

Finalization of transportation construction contract management at Project Management Unit No.7 under Ministry of Transport, Viet Nam

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ABSTRACT

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Accepted: 20 June 2021 Published: 08 July 2021 Managing the many contracts related to a construction project can be hard and time-consuming. Therefore, researching to learn about construction contracts and construction contract management to determine the current situation, causes and propose solutions to overcome is essential for businesses and agencies. State authority in construction activities. In addition, the management of contract performance after the result of contractor selection and contract signing is a subject of special concern of the Investor, the contractor and the whole society. This article explains construction contract in terms of generic contract provisions and recommend solutions for completing contract management at PMU 7 under the Ministry of Transport, Vietnam.

Keywords: Contract management, quality management, construction investment, payment progress, PMU7.

I. INTRODUCTION

Over the past years, together with the general development of the country, the process of renovation and socio-economic development in our country has been increasingly strong. Before that development, the demand for investment and construction of works is massive, as a result investment in the construction projects, especially transport works, is one of the important factors in the socio-economic development. Especially in the next coming years, the transport sector will implement a series of major projects such as the North-South Expressway Project in the East, Long Thanh Airport Project, Dai Ngai Bridge, Rach Mieu 2 Bridge, ...

Project Management Unit 7 (PMU7) under the Ministry of Transport is the Project Management Unit specialized in road, which manages projects in the South Central and Southern regions. Over the past time, the Board's project management has achieved encouraging results, the new bridge and road system has been significantly increased, the traffic capacity in the area has been improved, contributing to the development of the project. Continuous development of the Transport industry.

In order to achieve the above results, the state departments, including the PMU7, had to make great efforts in improving the management efficiency in all aspects of transport infrastructure construction projects. In which, the management of construction contracts plays an important role in managing the progress, quality, capital ... of the transport projects.

However, in the implementation process, there are unavoidable problems and inadequacies affecting the performance of construction contracts. Besides, in recent years, the introduction and revision of a series of legal documents has significantly affected the activities of the traffic construction project.

Therefore, researching to learn about construction contracts and construction contract management to determine the current situation, causes and propose solutions to overcome is essential for businesses and agencies. State authority in construction activities. In addition, the management of contract performance after the result of contractor selection and contract signing is a subject of special concern of the Investor, the contractor and the whole society.

II. CONSTRUCTION CONTRACT

A. Concept

Construction contract means a civil contract agreed in writing between the principal and the contractor to perform part or all of the work in construction investment activities. In which the principal is the investor or general contractor or main contractor, the contractor is the general contractor or main contractor when the principal is the investor, and the subcontractor when the principal is the main contractor.

Construction contract is a legal document binding on the parties to the contract. Disputes between the contracting parties are settled on the basis of legally effective signed contracts.

A construction contract is a civil agreement related to construction investment activities, so in principle at the same time it is governed by many different laws, including: Civil Code No. 91/2015 / QH13, Law on Bidding No. 43/2013 / QH13, Enterprise Law No. 68/2014 / QH13, Construction Law No. 50/2014 / QH13, Therefore, when participating in contract signing, the parties must ensure the principles:

(1) Voluntary, equality, cooperation, not against the law and social ethics;

- (2) Ensure there is enough capital to pay according to the agreement of the contract;
- (3) Completed the contractor selection and contract negotiation process;
- (4) If the contractor is a partnership of contractors, there must be a partnership agreement. Members of the consortium must sign and stamp (if any) into the construction contract, unless otherwise agreed by the parties.

B. The role of construction contracts

In a market economy, all economic relations in general and construction contract delivery relationships in particular between entities are established and implemented on a contractual basis. Therefore, construction contracts play a very important role in construction management activities:

- A contract signed by the parties, effective and in accordance with the law is a legal document binding on the parties in the contract performance process, an important legal basis for protection. legitimate rights and interests, settlement of disputes between the parties.
- Is a construction management tool of the State. Through the contract, the State can exercise its management of construction investment activities by specifying the subjective conditions of the contract, the content and form of the contract, grounds and procedures. to enter into the contract, implementation mechanism and settlement of contractual violations and disputes.
- Is a tool to help the Investor/the contractor manage the contractor's activities, construction investment management, playing a decisive role on the project results because most construction activities are carried out by the contractor. contract through contract.
- As the basis for planning and implementing the plan, is an important means to combine planning with the use of market relations;

- Is an important tool contributing to the consolidation and development of the economic accounting regime in construction;

C. Construction contract management

Construction contracts have a very important position in construction investment activities, contracts signed by the parties, effective and in accordance with the law are legal documents binding on the During the contract performance process, it is a tool to help the Investor / the employer manage the contractor's activities.

