research this fact itself ex officio. This situation, has led to the birth of the principle of "first pay, then litigate" and the payment before researching whether the risk arised or not, and after that proving that the risk has not ocured, it is adopted to litigate for the return of paid money.¹⁰

In banking practices, in letter of guarantees texts, beside the record of "payment upon first request", "without entering a plea", "not looking for the concensus of the beneficiary", "without necessities of any processing, protest drawing, decision input", banks undertakes to make payment. Such recordings show that defenses arising from relations between the bank-the beneficiary and the beneficiary -interlocutor can not be done by the bank and thus the commintment of the bank has guarantee feature but not warranty.¹¹

Except the records mentioned above, in the introduction of guarantee letter or in the part where the guarantee commitment is included, the contract between the beneficiary and the interlocutor is sometimes also referred. For example, in the introduction of the guarantee letter that the guarantee is regulated, "for the material and equipment delivery and installation services execution regarding construction of the facility in accordance with the contract signed between" can be shown. Such records are useful to show that individualization of the guarantee, that is, the risk arising from which relationship is guaranteed. Otherwise these types of records do not mean that the commitment of the bank is not depending on the main relationship between the beneficiary and the interlocutor.¹²

If the letter of guarantee includes the record as, "on first request, payment without any objection", the interlocutor shall have been provided for the most extensive and comprehensive assurance. Interlocutor may request the payment as soon as the predicted risk realizes and without encountering any defence arising from the fundamental relation. In this case, banks without involving the relationship between the beneficiary and the interlocutor and without researching the interlovutor's payment request is indully or not according to this relation, have the right to make payments with the delagation of the interlocutor and make the claim the paid amount from the beneficiary depending on such contraguarantee relation.¹³

In the letter of guarantee there could be a record as, " payment upon first request after describing in a document, obtained from a public institution or person, that the liabilities undertaken with the contract has not been fulfilled." Similarly, a letter of guarantee can be issued as the payment shall be made upon first request and without any obligation, applying with a report indicates that the capacity of the plant being constructed, has not been reached how provided for in the contract, such report shall be provided by a determined authority or person. In scuh cases, the bank shall be obliged to examine the document submitted with payment request, whether in accordance with the letter of guarantee in terms of type and feature.

⁵ Tandoğan, Haluk: Borçlar Hukuku- Özel Borç İlişkileri, C.2, 3.Baskı, Ankara,1987, p.809.

⁶ Arkan, op.cit., p.312.

⁷ Reisoğlu, Seza: Banka Teminat Mektupları ve Kontrgarantiler, 2.basım, Ankara, 1990, p.12.

⁸ See YKD, 1990, c.16, S.5.,p.639.

⁹ Reisoğlu, op.cit., p.16.

¹⁰ Arkan, op.cit., p.313.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid., p.314.

The bank examines these documents with a reasonable care and just looking their outer appearances. The bank is not responsible for the counterfeiting after the ordinary examination. Ordinary is not responsible for the bank counterfeiting investigation be removed as a result. However, never banks can be obliged to examine whether the construction work, which is delivered by the beneficiary in accordance with the contract, has the features settled in the construction contract, after all banks always operating on documents.¹⁴

There is no legal obstacle for issuing a letter of guarantee as a guarantee contract conditionally. In this case, the “record “payable upon first request” shall be valid after the condition is approved by the interlocutor. Conditional guarantee also does not lead making of plea, arising from the main relationship, by the bank.¹⁵

