

Construction Contract Management: Policy Mechanisms and Influencing Factors

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Abstract: A construction contract is a civil contract agreed in writing between the principal and the contractor to perform part or all of the work in construction investment activities. Construction contracts include many different types, corresponding to stages and tasks in the construction process of a project. However, no matter what type of contract it is, it must comply with some basic legal issues that are the foundation of construction contracts. During the contract implementation process, the role of management is extremely important. The purpose of this study is to analyze several policy mechanisms in construction contract management and identify factors affecting construction contract management, and some inadequacies in construction contract management, from there, propose some solutions to improve construction contract management according to Vietnam's law.

Keywords: Construction contracts, management activities, policy mechanisms, impact factors.

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INTRODUCTION

A construction contract is a mandatory document signed between the investor and the construction contractor. A construction contract is an important and indispensable document when starting cooperation between the investor and the contractor, carrying important implications in terms of both benefits and legality, directly affecting the rights of both parties. Therefore, we need to be careful and learn carefully when signing construction contracts.

When deciding to start signing documents, both parties must determine the content of the contract. This means that both parties must know the scope of work, their rights, and powers to be able to properly perform the contract, avoiding unnecessary violations and controversies after signing the contract.

According to many construction contractors, construction activities are subject to many risks due to objective and subjective factors. In particular, the policy mechanism related to construction contracts has many regulations that are not close to reality, leading to risks for contractors.

Effective management of construction contracts is one of the important factors contributing to the success of the project. Therefore, this study focuses on clarifying policies and factors affecting contract management effectiveness.

LITERATURE REVIEW

Contract Concept

When agreeing to carry out any transaction, the parties often choose to create a contract to record those agreements. The contract can be expressed in writing or orally with witnesses. If the contract is violated or not as committed, the two parties will go

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to court together and the losing party will bear all costs.

According to Article 385 of the Civil Code (2015), a contract is an agreement between the parties on the establishment, change, or termination of civil rights and obligations. In reality, contracts are often found in property purchase and sale relationships, labor relationships, etc. This is considered evidence of the parties' agreements regarding the contents of the contract.

From the above analysis, a contract is understood as a commitment between two or more parties (legal entities) to do or not do something within the framework of the law. Contracts are often associated with projects, in which one party agrees with other parties to carry out the project or part of the project for themselves. And just like projects, there are socio-political projects and production and business projects. Contracts can be civil economic agreements (economic contracts) or social agreements.

Construction Contract

According to the provisions of the Construction Law (2014): A construction contract is defined as a civil contract agreed in writing between the principal and the contractor to perform part or all of the work in the activity construction investment.

Because it is also a type of civil contract, a Construction Contract, in addition to having to comply with the provisions of the Construction Law, the Investment Law, and other relevant specialized laws, must also ensure the requirements under the Civil Code (2015).

The parties signing the contract must follow the principles of volunteer, equality, and cooperation, not contrary to law and social ethics; ensure there is enough capital to make payments according to contract agreements; complete contractor selection and conclude the contract negotiation process; in case the contractor is a joint venture contractor, there must be a joint venture agreement. Joint venture members must sign and stamp (if any) the construction contract unless the parties have otherwise agreed.

The contract parties must comply with the commitments in the contract regarding the scope of work, quality requirements, quantity, type, deadline, method, and other agreements; honest, cooperative, and lawful; Do not infringe on the interests of the State, the community and the legitimate interests of other organizations and individuals.

Construction Contract Management

Construction contract management is an essential aspect of construction project management to ensure the project is constructed and implemented with the highest efficiency as well as meeting related quality and technical requirements. to meet the conditions for exploitation and use.

Construction contract management is also meaningful to minimize risks and conflicts during contract implementation, ensuring that the contents signed and agreed upon in the contract are fully and accurately implemented.

Contract management in construction refers to issues of managing partnership relationships between main contractors - subcontractors - suppliers - construction supervision units - investors, etc. The purpose of construction contract management is to ensure optimal financial performance, and transparency and minimize risks related to costs when implementing the project.

There are many potential risks in the construction field, so creating and managing construction contracts with all the terms and conditions that comply with current law will help protect the interests of participating parties in the long term.

In general, construction contracts will help construction investors or general contractors ensure the project goes smoothly, on time, with quality, and within budget. So the common types of contracts in the construction industry.