Construction contract management is an indispensable content in the management of construction investment projects, and plays an important role in ensuring the investment efficiency of public construction investment projects. process, and has a direct influence on the progress, quality, safety and cost of bidding packages, and also serves as the basis for stakeholders to perform the role of construction investment management.

Over the past years, the State has issued many legal documents on construction management in order to guide the subjects participating in the construction investment process to manage construction contracts, contributing to ensure efficiency of construction investment activities.

To manage a good construction contract, the parties involved need to know the contents of the contract. Construction contract management is not only limited to the construction contract implementation phase (Construction contract performance management) but needs to be extended to the preconstruction stage, including submission of contract negotiation (to be done before the submission of contractor selection results) and contract finalization (after notification of contractor selection results).

D. Criteria for evaluating construction contract management

Evaluation of construction contract management, on the one hand, the contractor self-evaluates, on the other hand, is more objective than the principal. The evaluation results are the basis for contractors to give timely measures to correct, promote their strengths, to limit and overcome shortcomings to improve quality and progress when participating in the construction of construction.

The main evaluation criteria include:

- (1) The contractor's ability to actually mobilize personnel, machinery and equipment;
- (2) Meet requirements on overall progress, detailed progress;
- (3) Meeting the requirements of quality, labor safety, environmental protection, fire prevention and fighting, traffic safety (if any);
- (4) Settlement of payment procedures and contract settlement;
- (5) Implementation of State Inspection and Audit Conclusions,
- (6) Implementation of the contractor's construction warranty responsibility.

These criteria can be measured with two levels of "pass", "fail" or calculated for points according to certain qualitative or quantitative scales.

 i. A number of projects have been and are being implemented at PMU7

PMU7 is the Road Sector Project Management Unit, which manages construction investment projects specialized in roads in the South Central and Southern regions, including 17 provinces and cities. In recent years, it has managed and operated many important projects, the lifeblood of the country.

Remarkable projects that implemented and being constructed by PMU7:

- (a) National Highway 1 expansion project, section Km1392-Km1405 and Km1425-Km1445 in Khanh Hoa province.
- Total length of the project: 30.2 Km.
- Scale: The suburban section follows the plain grade III road standard, the design speed Vtk = 80km / h (TCVN 4054: 2005); section passing the urban area

according to the standard of secondary main urban street, design speed Vtk = 60km/h

- Total investment: 2,257,048 billion VND.
- Project implementation time: Started in 2013, completed in 2016.
- (b) National Highway 1 expansion project, section Km1445 Km1488, Khanh Hoa province.
- Total length of the project: 36.7 Km.
- Scale: The suburban section follows the plain grade III road standard, the design speed Vtk = 80 km / h (TCVN 4054: 2005); section passing the urban area according to the standard of secondary main urban street, design speed Vtk = 60 km/h
- Total investment: 2,335,746 billion VND.
- Project implementation time: Started in 2013, completed in 2016.
- (c) Component 1 project: Co Chien bridge construction investment project in the form of a BOT contract, under the Co Chien bridge construction investment project, Highway 60, Tra Vinh Ben Tre province.
- Total project length: 14,161 Km.
- Scale: Permanent design bridge with reinforced concrete and reinforced concrete; Design load: live load HL-93; pedestrians: 3x10-3 Mpa; Road section: plain grade III road standard, design speed $V_{\rm tk}=80$ km/h.
- Total investment: 824,775 billion VND.
- Project execution time: 36 months, starting at the end of 2010 and ending in 2014. Actual starting time: March 7, 2011.
- (d) Project component 2, under the Project of investment and construction of Co Chien Bridge, Highway 60, Tra Vinh Province Ben Tre.
- Total length of the project: 1,619.1 m.
- Scale:
- + Main bridge continuous span in balanced cantilever type, simple span guide bridge in Super T beam type; Cross section of 4 lanes, bridge width Bc = 16.0m; Design speed Vtk = 80km / h.