9. TYPES OF LETTER OF GUARANTEES REGARDING INTERNATIONAL CONSTRUCTION CONTRACTS

a. Bid-Bond/Tender Guarantee

Bid bond is regulated as “tender guarantee” in the article 2(a) of ICC Uniform Rules For Contract Bonds, no 325, dated June 20, 1978. According to these rules, “the Bid Bond is a commitment to the party (beneficiary) who invites to the tender upon instructions of another person (who instructs) who is authorized in this regard by the administrator or the request of the participant to the tender (the principal) a bank or an insurance company, with such commitment the guarantor incurs a debt to the beneficiary within the limits of the amount of money provided for, in case the principal acts contrary to the debts arising from participating in the tender.”¹⁶ With the bid bond, a bank, an insurance company or another guarantor, gives a guarantee to meet the losses rate of is shown in the letter that will occur in case the winner of the tender does not want to pay the performance bond or not conclude the Contract.¹⁷

b. Performance Bond / Final Guarantee / Definite Letter of Guarantee

This guarantee type, which is regulated as “performance bond” in the article 2(b) of ICC (International Chamber of Commerce), Uniform Rules For Contract Bonds, is defined as: “A Bond is a commitment to the party (beneficiary) who invites to the tender upon instructions of another person (who instructs) who is authorized in this regard by the administrator or the request of the participant to the tender (the principal) a bank or an insurance company, with such commitment the guarantor incurs a debt to the beneficiary, in case the principal acts contrary to the debts arising from default of duly performance of the contract provisions, or in case provided for in the letter of guarantee, he incurs the debt of performance of the contract exactly”¹⁸ In the performance bond letter, the beneficiary is guaranteed for the Contractual obligation to be carried out.¹⁹

c. Advance Payment Guarantee

According to article 2(c) of ICC Uniform Rules For Contract Bonds, Advance Payment Guarantee is a commitment to the party (beneficiary) who invites to the tender upon instructions of another person (who instructs) who is authorized in this regard by the administrator or the request of the participant to the tender (the principal) a bank or an insurance company, with such commitment the Guarantor incurs a debt to the beneficiary to secure the repayment of any sum or sums advanced by the Beneficiary to the Principal under or for the purposes of the Contract, where such sum or sums is or are advanced before the carrying out of works, the performance of services or the supply or provision of any goods pursuant to such Contract.²⁰

This bond issue is to ensure the advances to be given the contractor. In the contract the conditions of the repayment are decided between the contractor (principal) and the Beneficiary. In case these conditions are realised, the payment obligation borrows because of the occurring of risk of the guarantor bank who is giving advance payment guarantee.²¹

d. Standby Letter of Credit

In order to commit to pay to the employer the determined money in the Contracting work in case the contractor, fails to comply with the contractual obligations, applying to the bank, it is possible to get Standby Letter of Credit in favour of the employer.²²

¹⁴ Ibid.

¹⁵ Ibid.,p.315.

¹⁶ Şanlı, Cemal / Ekşi, Nuray: Uluslararası Ticaret Hukuku, 5.Basım, Arıkan Yayınları, İstanbul, 2006, p.190.

¹⁷ Ibid.

¹⁸ Ibid.,p.191.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.,p.192.

²² Ibid.

With this type of Standby Letter of Credit, the issuing bank, guarantees to pay the beneficiary of the Standby Letter of Credit, the amount indicated in the Standby Letter of Credit, in case the contractor fails to comply with his contractual obligations to the employer. In other words, this Standby Letter of Credit has the nature of letter of guarantee.²³

Owned business contracting business owner, this letter remains at the employer until the end of the undertaken work. If the contractor does not fulfill the conditions of contract, the bank issuing Standby Letter of Guarantee, shall pay the guaranteed amount to the upon request of the employer without delay and immediately on first demand. The objection of the principal the contractor that claiming fulfills the conditions of the contract does not prevent the payment of the bank letter of credit.²⁴

CONCLUSION

Construction sector is supported by foreign governments in every country in the world. Because this sector provides the country foreign exchange and employment, ensure operability of the economy, is the best tool to combat inflation and recession, and also an effective foreign policy honour. Therefore, the credit easeness provided by their states to construction companies in western countries to, legislative and tax facilities also benefiting the same facilities Turkish companies is important for Turkish contracting services abroad increase competitiveness in the market. Indeed, a recent law amendment, provided revenues by contracting and consulting services overseas entering among earnings exempt from corporate tax permanently. Although number of construction the contractors active in the sector in Turkey is currently around 200.000, 90 percent of construction works abroad is carried out by the members of professional organizations such as The Contractors' Association of Turkey and/or the Construction Industrialists Employers Association and number of these construction companies does not exceed 250. Therefore in professional organizations related to construction works, for construction the Contractors with a serious organization, powerful machine park, a solid financial structure and the ISO standards, it is preferred to use the name "Construction Industrialists".