From the above analysis, construction contract management is understood as the process of confirming the responsibilities and roles of the parties involved in a project to ensure the effective implementation of the construction investment project without violation. comply with the provisions of the law.

RESEARCH METHODS

Theoretical research method: This research focuses on studying theories of contracts, construction contracts, and construction contract management. Based on analysis and evaluation, this study draws separate points and clarifies issues related to policy mechanisms and factors affecting construction contracts.

Document research method: This study focuses on analyzing and understanding several legal documents on construction contracts and construction contract management. Specifically, the following legal documents: Construction Law 2014; Decree 37/2015/ND-CP detailing construction

contracts; Circular 07/2016/TT-BXD guiding the adjustment of construction contract prices; Circular No. 08/2016/TT-BXD guides several contents on construction consulting contracts; Circular 09/2016/TT-BXD guiding construction contracts; Circular No. 30/2016/TT-BXD guiding contracts for design - supply of technological equipment and construction of works.

In particular, Decree 37/2015/ND-CP, Circular 07/2016/TT-BXD, Circular No. 08/2016/TT-BXD, Circular 09/2016/TT-BXD and Circular No. 30/2016 /TT-BXD is only mandatory for construction investment projects of state agencies, political organizations, socio-political organizations, socio-political-professional organizations, and social organizations – occupations, social organizations, units of the people's armed forces, public service units; construction investment projects of state-owned enterprises; Projects that use state capital or state-owned enterprise capital of 30% or more or less than 30% but over 500 billion VND in the total investment of the project. Other construction investment projects are not required but are encouraged to apply these documents.

Government decrees: Government. (2017). Decree 53/2017/ND-CP regulating legal land documents for granting construction permits; Decree 100/2018/ND-CP amending, supplementing, and abolishing regulations on business investment conditions in the field of state management of the Ministry of Construction; Decree 72/2019/ND-CP amending Decree 37/2010/ND-CP on formulation, evaluation, approval, and management of urban planning and Decree 44/2015/ND-CP guiding on planning build; Decree 06/2021/ND-CP guides quality management, construction and maintenance of construction works; Decree 10/2021/ND-CP on construction investment cost management, etc.

RESEARCH RESULTS AND DISCUSSION

The State Policy Mechanism on Construction Contracts

The construction, promulgation, amendment, and supplementation of mechanisms in investment and construction management in recent years have often fluctuated, and there have been many periods when the mechanisms have been inconsistent and inconsistent. The parallel implementation of many legal documents has caused many difficulties in investment and construction management in general and contract management in particular.

Specific examples are a Consulting contract for establishing an investment and construction project to expand Ho Chi Minh City National University (group A project) in Thu Duc City commune (Ho Chi Minh City) and Di An town (Binh

Duong province) invested by the Project Management Board of the Ministry of Finance. This contract was signed between the Project Management Board of the Ministry of Finance and the Joint Venture of Phuc Khang Architecture and Consulting Joint Stock Company in 2012. The contract was in the process of being implemented when the state issued the Law on Public Investment dated June 18, 2014, this Law takes effect from January 1, 2015. According to Point c, Clause 1, Article 106 of the Transitional Provisions of the Law on Public Investment No. 49/2014/QH13, projects that are not included in the investment plan approved by competent authorities must be prepared, appraised, deciding investment policies, causing complexity for contract management. To date, the contract products have not yet been approved.

The reality of many countries around the world is similar, whether they have more or less experience in construction management. State policy mechanisms often have a major impact on the construction investment sector. If the policy is reasonable and the State's normative documents are issued fully, synchronously, and promptly, it will continuously promote the development of the construction industry and vice versa when the policy is inconsistent or inconsistent. If it is slow and not yet specific, it will have an immediate negative impact. The reason is that the agencies and departments that are directly managing and implementing construction investment will have the mentality of slowing down the implementation process, even stopping to listen to other agencies' implementation, or passively waiting. Only when there is direct instruction from superiors will it be implemented.