- + Bridge-first road (10m behind abutment): 4-lane delta grade III, roadbed width Bn = 20,5m; Design speed Vtk = 80km / h.
- Total investment: 2,308,735 billion VND.
- Project implementation time: Started in 2013, completed in 2016.
- ii. Current situation of management of the construction contract negotiation and finalization process

PMU7 is assigned by the Ministry of Transport to perform the powers and responsibilities of the Procuring Entity in accordance with Article 75 of the Law on Bidding No. 43/2013 / QH13 and other relevant regulations. including the task of negotiating and completing contracts.

The contract negotiation and finalization is carried out by PMU7 on the basis of regulations and guidance of the Law on Bidding, Construction, Environmental Protection, Labor Security, Traffic,, the regulations of the Ministry of Transport, Bidding Documents, Bidding Documents and other relevant regulations.

For PMU7, the negotiation and finalization of the contract often focuses on the main contents:

- (a) Negotiating the tasks, the scope of work the contractor must perform, the handling of work volumes and items arising outside the contractual scope (if any);
- (b) Negotiating the work plan, contract schedule, in which proposing the contractor to study, proposing to shorten the contract progress (Due to the long time for contractor selection, affecting the overall progress of the Project).
- (c) Negotiation on mobilization of human resources and construction equipment. In case of necessity to ensure project progress and quality, the contractor commits to mobilize additional construction personnel and machinery at the request of PMU7.
- (d) Negotiation on quality management, acceptance, and hand-over of works and work items; Warranty, construction insurance; Ensure performance of contracts; Construction warranty guarantee:

Negotiating, updating and supplementing regulations issued in the process of selecting contractors, but the bidding documents have not mentioned; Negotiating the form, value and validity period of the contract performance guarantee; Agreement to replace the construction warranty money with a letter of guarantee from an equivalent value bank.

- (e) Negotiation on advance payment, contract payment: Advance value, number of advance installments, conditions of advance, method of advance recovery; Payment method, Value of retained money for warranty and finalization.
- (f) Negotiating contract price adjustment, price adjustment coefficients, price index source; Plan for handling arising volumes and items (if any).
- (g) Negotiation on settlement and liquidation of contracts: Settlement time, contract liquidation, responsibilities and handling measures if the contractor does not coordinate in the settlement and liquidation of the contract; The coordination in inspection, auditing, verifying and approving the settlement of the competent agency; Retained funds awaiting settlement.

The completion of a contract is done after the result of contractor selection is available, the existing issues are updated, and the opinions of the contractor selection result appraisal agency before signing the contract.

iii. Current situation of contract progress management

PMU7 as the representative of the Investor, managing and operating projects for other investors in the form of trust, the Board is responsible for implementing the following contents:

- (a) Review and approve the contractor's detailed construction schedule; Monitoring and supervision of construction progress:
- Inspection before construction: Check the contractor's progress management system from the leadership level to the professional departments, divisions, and divisions, in accordance with the

requirements, nature and scale of the project, package Building contractor; The overall construction schedule table is consistent with the contract construction progress, detailed construction progress of work items in accordance with the overall construction progress. Contractor's construction progress control plan, which specifies updating the actual construction progress of the site and solutions to timely adjust to ensure the recovery of slow construction work;

- Inspection during construction: Plan and method of controlling mobilization progress, supplying personnel, machinery, equipment and materials in accordance with detailed construction progress of items and works; Plan to organize testing, quality verification, measurement and observation of technical parameters of each part, work item and works according to design requirements; Check the detailed construction progress of each part, item, and work to direct the adjustment and overcoming of the slow construction volume, if any.
- (b) In case the progress of contract performance is considered to be prolonged, the PMU7 must consider and report to the Ministry of Transport for appropriate adjustment.

iv. Actual situation of volume management and contract price

The work construction must be carried out strictly according to the approved design volume. Contents and work volume of a construction contract are the contents and work volumes that the PMU7 signs with the contractor and must be clearly agreed upon in the contract by the parties.

