

MINISTRY OF CONSTRUCTION

SOCIALIST REPUBLIC OF VIETNAM

Independence – Freedom – Happiness

No: 09/2008/TT-BXD

Hanoi, 17 April 2008

CIRCULAR

Guiding the adjustment of contract price and changing of contract price forms due to the material price fluctuation

Pursuant to the Decree No. 17/2008/ND-CP dated 04/02/2008 of the Government regulating on Functions, Duties, Powers and Organization Structures of Ministry of Construction;

Pursuant to the Decree No. 99/2007/ND-CP dated 13/6/2007 of the Government on Construction and Investment Cost Management; The Decree No. 03/2008/ND-CP dated 07/01/2008 of the Government on amendment of and addition to some articles of the Decree No. 99/2007/ND-CP dated 13/6/2007 of the Government on Construction and Investment Cost Management;

Pursuant to guiding opinion of the Prime Minister in the Despatch No. 164/TTg-CN dated 29/01/2008 and Document No. 546/TTg-KTN dated 14/4/2008 on adjustment of material price and changing of contract price forms.

Ministry of Construction shall gives the instruction on adjustment of contract price and change of contract price forms due to the price change of raw materials, fuel and construction materials (hereinafter referred to as Construction material price) as follows:

1. Applicable entities and scope

1.1. This Circular shall instruct the adjustment of cost estimate, bidding package price, total investment cost and construction contracts between investors and contractors under State-funded Construction Investment Projects due to the uncontrollable price fluctuation..

1.2. The amendment of construction material price shall be applied for bidding packages implemented or being implemented with contract price under lump sum or fixed unit price forms.

1.3. Price form of contracts using lump sum and fixed unit price forms shall be changed to adjustable unit price form due to the uncontrollable construction price fluctuation.

2. Adjustment principles

2.1. Adjustment of construction material price shall be applied for construction works completed since 2007 affected by construction material price fluctuation which causes the increase/decrease in construction cost that out of the control of the Investors and Contractors (hereinafter referred to as construction works affected by price fluctuation).

2.2. The adjustment of cost estimate, bidding package price, total investment cost, contracts between Investors and Contractors should be carried out in combination with inflationary-controlled measurements, macroeconomic stability to ensure the sustainable development.

2.3. Construction works affected by price fluctuation, shall be defined and adjusted by the Investors and the Contractors on principle of sharing interests and liabilities.

2.4. The following construction material price shall be adjusted (increased, decreased) as follows: gasoline, petroleum and diverse iron and steel (including various metal cables and tubes), asphalt, cement, sand, stone, gravel, different bricks, electric wire, diverse electric cable and diverse woods (including wooden formwork, various timber doors), various glass. In case the other construction materials must be adjusted due to price fluctuation, it is deemed to be defined by Investors and reported to the Minister, Chairmen of provincial level People's Committee, Chairmen of Economic group, Chairmen of B.O.M of State Corporation for decision.

2.5. In order to change the price form of contracts under lump sum and fixed unit price forms to adjustable unit price form, contents and scope of the adjustment shall be clearly defined and shall be only calculated from the date of material price fluctuation which specified by the Investors and Contractors to be suitable with implementation progresses.

3. Amendment methods of construction material price

3.1. Amendment of construction material price shall be applied for contracts and bidding packages individually as well as for the whole project. The additional costs due to adjustment of construction material price shall be determined by

additional construction cost estimate which shall be the basis for adjustment of contract price, bidding package price, cost estimate and total investment cost.

3.2. Additional construction cost estimate can be determined by compensation for direct material costs or correction factor of material costs. The Investors can use correction factor of material costs that calculated by himself or use the price index announced by the Ministry of Construction or by Statistical General Department. The additional construction cost estimate shall be defined as instructed at the appendix promulgated in attachment with this Circular.

3.3. Additional construction cost estimate shall be made once only on the basis of construction works affected by increase (decrease) of construction material price from 2007.

3.4. Investors shall be responsible to organize the adjustment of cost estimate, bidding package price and total investment on the basis of additional construction cost estimate.

4. Amendment of construction cost estimate after completion of additional cost estimate

4.1. Additional construction cost estimate for bidding packages under the forms of bidding appointment or force account but without availability of contract or implemented contract (under the form of lump sum and fixed unit price) shall be prepared by the Investor as the guidance at above-mentioned point 3 to be the adjustable basis for construction cost estimate.

4.2. For the packages, work items and works where the contractors have not been selected, the Investors shall amend the cost estimate according to current regulations.

4.3. Adjusted cost estimate shall be defined by addition of approved construction cost estimate and additional cost estimate.

5. Amendment of bidding package after completion of additional cost estimate

The Investor shall adjust the bidding package price by adding approved winning bid price with additional cost estimate as specified in article 3. In case the bidding package price, after being amended, does not exceed the approved bidding package price, this shall be approved by the Investor. In case the bidding package price, after being amended, exceeds the approved package price but does not exceed the total investment, it shall be approved by the Investor and the results

shall be reported to the Investment Decider. In case the package price, after being amended, exceeds the approved total investment, then the adjustment of total investment shall be implemented as instructed at point 6 of this Circular.