For example, if the State's documents clearly and completely stipulate the contract content for each type of contract in construction activities, it can regulate the behavior and consciousness of the subjects participating in the contract and force them to seriously comply with the provisions of the law. On the contrary, if there is a lack of clear regulations and weak regulations, implementation can be difficult or can be abused. If the rights and obligations of the subjects participating in a construction contract are not clearly defined, it can lead to arbitrary implementation, lack of transparency, and lack of seriousness in the process of implementing those commitments which can easily happen. dispute. If the responsibilities of the parties in the construction contract are not fully specified, when one of the parties violates the commitment, it will lead to shifting responsibilities to each other, which is very difficult to resolve. If there are no specific provisions for handling disputes in construction contracts, it will make resolving disputes when they arise difficult.

Regulations on Construction Contract Management

Article 7, Decree 37/2016/ND-CP dated April 22, 2015, of the Government regulates the management of construction contract implementation as follows: (i) Regulations on the responsibilities of the parties in the contract build. (ii) Within the scope of their rights and obligations, the parties need to make plans and measures to organize implementation following the content of the signed construction contract to achieve contractual agreements.

The principal and contractor must appoint and notify the other party of a representative to manage the performance of the construction contract. The representatives of the parties must have full authority to make decisions and be responsible for their decisions within the scope of authority specified in the contract. In which: (i) The contractor is the investor or representative of the investor or general contractor or main contractor. (based on Clause 2, Article 2, Decree 37/2016/ND-CP). (ii) The contractor is the general contractor or main contractor when the contractor is the investor; is a subcontractor when the principal is the general contractor or main contractor. The contractor can be a consortium of contractors (based on Clause 3, Article 2, Decree 37/2016/ND-CP).

Regulations on Handling Petitions, Proposals, Requests, and Feedback from the Parties

Regulations on forms of presentation of recommendations, suggestions, and requests: All recommendations, suggestions, requests, and feedback from the parties during the management process of implementing construction contracts must be implemented. written.

Recommendations, suggestions, and requests of the parties during the process of managing contract implementation must be sent to the correct transaction address or information exchange address agreed upon by the parties in the construction contract.

Regulations on the content of written petitions, proposals, and requests: The content of written petitions, proposals, and requests must show the grounds, basis, and effectiveness (if any) of the petitions and proposals, requirements, and response time according to the agreement in the contract.

Regulations on time to respond to petitions, proposals, and requests: When receiving a petition, proposal, or request from one party, the other party must respond in writing regarding approval or disapproval within the prescribed time limit. determined by the parties in the construction contract, but no more than seven working days from

the date of receipt of recommendations, proposals, and requests, unless otherwise agreed by the parties.

After this period, if the party receiving the petition, proposal, or request does not resolve it without giving a legitimate reason, causing damage to the other party, it must be fully responsible and compensate the other party for the damage (if any).

Engineering, Procurement, and Construction (EPC) Contract Management Regulations

EPC contract or design contract - procurement of materials, equipment - construction of works is a contract to perform tasks from design, procurement of materials and equipment to construction of works. , construction items and test run, acceptance, and handover to the contractor (According to Point g, Clause 1, Article 3, Decree 37/2015/ND-CP).

Clause 4, Article 1, Decree 50/2021/ND-CP dated April 1, 2021, of the Government stipulates: (i) Before proceeding with the procurement of materials and equipment for an EPC contract, the contractor must Establish requirements on technical specifications, technology, and origin to submit to the contractor for approval before proceeding with procurement if the parties have agreed in the contract. The principal's approval does not reduce the contractor's responsibility for the procurement of materials and equipment for the EPC contract. (ii) In case the parties do not agree to the EPC contract, the contractor is responsible for complying with the approved design documents and accompanying technical specifications, technology, and origin of materials and equipment. technology equipment in EPC contracts. (iii) The contractor can directly purchase or hire a subcontractor to purchase materials and equipment for the EPC contract.

Section 2, Article 5, Circular 30/2016/TT-BXD of the Ministry of Construction provides detailed regulations on the management of EPC contract implementation as follows: (i) Managing the scope of work implementation according to objectives of the bidding package and according to the list of tasks in the signed contract; Check the accuracy, completeness, and suitability of survey, design and technical documents applied to the EPC contract work. (ii) Manage the progress of work implementation following the overall progress of the project and the signed EPC contract. (iii) Check and manage the quality and quantity of work to be performed under the EPC contract. (iv) Manage costs of performing work under EPC contracts; Control, payment, and adjustment of EPC contract prices. (v) Safety management, fire prevention, and environmental sanitation. (vi) Manage adjustments

to the EPC contract and other necessary contents of the EPC contract.