Construction volume is calculated and confirmed between PMU7, construction contractors, supervision consultants according to actual time or stage of construction and is compared with design volume approved as a basis for acceptance and payment under the contract.

When there is a volume arising outside the approved design and estimate of works construction, the PMU7,

the supervision consultant and the construction contractor must consider to handle.

The construction contract price is paid by the PMU7 to the contractor according to the requirements on volume, quality, progress, payment conditions, contract advance and other requirements as agreed in the contract.

According to the assignment and authorization of the Ministry of Transport, the PMU7 shall perform the tasks and competence of the project investor according to the current regulations on construction investment cost management, determine bidding package price, contract price, value of work volume generated or added during the construction process. Based on the provisions of the contract and relevant law provisions, the PMU7 is responsible for organizing the appraisal and approval of the adjusted work volume value, arising and supplementing to ensure the total value of modified, generated or supplemented items must not exceed the contingency cost for the generated volume of the bidding package, or add the work items not included in the contract; Consider and approve the cost of contract price adjustment due to price slippage under the provisions of the contract according to the method approved by a competent authority to ensure that the total value does not exceed the contingency costs due to price slippage of the bidding package.

v. Quality management situation

The construction quality of a construction contract must comply with and satisfy quality requirements as prescribed by law. The construction quality of the construction contract must comply with the approved design documents, is ensured to comply with the process from the beginning to the completion of product handover under the contract. agreement party.

PMU7 implements the duties and authority of the Investor (the employer) in accordance with the current regulations on construction management and construction quality control, which include:

- (a) Organize the supervision and management of construction quality in accordance with the form of project management, construction contract; implementation of works; request construction contractors to comply with the signed contract.
- (b) Inspect and urge the construction contractor and other contractors to carry out work on the site according to the construction progress requirements.
- (c) Informing about the duties and powers of individuals in the quality management system of the PMU7 and the construction supervision consultant to relevant contractors for coordinated implementation.
- (d) Checking the suitability of the construction contractor's capacity against the bid and construction contract, including: Human resources, construction equipment, construction laboratories.
- (e) Ask the contractor to implement and approve the contents:
- Quality management system, targets and policies to ensure the quality of contractors.
- Plan to organize testing, quality verification, monitoring and measurement of the technical parameters of the works according to design requirements and technical instructions.
- Measures for checking and controlling quality of materials, products, structures and equipment used for the project.
- Designing construction measures, safety measures and environmental protection measures; adjust construction methods in accordance with the actual conditions, do not reduce the quality, longevity of the works and increase the cost of the implementation of copper.
- Plan for inspection and acceptance of construction jobs, pre-acceptance test of construction stages or construction parts (items), acceptance of the completion of work items and construction works.
- To suspend the construction of construction contractors when the construction quality is not guaranteed to meet the technical requirements, construction measures are not safe; assume the prime

responsibility for, and coordinate with concerned parties in, solving problems arising in the process of work construction and coordinating in handling and overcoming incidents according to regulations.

- Monitoring, inspecting, and supervising the preacceptance test of construction jobs to change construction steps; acceptance of construction stages, construction parts, acceptance of completed construction items, construction works according to regulations.
- Perform the role of investor's responsibility in preparing and archiving the completion of the project; manage records, construction documents and submit them to the Historical Archive; Perform the role and responsibility of the investor in the work warranty work in accordance with the current regulations and the regulations of the Ministry of Transport.

vi. Current situation of labor safety, environmental protection and fire prevention

PMU7 is the Project Management Unit of the road sector, which manages construction investment projects specialized in roads in a large area, including 17 provinces in the South Central region and the South. Ministry, with many large-scale projects with complex technical nature, many arterial highways have to be constructed and ensure smooth traffic safety. Therefore, the work of ensuring labor safety, environmental sanitation, fire prevention and traffic safety is always on top priority.

vii. Current situation of settlement management

PMU7 is a particular public non-business unit, applying the mechanism of financial autonomy, self-guarantee of recurrent expenditure; perform tasks and authority of project investors according to current regulations on payment and settlement of completed projects, including the following main tasks:

- Review, complete, and gather all legal documents and procedures from project preparation, project preparation and completion of investment..