6. Amendment of total investment after completion of additional cost estimate

The Investors shall organize the adjustment of total investment cost basing on adjusted construction cost estimate or adjusted bidding package price. In case the adjusted total investment exceeds the approved total investment, Investors shall report to investment deciders for consideration and decision. In case the investment of the Project is decided by the Prime Minister, the decision shall be entitled to Minister, Head of Ministerial level Bodies, Head of Governmental Bodies, Chairmen of Provincial level People's Committees, Chairmen of Economic Group and Chairmen of B.O.M of State Corporation.

7. Amendment of contract after completion of additional cost estimate

7.1. For signed contracts, investors and contractors shall sign the additional contract price to be the basis for the payment basing on additional cost estimate and contents of signed contract.

7.2. For bidding packages with selected contractor but contract has not been signed, Investors shall negotiate and sign the contract basing on additional cost estimate and content of bidding documents.

7.3. For change of price form of contracts under lump sum and fixed unit price to adjustable unit price from, the adjusted contents and scope shall be reported by investors to investment decider for permittance before implementation. The contents of contract price form according to adjustable price shall be implemented as guided at the Circular No. 06/2007/TT-BXD dated 25/7/2007 of Ministry of Construction guiding contracts in construction activities.

For State-funded projects of which bidding plans approved by the Prime Minister, the decision shall be entitled to Minister, Head of Ministerial level Bodies, Head of Governmental Bodies, Chairmen of Provincial level People's Committess, Chairmen of Economic Group and Chairmen of B.O.M of State Corporation.

8. Implementing provisions

8.1. The Investors shall consider and decide the adjustment of cost estimate, bidding package price, construction contracts to ensure the project's efficiency. For

Projects approved by the Prime Minister, the decision shall be entitled to Minister, Head of Ministerial level Bodies, Head of Governmental Bodies, Chairmen of Provincial level People's Committess, Chairmen of Economic Group and Chairmen of B.O.M of State Corporation.

8.2. For local- funded construction investment projects, the investors shall be responsible to calculate the adjustment of cost estimate, bidding package price, contract price forms; Provincial level People's Committees shall stipulate the application of construction unit price system, daywork rate for equipments and construction machines, construction material price. In case the announced prices are not available or not suitable, the investors shall use prices quoted in eligible receipts and invoices which is suitable to current market price.

8.3. The investors shall advance the contractors compensation amount for price fluctuation as instructed in this Circular according to advance rate of Contract for unperformed workload. On the other hand, the Investors shall also pay 80-90% of price fluctuation for implemented workload while waiting for adjustment procedures so as not to affect the implementation progress and to avoid the Contractors' losses.

The documents for advance and payment shall include: Advance (provisional payment) claims, adjusted contract (appendix) and additional construction cost estimate.

8.4. In case the adjustment of construction material price causes the change of project group, the Investors shall continue the performance of projects as before the adjustment (no need for reparation of making, appraisal and approval procedures of the Project).

8.5. For bidding packages using ODA fund (excluding counter –part fund propotion), the price adjustment shall be implemented as regulated in the contracts. If necessary, the investment deciders shall consider and decide after obtaining agreement with sponsors, on the other hand, the Ministries, branches and local authorites shall be responsible for coordination with Ministry of Planning and Investment to negotiate with Sponsors on fund supplementation due to price fluctuation.

8.6. For works and bidding packages implemented as regulations of Decrees of the Government on Investment and Construction Management (the Decree No. 16/2005/ND-CP dated 07 February 2005 and Decree No. 112/2006/ND-CP dated 29 September 2006) with adjustable contract price form, if the delay in contract

progress is not due to Contractors' failures, then the implemented workload since 2007 shall be adjusted according to instructions of this Circular.

8.7. Ministries, Ministerial-level Bodies, Governmental bodies, Provincial-level People's committees, Economic groups and State Corporations shall be responsible to conduct, instruct and supervise investors and contractors to strictly implement the adjustment of construction material prices, cost estimate, bidding package price, total investment cost and change of contract price form as stipulated in this Circular. Investors are requested not to delay their construction progress due to the cause of construction cost adjustment of the works, but to accelerate the progress of works, especially for national major works..

8.8. Adjustment of labour cost of construction cost estimate shall follow the provisions of Circular No. 07/2006/TT-BXD dated 10/11/2006 and Circular No. 03/2008/TT-BXD dated 25/01/2008 of the Ministry of Construction guiding adjustment of construction cost estimate.

8.9. Investment deciders shall be responsible to decide transition of policy application as stipulated by Decree 99/2007/ND-CP on management of construction investment costs (including total investment cost, project cost estimate, construction norms and prices, contracting, payment and final payment) after examination of investors' reports. The transitional policy handling for state-funded projects approved by the Prime Minister shall be responsibility of the Heads of ministries, heads of ministerial level bodies, heads of Governmental bodies, Chairmen of provincial-level People's committees, Chairmen of Economic groups, Chairmen of State-owned Corporations.

