

**MINISTRY OF
CONSTRUCTION**

No. 04/2019/TT-BXD

**THE SOCIALIST REPUBLIC OF VIETNAM
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Hanoi, August 16, 2019

CIRCULAR

**AMENDMENTS TO CIRCULAR NO. 26/2016/TT-BXD DATED OCTOBER 26, 2016 OF
THE MINISTER OF CONSTRUCTION ON ELABORATION OF A NUMBER OF ASPECTS
OF CONSTRUCTION WORK QUALITY CONTROL AND MAINTENANCE**

Pursuant to the Law on Construction dated June 18, 2014;

Pursuant to the Government's Decree No. 46/2015/ND-CP dated May 12, 2015 on quality control and maintenance of construction works (hereinafter referred to as "the Decree No. 46/2015/ND-CP");

Pursuant to the Government's Decree No. 81/2017/ND-CP dated July 17, 2017 defining the functions, tasks, powers and organizational structure of the Ministry of Construction;

At the request of the Director of the State Authority for Construction Quality Inspection;

The Minister of Construction hereby promulgates a Circular on amendments to Circular No. 26/2016/TT-BXD dated October 26, 2016 of the Minister of Construction on elaboration of a number of aspects of construction work quality control and maintenance.

Article 1. Amendments to some Articles of the Circular No. 26/2016/TT-BXD dated October 26, 2016 of the Minister of Construction on elaboration of a number of aspects of construction work quality control and maintenance (hereinafter referred to as "the Circular No. 26/2016/TT-BXD")

1. Clause 4 of Article 6 is amended and Clauses 5 and 6 are added to Article 6 as follows:

a) Clause 4 is amended as follows:

“4. Every supervisor shall prepare a supervision report and send it to the investor, and take responsibility for its accuracy, truthfulness and objectivity. The report shall be prepared in the following cases:

a) It is prepared on a periodic basis or according to construction phases. The investor shall define the preparation of periodic reports or reports according to construction phases and reporting time. Main contents of such reports are provided in the Form No. 04 Appendix V hereof;

b) It is prepared upon the completion of a phase, contract package, work item or construction work. Main contents of such report are provided in the Form No. 05 Appendix V hereof.”

b) Clauses 5 and 6 are added to Article 6 as follows:

“5. Responsibilities and rights of a chief supervisor

a) Manage the construction supervision in accordance with Clause 1 Article 26 of the Decree No. 46/2015/ND-CP, contracts, scope of work assigned by the investor, quality management system and relevant regulations of law.

b) Assign tasks and responsibilities, and inspect and expedite the construction supervision by supervisors;

c) Supervise and sign records of commissioning of tasks relevant to the issued practicing certificate in case of direct supervision of construction. Check and compare information on as-built drawings prepared by the construction contractor with existing condition of the construction work, and then append signature;

d) Take part in carrying out commissioning and sign records of commissioning of construction phases (if any), contract packages, work items or construction works. Refuse to carry out commissioning, if quality of the work items and construction works fails to comply with design requirements, technical regulations and standards applied to works; provide explanation in writing;

dd) Be responsible to organizations in charge of construction supervision and the law for the tasks he/she has performed. Refuse to carry out supervision in writing when the construction fails to adhere to the construction planning or construction permit if the construction permit is required, construction designs or construction contracts between investor and contractors and regulations of law;

e) Cooperate with relevant parties in resolving difficulties that arise during the construction process;

g) Do not agree with comments and supervision results from supervisors when the construction fails to adhere to the construction permit if the construction permit is required, technical regulations, applicable standards, technical specifications, construction method statements and safety assurance measures that have been approved; construction contracts between investor and contractors and regulations of law;

h) Submit written proposal for construction suspension to the investor if any part of a work, work item or construction work is suspected of failing to ensure safety, thereby leading to partial or complete collapse of the work;

i) Request the investor to carry out monitoring, experiments or inspections of work items and construction works if necessary and resolve issues concerning changes to design during construction (if any).