The difference of the construction industry products from industrial products is that they are produced on a project basis and depending on entirely the order. Product specification is re-carried out with each construction contract. A certification system certifying qualifications of the workforce in Turkey is still missing, lack in this area leads to adverse consequences for employment of Turkish people in the overseas projects. Overseas contracting sector is very important to many countries in terms of service exporting in foreign markets and creating employment abroad. However construction works undertaken in many countries compels qualified and certified workingmen. In this case, the overseas construction industry can not create local labor force employed abroad, which negatively affects the employment of the country as a result. Therefore, creating an internationally recognized certification system, increasing in the employability of the workforce should be provided by training and certification in international standards.

Being unable to invest in Turkey where due to resource shortages of the public sector, the contractors, doing business abroad, create employment from the investment budgets of other countries. Turkish construction companies have undertaken works for primarily housing, then infrastructure, road, bridge, tunnel, irrigation works are seen, but constructions of the dams, pipelines, hotels, trade centers, airports and petro-chemical plants also present themselves as diverse business areas which require a high level of specialization, project management skills and advanced technology, has increased, differently from previous period. With joint ventures with foreign companies, Turkish construction companies today have come to the forefront, undertaking investment and operation of the major projects in the countries where once they had worked as the contractors for the construction projects. After 1990s, the geography where competitiveness of Turkish contractors steadily had the highest level has been, Commonwealth of Independent States countries and Middle Eastern countries and these regions was followed by North African countries.

Among the causes of competitive advantage in these areas are Turkish contractors taking more risk than western competitors, more affordable prices than competitors who can deliver services in international quality standards, being familiar with local culture and business environment and logistical advantages resulting from Turkey's geographical situation. Today, the total amount of construction works that Turkish contractors undertaken abroad is less, in terms of transfer the amount that they can transfer and the employment, than real potential. If the problems of providing the letter of guarantee to contracting companies abroad, are solved, doubling of the employment is possible with already generated a net foreign exchange input. The process of the European Union will make contractors face a much stronger international competition in the domestic

²³ Ünay, Vecdi: Bankalarca Dış Ticaretin Finanse Edilmesi Usulleri, İstanbul, 1989, p.108; Şanlı/Ekşi, op.cit., p.192.

²⁴ Ünay, op.cit., p.109; Şanlı/Ekşi, op.cit., p.192.

market in the future. After all, in this process the contracting companies survive who can employ a skilled workforce through restructuring and can submit service in international standards with high efficiency in order to be able to use new technologies by investments to increase productivity.

In recent years, for the contractors doing business in international standards, to open up foreign countries because the works in domestic market narrowed too much, to accept low profit margins has become a necessity. Also, the contractors who make no concessions on quality are forced to seek works abroad due to encountering extreme price reducing race in domestic tenders in domestic construction contracting industry which is not subject to any qualification and certification of competence. Construction sector is number one sector that can produce a solution with high employment potential and competitiveness abroad both for the current account deficit of Turkey and problems of unemployment. On the other hand, the construction sector is one of the few sectors that Turkey can compete with own production abroad. Moreover, in this competitiveness of the contractors undertaking contract works abroad are not on the basis of state support, cheap credit or cheap labor, but capital, technology, knowledge, dynamism and high risk-taking capacity are the fundamentals. Indeed, any country's construction contracting sector which is at the same level of Turkey's national income per capita in the world is not developed in foreign competition like Turkey's contracting service.

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