

New regulations: construction contracts for state-funded projects



**By Le Hong Phong and
Nguyen Thu Huyen**

On 7 May 2010, the Government of Vietnam issued Decree No. 48/2010/ND-CP (Decree 48) which regulates construction contracts for projects funded with 30 percent state capital. Decree 48 takes effect on 1 July 2010 and replaces the part of Decree No. 99/2007/ND-CP which deals with construction contracts.

Types of construction contract

Decree 48 identifies eight types of construction contracts, based on the nature of work, as follows: (i) contracts for providing construction consulting services; (ii) contracts for providing construction of works; (iii) contracts for procurement; (iv) contracts for engineering and construction; (v) contracts for engineering and procurement; (vi) contracts for procurement and construction; (vii) contracts for engineering, procurement and construction; and (viii) turn-key contracts. Decree 48 also provides for five types of construction contracts, based on the price of contracts: (i) lump sum price contracts; (ii) fixed unit price contracts; (iii) adjustable unit price contracts; (iv) time-based price contracts, and (v) value percentage-based price contracts.

Governing law and language

The Vietnamese law is to govern construction contracts; foreign laws may only be allowed for construction projects funded by ODA capital where permitted. Furthermore, Vietnamese will always be the official language of construction contracts. Contracts involving a foreign party can also be signed in English but the parties must specify the language to be used in correspondence and that which shall prevail to resolve any dispute.

Rules on contract adjustment

Decree 48 also provides for circumstances where adjustments to the contract and contract price are permitted. Adjustments can only occur during the implementation of the signed contract and will be decided by the owner if the new price does not exceed the approved total invested capital. If the adjustments exceed that

threshold, they will be decided by the person who has the power to make such investment.

Price adjustment will apply only to three types of construction contracts; namely, fixed unit price, adjustable unit price and time-based price contracts. Further price adjustment and details of the price adjustment must be agreed in the contract. Price adjustment may take the form of unit price adjustment or quantity adjustment, or both. If the additional quantity is 20 percent greater than the respective volume in the signed contract, the parties will determine the new unit price for such additional works. If it is less than 20 percent, the unit price agreed in the contract will apply. For fixed unit price contracts and time-based price contracts, if the price of state-regulated materials greatly fluctuate, price adjustment is possible in the event it is agreed in the contract and approved by the investment decision-making body.

Contract adjustments are also possible if the same is agreed in the contract. For lump sum contracts, Decree 48 only permits adjustment in respect of quantity beyond what the parties have agreed. A contract may be adjusted in terms of price, quantity or works schedule. Works schedules can only be adjusted in some prescribed situations, and the parties must delineate responsibilities of each party if the completion date is behind the agreed schedule.

Termination of construction contracts

Decree 48 stipulates circumstances where the owner and the contractor may each terminate the contract without compensation to the other party. The owner may terminate if the contractor goes bankrupt or assigns interest of the contract to its creditors without approval of the owner, or the contractor refuses to implement the agreed works or fails to carry out the agreed work for 45 consecutive days. The contractor may terminate if the owner goes bankrupt or is dissolved, the contractor cannot carry out the works for more than 45 consecutive days due to the fault of the owner, or the owner fails to pay the contractor after 45 days of receipt of a complete and valid payment dossier.

bizconsult law LLC

Law and Intellectual Property, 3/F, VNA Building,
20 Tran Hung Dao Street, Hanoi, Vietnam

Tel: (84) 4 39332129 Fax: (84) 4 39332130

Email: phong.lh@bizconsult-vietnam.com
huyen.nt@bizconsult-vietnam.com

www.bizconsult-vietnam.com