8.10. For Construction contracts that the payments were completed by the investors within the year of 2007 (the contract payment has been finalized including contract price and additional amount (if any) in 2007), except the specified warranties, the construction material prices shall not be subject of adjustment.

9. Implementation enforceability

9.1. This Circular shall be of full force and effect in fifteen days after the date of its publication in the Official Gazette and replace the Circular No. 05/2008/TT-BXD dated 22 February 2008 of Ministry of construction guiding the material price and contract price form due to the material price fluctuation.

9.2 The Investors of Construction Investment Projects are recommended to use other fund sources for implementation of adjustment of price and contract price form according to instructions of this Circular.

All problems arising during the implementation of this Circular should be reported to the Ministry of Construction for information collection, examination and settlement.

PP MINISTER
DEPUTY MINISTER

(Signed)

Cc:

- Central Party's Office;
- Government's Office;
- National Assembly's Office;
- *Ethnic Council and People's Committees of National Assembly;*
- National President's Office;
- Ministries, Ministerial level Bodies, Governmental Bodies;
- People's Council, People's Committee of Provinces and Cities under direct Central Authority;
- People's Supreme Court;
- People's Supreme Procuracy;
- Central bodies of unions;
- Document Checking Bureau of Justice Ministry;
- *Departments of Constructions of Provinces and Cities under direct Central Authority;*
- Economic groups, State-owned Corporations;
- Official Gazette;
- Government's Website, *MOC's website;*
- *Offices, Departments of Ministry of Construction;*
- *Filling in Office, Legislation Department, Financial and Accounting Department, Economics Institute.*

Dinh Tien Dung

APPENDIX
ADDITIONAL CONSTRUCTION COST ESTIMATE
DUE TO ADJUSTMENT OF CONSTRUCTION MATERIAL

(Enclosed to the Circular No. 09/2008/TT-BXD dated 17/04/2008 of Ministry of Construction)

NO	COST ITEMS	CALCULATION FORMULAS	SYMBOL
I	DIRECT COSTS		
1	Material cost	$\sum_{i=1}^n Q_i \times CL_i$ or $G_{VL} \times P \times K$	VL
2	Other direct costs	VL x ratio	TT
	Total of direct costs	VL+TT	T
II	GENERAL COSTS	T x ratio	C
III	TAXABLE INCOME	(T+C) x ratio	TL
	Taxable construction cost	(T+C+TL)	G_{BS}
IV	VALUE ADDED TAX	$G_{BS} \times T^{GTGT-XD}$	GTGT
	Construction cost including tax	$G_{BS} + GTGT$	G_{BS}^{XD}

1. Adjustment of construction material cost by matching costs of direct materials

$$VL = \sum_{i=1}^n Q_i \times CL_i$$

Where:

Q_i is the quantity of the i^{th} material (in ordinal number) of construction work quantity affected by market price fluctuation and can be defined by time (month, quarter) or acceptance period.

CL_i is the differential prices at the date of adjustment and those stated in the Contract or cost estimate of the bidding package of i^{th} material.

The construction material prices noticed or announced by relevant Government's authorities or announced prices at the date of adjustment shall be used as the basics for adjustment.

In cases that the material prices stipulated by the contract was lower than that noticed by the relevant Government's authorities of the respective date, CL_i is the differential prices of construction materials noticed by the authorities at the date of adjustment and the prices noticed by the authorities at respective date.

In cases the prices noticed by the relevant Government authorities are not updated or not effective or the price of subjected material is not noticed, investors and contractors shall use eligible documents and invoices to determine the price for adjustment and shall be responsible for the truth and accuracy of such documents.

Eligible invoices are those as regulated by Ministry of Finance. In case that the construction materials can not get invoice, then it can based on contract or handwritten receipts but with full name, address and signatures of material suppliers.

2. Adjustment of construction cost by adjusted coefficient of material cost

$$VL = G_{VL} \times P \times K$$

Where:

G_{VL} is direct material cost in the contract.

P is ratio of material cost affected by price increase in direct material costs in the contract.

K is coefficient of construction material price rising at the date of adjustment in comparison with the prices stated in the Contract of the subjected material. The Investors shall be responsible to calculate this coefficient or apply the price index announced by Ministry of Construction or by Statistical General Department.

3. Other costs.

In case the general cost norm is calculated on labour costs of direct costs, then it is defined as follows:

$$C = NC \times \text{other direct cost ratio} \times K_C^{NC}$$

NC is labour cost in Direct cost of construction works with adjusted material prices.

K_C^{NC} is ratio of general costs in labour cost (for applicable work)

The ratio of general cost and taxable income are those applied for the Contract, bidding package, cost estimate where applicable.

The value added tax shall be calculated under current regulations of the Government.