- Organize the pre-acceptance test and make payment according to regulations;
- Make A-B settlement for signed contracts in a timely manner, serving as a basis for project settlement.
- Urge and synthesize the settlement data of the local ground clearance work for general settlement into the project.
- Review the settlement file, direct the making of the settlement report of the completed project; to organize an independent audit, submit to the competent authorities for verification and approval of the settlement according to regulations.
- Provide sufficient inspection and examination data before and after the settlement of the completed project as a basis for implementation, and handle the conclusions of the State Inspector and Auditor according to regulations.

Currently, the contractor is paid in 3 phases: Contract advance, contract payment and construction contract finalization.

III. ASSESSING THE STATUS OF CONSTRUCTION CONTRACT MANAGEMENT AT THE PMU7

PMU7 is a unit under the Ministry of Transport, formed right after the day of complete liberation of the South and reunification of the country. Through the process of implementing the tasks, the leadership and professional staff of the PMU7 have grown up and responded better and better to the tasks assigned by the Ministry of Transport. The Management Board of Project 7 is increasingly trusted by the Ministry of Transport and continues to expand its operating area to the Southeast (from 1998) and the South Central Coast (since 2012).

A. Result

PMU7 has been assigned by the Ministry of Transport to manage investments in many strategic key projects of the South Central and Southern regions. All of the above projects have been completed in excess of schedule, with construction quality consistent with technical standards, high investment efficiency, basic investment management in accordance with current regulations ... Achievements stated The Board has been recognized by the Ministry of Transport and evaluated and ranked the PMU7 to have completed class A tasks for 5 consecutive years 2015, 2016, 2017, 2018, 2019.

B. About site clearance

- As a rule, the site clearance work is separated into independent sub-projects and assigned to the locality as an investor. However, during the implementation process, PMU7 still actively coordinates, is responsible for providing all relevant documents, planning capital and transferring to the locality in a full time.
- Regularly monitoring, inspecting, closely coordinating and jointly participating in site clearance with the locality, promptly removing problems and difficulties, receiving the site and handing it over to investors and construction units; grasp the implementation of site clearance to promptly propose to localities and the Ministry of Transport to remove difficulties and obstacles.6.3. In terms of quality and progress:
- The PMU7 implements many measures to improve the quality of construction works, as follows:
- + Continue to seriously implement the action program to enhance construction work quality control of the Ministry of Transport, maintain and promote the achievements in the quality of works achieved in recent years. PMU7 has organized thoroughly for all operational departments, the Executive Board and on all projects, at the same time held seminars to find out the cause of failure to propose preventive measures from the very beginning. For investment projects in the form of public private partnership contracts: Coordinate, urge investors and direct relevant units to strengthen quality and progress management.

+ General assessment of quality work over the years 2016, 2017, 2018, and 2019: All projects meet the required quality standards and there has been no major incident, there are some minor failures but have been engraved. repair, timely repair.

C. Regarding labor safety, environmental sanitation, traffic safety

All projects (including completed, in progress or in progress) are actively implemented and implemented in traffic safety, occupational safety, environmental sanitation, and fire prevention. According to regulations, no serious cases of occupational unsafety, environmental sanitation, traffic safety and fire and explosion occurred on the scope of the projects.

D. Inspection and auditing work

- The inspection and audit conclusions have basically complied with the State's regulations on construction investment, did not let major errors or negative signs occur, some minor errors have been fixed. time and serious right after having the inspection and examination conclusion.

E. Payment and settlement

- Seriously implementing Directive 27 / CT-TTg dated December 27, 2013 of the Prime Minister and Directive 14 / CT-BGTVT dated August 12, 2013 of the Ministry of Transport on strengthening the settlement the completed capital construction investment capital belongs to the State budget source under the management of the Ministry of Transport.
- By the end of 2019, PMU7 has completed 100% of the plan to submit the final settlement of the Ministry of Transport.

