

*Subject: Additional guidelines for some
contents of Circular 09/2008/TT-BXD*

Hanoi, August 1, 2008

To:

- **Ministries and Ministry-level Agencies;**
- **People's Committee of Central Provinces and Cities;**
- **Economic Groups and State-owned Corporations.**

Upon review and acquirement of comments from relevant Ministries, agencies and institutions with respect to the application of Circular 09/2008/TT-BXD dated April 17, 2008 by the Ministry of Construction providing guidelines for adjustment of construction price and contracts due to price fluctuation of raw materials, fuels and construction materials, the Ministry of Construction has the following instructions:

1. Adjustable kinds of materials:

Circular 09/2008/TT-BXD stipulating 13 adjustable kinds of materials states that in case it is necessary to adjust other kinds of materials due to price fluctuation, the employer is required to report for decision from the Minister, Chairman of Provincial People's Committee, Chairman of Economic Group, Chairman of Board of Management of State-owned Corporations. Semi-finished products and accessories made of adjustable constructions materials shall also be adjusted according to the regulations.

2. One-time additional construction cost estimates:

Additional construction cost estimates shall be prepared one time based on accomplished quantities and uncompleted remaining quantities of the contract, in order to check whether the adjusted amount shall exceed total investment or not so that the authorized person can make decision for the adjustment (Item 6 of Circular 09/2008/TT-BXD). Extra adjustment shall be allowed in case of further price fluctuation of construction materials in excess of additional cost estimates after the adjustment.

3. Time for calculating material difference:

Time for calculating material difference is the time of inspection of progress accomplished quantities which may take place monthly, quarterly or periodically according to the contract.

Material price at the time for calculating difference for adjustment is the price of materials at time of inspection of accomplished quantities notified/announced by relevant Inter-Departments or the price shown on eligible invoices and vouchers in accordance with the Ministry of Finance and market price where the construction is carried out.

Material price difference is the difference between material price at the time of adjustment and construction material price in the contract, approved bid package cost

estimates, or material price 28 days prior to the bid open (in bidding case) for the contracts signed since 2007, or material price in December 2006 or Quarter IV of 2006 for contracts signed before 2007 without price in December 2006. In case construction material price in the contracts or approved bid package cost estimates is lower than the construction material price notified or announced by the State authorized agency at the corresponding time, the State authorized agency's price shall be applied.

Eligible invoices and vouchers are the ones issued according to the regulations of the Ministry of Finance. The contractor shall be responsible for legality of invoices and the employer shall review and apply. In case material price cannot be determined based on the invoices submitted by the contractor (many price rates, previous purchase, different times), the employer shall consider and decide to apply suitable price rate according to the market price where the construction is carried out at the time of inspection of accomplished quantities. In case the employer fails to have enough capability, evaluating consultants may be hired for consideration and decision.

For fuels (petrol, oil, etc): When calculating fuel cost balance, the employer and the contractor shall determine quantity or fuel density based on machinery shift price in the contract and fuel consumption estimates in accordance with relevant Circulars issued by the Ministry of Construction guiding methods for determination of construction machinery and equipment shift price (Circular 06/2005/TT-BXD dated April 15, 2005, Circular 03/2006/TT-BXD dated May 22, 2006, Circular 07/2007/TT-BXD dated July 25, 2007, etc). In case of unstipulated machinery and equipment, fuel consumption estimates of machinery having equivalent economic and technical criteria.

4. Method for determination of additional construction cost estimates:

Additional construction cost estimates shall be determined based on material cost adjustment coefficient method or direct material cost balance method and calculated for each contract according to the guidelines in the appendix of the Circular 09/2008/TT-BXD. The Ministry of Construction has the following instructions:

4.1 Determination of additional construction cost estimates according to material cost adjustment coefficient method:

Additional construction cost estimates according to material cost adjustment coefficient method shall be determined based on direct material cost value, material cost density of adjustable materials and material price increase coefficient (K).

Direct material cost value, material cost density of adjustable materials shall be determined based on the contract price; In case of lump sum contract, material cost density shall be determined based on estimated cost structure, estimation standards issued or announced by the State, local construction price and price structure, price structure and estimates of similar construction works.

Material price increase coefficient shall be determined based on the following formula:

$$K = \frac{K_i - K_0}{K_0}$$

Where: - K is material price increase coefficient at the time of adjustment
 - K_i is material price index at the time of adjustment

- K_0 is material price index in December 2006 or Quarter IV of 2006 for contracts signed before 2007 without price in December 2006, or material price index 28 days prior to the bid open (in bidding case), time of approving bid package cost estimates for the contracts signed since 2007.

Applicable price index is the one announced by the Ministry of Construction or the one issued by the General Department of Statistics or the one determined by the employer according to the guidelines of methods for determination of price index stated in the Letter 1599/BXD-VP dated July 25, 2007 by the Ministry of Construction.

4.2 Determination of additional construction cost estimates according to direct material cost balance method:

In case quantity and price of construction materials of the contract can be defined, additional construction cost estimates shall be determined based on direct material cost balance method in accordance with guidelines in the Circular 09/2008/TT-BXD and this Letter.

5. Advance payment for the contractor's purchase of raw materials, fuels and construction materials.

If the advance payment upon contract signing is made as regulated, price adjustment shall be applied when construction material price is fluctuated.

In case the two parties determine the amount of advance payment for purchasing materials, fuels and construction materials or in case of exceptional advance payment for purchasing material, fuels and construction materials before price fluctuation, price adjustment shall not be applied for the purchased quantities of materials, fuels and construction materials using advance payment.

- 6. In order to ensure capital, push up project progress and reduce damages and losses for the contractor, the employer shall be allowed to give temporary approval to additional cost estimates to have basis for process of advance payment or temporary payment to the contract while waiting for adjustment procedures.** In case temporarily-approved additional cost estimates do not exceed total investment rate, the employer is allowed to proceed with advance payment or temporary payment based on the temporarily-approved estimates. In case of exceeding the total investment rate, permission shall be made by the investment decider before process of advance payment or temporary payment.

For the smooth implementation of adjustment of construction price and contract due to price fluctuation of materials, fuels and construction materials according to the Circular 09/2008/TT-BXD, Ministries, agencies and local authorities are required to conduct, instruct, organize, examine and timely solve all obstructions during the implementation. Provincial People's Committees are required to instruct Department of Construction, Department of Finance to update market information, timely announce monthly construction material price in correspondence with market price so that the employer, contractor and relevant organizations can have basis for determination of additional construction cost estimates.

In case of any obstruction during the implementation process, relevant Ministries, agencies, local authorities, employers and organizations are required to report to the Ministry of Construction for timely consideration and solution.

Obstructions shall be reported in writing to the Ministry of Construction or discussed through website of the Ministry of Construction <http://www.moc.gov.vn> or via telephone of the Ministry of Construction 9760271, extensions 336, 338, 339 and 344.

Receivers:

- Above;
- Department of Construction of Central Provinces and Cities;
- Filing.

**For the Minister
Deputy Minister**

(signed)

Cao Lai Quang