6. Responsibilities and rights of a supervisor

a) Supervise the construction as assigned by the chief supervisor according to the issued practicing certificate. Be responsible to the chief supervisor and the law for the tasks he/she has performed;

b) Supervise the construction according to the construction permit if the construction permit is required, construction designs, technical regulations, applicable standards, technical specifications, construction method statements and safety assurance measures that have been approved;

c) Directly engage in and sign records of commissioning of construction; check and compare information on as-built drawings prepared by the construction contractor with existing condition of the construction work with respect to the construction tasks he/she directly supervise;

d) Refuse requests made against the construction contract between the investor and contractors in accordance with regulations of law;

dd) Promptly notify the chief supervisor of deviations and violations against the construction permit if the construction permit is required, construction designs, technical regulations, applicable standards, technical specifications, construction method statements and safety assurance measures that have been approved; construction contracts between investor and contractors and regulations of law. Request or refuse commissioning of construction tasks in writing;

e) Submit written proposal for construction suspension to the chief supervisor if it is found that any part of a work, work item or construction work is suspected of failing to ensure safety, thereby leading to partial or complete collapse of the work and promptly notify the investor;

g) Request the chief supervisor to carry out monitoring, experiments or inspections of work items and construction works if necessary and resolve issues concerning changes to design during construction (if any).”

2. Point b Clause 2 of Article 9 is amended and Clause 3 is added to Article 9 as follows:

a) Points b and c of Clause 2 are amended as follows:

“b) Legal representatives of the construction contractor and chief supervisor;

c) Legal representative and chief supervisor of the prime contractor or EPC contractor if the EPC contract is concluded; legal representative and chief supervisor of each consortium’s member in case of contractor consortium;”

b) Clause 3 is added follows:

“3. If multiple prime contractors engage in constructing a work item or construction work, the investor may carry out commissioning and make a record of commissioning of the work item or construction work with respect to each prime contractor.”

3. Clause 3 is amended, Point d is added to Clause 1 of Article 13, Clause 3a is added to Article 13 as follows:

a) Clause 3 is amended as follows:

“3. The investor shall carry out conditional commissioning of a work item or construction work to put it into operation if it has yet to be finished as prescribed in Clause 3 and Point b Clause 4 Article 31 of the Decree No. 46/2015/ND-CP.

The investor shall keep carrying out construction and commissioning of uncompleted tasks according to the approved design; the construction process shall ensure safety and avoid affecting normal operation of the completed work item or construction work.”.

b) Point d is added to Clause 1 as follows:

“d) The specialized construction agency shall carry out inspections in accordance with Points a, b and c Clause 3a of this Article.”

c) Clause 3a is added after Clause 3 as follows:

“3a. The specialized construction agency shall, according to Clause 2 Article 32 of the Decree No. 46/2015/ND-CP, inspect:

a) whether the construction is carried out according to the construction permit if the construction permit is required, construction designs, technical regulations, applicable standards, technical specifications, construction method statements and safety assurance measures that have been approved;

b) compliance with regulations on occupational safety management during construction;

c) compliance with regulations on control of quality of construction works of investors and contractors concerned during surveying, design and construction of works;

d) fulfillment of conditions for carrying out commissioning of work items and construction works.”

4. Clause 2 Article 14 of the Circular No. 26/2016/TT-BXD is amended as follows:

“2. The costs of inspection of construction work commissioning shall be specified in the “miscellaneous costs” and included in the total investment estimate.

The cost estimate specified in Clause 1 of this Article shall be made according to the characteristics of the work, its location and duration of construction; time for commissioning inspection, quantity of officials and experts (if any) participating in the commissioning inspection and compulsory workload. Regarding the state-fund work, the costs set out in Point c Clause 1 of this Article shall not exceed 20% of the costs of construction supervision consultancy. “The estimate of commissioning inspection costs shall be prepared, assessed and approved under Clause 5 Article 32 of the Decree No. 46/2015/ND-CP.

5. Articles 15a and 15b are added after Article 15 of the Circular No. 26/2016/TT-BXD as follows:

“Article 15a. Management of field experimentation during construction

1. Every investor shall inspect eligibility requirements, approve the laboratory or field experiment station proposed by the contractor to in accordance with regulations of law and sufficient tests are conducted to conduct construction experiments for the purpose of work quality control prior to construction.