IV. SOLUTION FOR COMPLETING CONSTRUCTION CONTRACT MANAGEMENT AT PMU7

Mobilize to the utmost all resources, continue to perfect mechanisms and policies to attract investment capital from all economic sectors, including foreign investors to invest in highway development in the form of public-private partnerships such as BOT, BT, BTO ... because this is the driving force of the country's economic development at present and in the future.

On March 1, 2016, the Prime Minister issued Decision No. 326 / QD-TTg approving the planning on development of Vietnam's expressway network to 2020 and orientation to 2030.

The master plan is built on the basis of forecasting of transport demand, orientations for socio-economic development to 2030 of the country; economic development orientation of 4 key economic regions; development strategy of Transport to 2020 and orientation to 2030, plan to establish Vietnam's expressway network including 21 routes with a total length of 6,411 km, including North-South Expressway, Road system Expressways in the North, Central and Central Highlands, Southern regions, Ring road system in Hanoi and Ho Chi Minh City

This national expressway network plan is used as a basis to determine investment capital, land fund and

This national expressway network plan is used as a basis to determine investment capital, land fund and the implementation progress of expressway projects from now to 2020, 2030 and the following years

The total land fund for the construction of expressways as planned is about 42,043 ha, of which the occupied area of the roads has been and is being built about 8,688 ha, the additional area is about 33,355 ha. (of which agricultural land area is estimated at 16,402 ha).

In order to implement the Plan, it is necessary to develop synchronous policies to implement the Plan (Policy to create an equal competitive environment for investors, Policy on environmental protection in expressway development, Human resource development policy: Expand forms of training at home and abroad in expressway construction, management and operation).

Some mechanisms for implementing the Plan:

- Mobilize to the utmost all resources, continue to perfect mechanisms and policies to attract investment

capital from all economic sectors, including foreign investors to invest in developing highways in the form of public private partners.

- Amend and supplement regulations on financial support policies, taxes, prices, fees, charges, and franchises to increase the commercialism of projects and responsibility for contributions of users, to ensure satisfactory benefits. worth investors.
- Promote the mobilization of donors to continue providing ODA for expressway development, especially works with pervasive power, creating great breakthroughs. It is necessary to carefully calculate and take appropriate steps to bring into full play the public-private partnership model, between foreign-invested enterprises and ODA finance of countries and international organizations.
- Encourage the application of new technologies and new materials in the construction of expressways. Applying advanced technologies for organization of management construction exploitation: Traffic safety equipment; information technology in operation, management and exploitation.
- The management and implementation of the construction contract is very wide and involves many legal regulations, many related entities (departments, localities, consulting, supervision, design, ...). PMU7 with a wide management area in the South Central and Southern provinces is in need of all levels and sectors from central to local to pay attention to support and coordinate closely to the implementation of contract management to ensure quality, progress, efficiency in construction costs, labor safety, environmental protection.
- For the state management: Some provisions of the Law, Decree, and Circular are overlapping and not close to reality, and need a reasonable adjustment such as construction warranty, regulations. on the application, application of norms, unit prices, regulations on handling contract breaches, regulations on contractual disputes with third parties (credit institutions, banks), ... should have detailed

instructions promptly. There should be specific and transparent regulations on responsibilities for each individual organization when participating in the project.

- Strictly manage jobs that easily affect the performance of construction contracts (progress, cost, quality, labor safety, and environmental sanitation) such as: investigation, public clearance, input materials, construction site management.

V. CONCLUSIONS AND RECOMMENDATIONS

Contracts are the method by which the owner creates a project organization to employ resources to achieve their development objectives. Contracts should aim to produce a cooperative organization, aligning the contractors' objectives with the owners.

In contract management, there should be specific and transparent regulations on responsibilities for each individual organization when participating in the project.

The management and implementation of the construction contract is very wide and involves many legal regulations, many related entities (departments, localities, consulting, supervision, design, ...). As a result, it is in need of all levels and sectors from central to local to pay attention to support and coordinate closely to the implementation of contract management to ensure quality, progress, efficiency in construction costs, labor safety, environmental protection.

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