Evaluate the Policy Mechanism for Construction Contract Management

Advantage:

For Investors: (i) Can make the most of their technical expertise, experience, and management capacity. (ii) Minimize costs and human resources. (iii) Advantages in project construction progress, avoiding many risks during the design and construction process.

For Contractors: (i) Create conditions for contractors to be more proactive in their work, not dependent on the investor's inspection and supervision. (ii) Minimize construction interruption time, ensuring contract progress.

Defect:

Firstly, to apply for an EPC contract, certain conditions must be met to receive maximum benefits.

Second, misapplication of projects can cause the project to not be completed as expected, which causes investors to incur unnecessarily high fees, causing waste of the budget.

Third, there are many possibilities of inadequacies, specifically: (i) Technical technology causing errors: The contractor's lack of expertise to supervise and inspect can cause errors to arise in the process. project construction and operation process. From there, it causes damage from many sides, not just from the contractor. (ii) The installed equipment and technology purchased by the contractor do not meet the conditions according to regulations in the host country (the contractor provides equipment with wrong specifications, and origin and is not suitable with standards in Vietnam, etc.)

Fourth, if the investor's inspection and examination process is not regular, contractor supervision is not high.

Fifth, contractors who are not professional and responsible will cause the project to have many errors. In some cases, after project acceptance, errors in construction or project equipment are discovered.

Factors Affecting Construction Contract Management

Firstly, the Investor's professional capacity and equipment:

Professional Capacity: The investor is the person who owns the capital or is assigned by the state to own the capital to manage the construction investment project, and is one of the two subjects directly participating in the contractual relationship. The investor is the person who must take full

responsibility for the management, inspection, supervision, and handling of contract violations in their construction activities. Many investors with poor capacity do not have expertise and knowledge about construction investment and do not firmly grasp the regulations on construction contract management, so their awareness of law compliance and proper management is not high. Loose contracts and lack of experience lead to delayed implementation of projects and price adjustments, causing loss and waste of investment capital and affecting project quality.

For example, a contract in the transportation industry was mentioned in the press recently. The contract was signed between Vietnam's investor and the Japanese contractor. The contract is implemented in the form of an adjusted unit price contract, paid in two currencies: Vietnamese Dong and Japanese Yen. The contract price is adjusted according to the price adjustment formula specified in the contract. When the contract was paid, the investor was shocked to discover that the contractor had a completely different understanding from the investor about adjusting the contract price.

Vietnam's investor believes that the contract price adjustment only applies to the part of the work paid in Vietnamese currency. Meanwhile, the Japanese contractor affirmed that the contract price adjustment applies to all work paid in Japan's Yen. The lack of clarity about the contract price adjustment clause causes each party to interpret the contract in a way that is beneficial to itself. Up to this point, the dispute between the investor and the foreign contractor has not yet been resolved. The investor's capacity is also a factor that greatly affects contract management.

The professional capacity of the investor is the ability, professional qualifications, and ethics of the members participating in contract management in the investor's construction activities (collectively referred to as managers). Managers with good management qualifications, good professional qualifications, and good ethics will manage better than managers with poor professional qualifications, weak management qualifications, and bad ethics. The awareness of complying with the law in contract management demonstrates the ethics of the manager. Managers who comply well with State laws will have a positive impact on the quality, time, and cost of construction contracts. On the contrary, if there is an accidental or intentional violation of the law by managers, it will negatively affect the quality and commitments that the parties have agreed to in the contract and may incur additional costs.

The investor's equipment plays an important part in the success of the project. If the investor is fully equipped with the necessary facilities and equipment to serve the work, it will bring high efficiency in the management of the investor. For example, investors are equipped with good measuring machines with high accuracy, which will limit unnecessary errors, etc.

Second, the professional capacity of construction contractors:

The capacity of the construction contractor is a prerequisite and the number one important factor for the success of a construction contract. The contractor's good professional capacity is demonstrated through many factors such as high professionalism, ability, experience, qualifications, and ethical qualities of staff, equipment and machinery, financial capacity, and the number of employees quality and skill of the workers, etc.