2. Every contractor shall prepare an experimentation plan under Clause 3 of this Article and submit it to the investor for approval prior to construction.

3. An experimentation plan includes:

a) Experiments to be conducted; frequency and number of tests for each type of experiment according to the construction design, technical regulation, applicable standard, technical specifications and workload;

b) Elaborate the sampling, maintenance, experimentation, sample retention and processing of experiment results;

c) Define responsibilities of contractors and supervision department of the investor for experimentation.

3. During the construction process, the investor's supervision department shall carry out periodic inspections of activities conducted within the laboratory and field experiment station. To be specific:

a) Regarding the laboratory, profiles of technicians directly conducting experiments, process of conducting experiments and equipment correction shall be inspected as prescribed;

b) Regarding the field experiment station, the Circular No.06/2017/TT-BXD dated April 25, 2017 of the Minister of Construction shall be complied with.

4. Any contractor in charge of experimentation shall conduct experiments according to the experimentation plan approved by the investor. In case of any adjustment, the contractor shall

prepare an adjusted experimentation plan and submit it to the investor for approval prior to experimentation.

Article 15b. Monitoring of works and their parts during construction

1. The monitoring of a work during the construction process shall be carried out:

a) according to the construction design, technical specifications or construction method statement that has been approved;

b) when the work has unusual signs (e.g. collapse, sliding, settlement, leaning, cracking, etc.) in order to serve the assessment and determination of reasons, thereby taking remedial measures or preventing possible incidents during the construction process.

2. Every construction contractor shall carry out monitoring under Clause 1 of this Article and the construction contract. The investor may select a contractor independent of the construction contractor to carry out monitoring during the construction process.

3. Regarding the state-funded work, if the investor has selected a monitoring contractor independent of the construction contractor to carry out monitoring during the construction process, the construction contractor shall not do so and employ independent monitoring results by agreement with the investor.

4. A monitoring outline shall contain at least: contents, frequency and time of monitoring; human resources, machinery and equipment for monitoring; benchmarks used for monitoring; monitoring procedures; regulations on reporting contents and assessment of monitoring results.

5. Construction contractors and independent contractors in charge of work monitoring (hereinafter referred to as “monitoring contractor”) have the responsibility to:

a) prepare a monitoring outline and submit it to the investor for approval;

b) carry out monitoring according to the approved outline; prepare a report and assess monitoring results.

6. Every investor has the responsibility to:

a) approve monitoring outlines prepared by monitoring contractors to form a basis for carrying monitoring. The investor may request a supervision consultancy contractor or design contractor to check the monitoring outline or hire a consultancy to check it if necessary before granting approval;

b) carry out supervision and assessment of monitoring results given by contractor. Define cases in which the design contractor shall assess and comment on monitoring results during the construction process, and request the design contractor to do so;

c) Request the construction contractor to use monitoring results during the construction process according to the construction design, technical specifications or construction method statement that has been approved.

7. Every design contractor has the responsibility to:

a) consider and check monitoring outlines prepared by contractors as requested by the investor to ensure that they are relevant to monitoring contents specified in the design dossier, technical specifications and construction method statement;

8. During the monitoring and assessment of monitoring results, if the monitoring data shows that a work poses a risk of incident or factors that affect quality of the construction, the contractor in charge of carrying out monitoring and assessment of monitoring results shall immediately notify the investor in writing for prompt remedial measures.”

5. Point b Clause 2 of Article 18 is amended as follows:

“b) If the inspection is carried out as requested by the specialized construction agency and construction agency according to Point dd Clause 2 Article 29 and Point dd Clause 5 Article 40 of the Decree No. 46/2015/ND-CP (hereinafter referred to as “the requesting agency”), the investor in, owner, manager or user of the work shall select an inspection organization as prescribed in Point a Clause 2 of this Article and obtain written approval from the requesting agency.”

6. The Appendix V of the Circular No. 26/2016/TT-BXD is replaced with the Appendix I hereof.

Article 2. Effect

1. This Circular comes into force from October 01, 2019.

2. Difficulties that arise during the implementation of this Circular should be reported to the Ministry of Construction for consideration./.

**PP. THE MINISTER
THE DEPUTY MINISTER**

Le Quang Hung

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