Contractors with good professional capacity and high reputation will easily meet and fully implement the commitments in the contract. On the contrary, the contractor has weak capacity and has a team of poorly skilled workers (for example, using seasonal workers) who are not trained at reputable state training facilities or are not trained. Regular training and retraining to improve skills, and unprofessional working style will affect the investor's contract management. A typical example is the contractor of Department 6 Railway Group Limited Company (China) which is the EPC general contractor for the Cat Linh Ha Dong railway line, which has too many weaknesses leading to the project being behind schedule, unsafe, and causing damage. The project's capital is overpriced, as the press has spent a lot of ink reflecting in recent times.

Third, the professional capacity of construction consulting contractors:

The professional capacity of a construction consulting contractor is demonstrated through many factors such as the number of years of experience in the field of construction consulting for both the organization and individuals within the organization, professional capacity, and professional ethics. of the staff in the agency and especially the officers who are in charge of design and construction surveys, they have enough experience and certificates to ensure compliance with the provisions of the law. Is it current, etc., what is the equipment and machinery of the unit, etc?

Contractors with good professional capacity and high reputation will always put the contractor's reputation first, thereby attaching great importance to ensuring the good implementation of signed contracts and seriously implementing all obligations. commitment in the contract. On the contrary, a contractor with weak capacity may even have a sale and transfer relationship in contracts, and a lack of professional responsibility will greatly affect the quality of contract performance. For example, a poor construction survey contract leads to errors and inaccuracies that can cause great economic loss, a design with many errors can cause serious consequences, and the work of estimating Calculate the lack of volume, establish the total investment, lack of contingency costs, arising volume, etc. This can lead to many adjustments, affecting the contract management of the investor.

CONCLUSION

Construction is a complex field with many parties, subjects, and related work contents. A construction contract is a mandatory document signed between the investor and the construction contractor. A construction contract is an important and indispensable document when starting cooperation between the investor and the contractor, carrying important implications in terms of both benefits and legality, directly affecting the rights of all parties. The parties must establish a solid mechanism to minimize potential risks in the project. From there, perfecting the construction contract management mechanism is an important issue in creating a construction cooperation relationship that is safe, friendly, and durable between the parties.

Contract management and implementation is an important step. If the other stages are perfect but the contract management is not good, it will not be meaningful because the investment project is not effective. Poor contract management will affect contract implementation progress and contract quality. Understanding, analyzing, and evaluating the content of construction contract management and factors affecting the quality of contract management is essential to finding optimal solutions to improve the quality of construction work. Construction contract management contributes to improving the efficiency of construction investment projects. This study is also the basis and foundation for researching to find highly legal solutions in the field of construction investment project management in Vietnam in the face of the country's increasing international integration more extensive.

REFERENCES

- Congress. (2014). Construction Law (Law No. 50/2014/QH13). Hanoi.

- Congress. (2015). Civil Law (Law No. 91/2015/QH13). Hanoi.
- Congress. (2020). Amending and supplementing several articles of the Construction Law (Law No. 62/2020/QH14). Hanoi.
- Government. (2014). Decree No. 53/2014/ND-CP dated June 26, 2014, detailing the implementation of several articles of the Law on Bidding on contractor selection. Hanoi.
- Government. (2015). Decree 37/2015/ND-CP provides detailed regulations on construction contracts. Hanoi.
- Government. (2017). Decree 53/2017/ND-CP regulating legal land documents for granting construction permits
- Government. (2018). Decree 100/2018/ND-CP amending, supplementing, and abolishing regulations on business investment conditions in the field of state management of the Ministry of Construction. Hanoi.
- Government. (2018). Decree 72/2019/ND-CP amending Decree 37/2010/ND-CP on formulation, appraisal, approval, and management of urban planning and Decree 44/2015/ND-CP guiding on planning build. Hanoi.
- Government. (2021). Decree 06/2021/ND-CP guides quality management, construction, and maintenance of construction works. Hanoi.
- Government. (2021). Decree 10/2021/ND-CP on construction investment cost management. Hanoi.
- Ministry of Construction. (2016). Circular 07/2016/TT-BXD guiding the adjustment of construction contract prices. Hanoi.
- Ministry of Construction. (2016). Circular No. 08/2016/TT-BXD guides some contents of construction consulting contracts. Hanoi.
- Ministry of Construction. (2016). Circular 09/2016/TT-BXD guiding construction contracts. Hanoi.
- Ministry of Construction. (2016). Circular No. 30/2016/TT-BXD guiding contracts for design - supply of technological equipment and construction of works. Hanoi.