

MINUTES OF CONTRACT NEGOTIATION

BETWEEN

VIETNAM EXPRESSWAY CORPORATION (VEC)

AND

THE JOINT VENTURE

**NIPPON KOEI CO., LTD - NIPPON ENGINEERING CONSULTANTS CO.,LTD -
CHODAI CO.,LTD - THAI ENGINEERING CONSULTANTS CO.,LTD**

SUBJECT: IDA Credit No. 3843-VN: Road Network Improvement Project
Detailed Design Consulting Services for the whole route of Da Nang -
Quang Ngai Expressway Development Project.

A. PARTICIPANTS:

1) Vietnam Expressway Corporation (the Employer):

- Dr. Mai Tuan Anh - General Director – Chief Negotiator
- Mr Nguyen Tat Son- Deputy General Director
- Mrs. Phan Thi Thanh Khuya -- Inspector
- Mr. Luong Quoc Viet - Chief accountant
- Mr. Phung Minh Mo - Manager of Investment Planning Dept.
- Ms Pham Thi Hong Huong - Manager of Appraisal Dept.
- Mr Pham Hong Quang - Manager of Technical, Technological, Environmental Dept.
- Mr Nguyen Hai Long -- Deputy Manager of Project Dept.
- Mr Phan Xuan Bang -- Deputy Manager of Procurement Team

2) The Joint Venture of Nippon Koei Co., Ltd - Nippon Engineering Consultants Co.,Ltd - Chodai Co.,Ltd - Thai Engineering Consultants Co.,Ltd (the Joint Venture)

- Mr. Ichizuru Ishimoto - Chief Negotiator
- Mr. Masanobu Sakamoto - Nippon Koei Co.,Ltd.
- Mr. Toshiyuki Fukuda - Nippon Koei Co.,Ltd.
- Mr. Takayasu Nagai - Nippon Koei Co.,Ltd.
- Mr. Tetsuya Maeda - Nippon Koei Co.,Ltd.

3) Project Management Unit 85 (PMU 85)

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- Mr. Nguyen Trung Sy -- Deputy General Director

- Mr. Nguyen Tien Ha -- Project Manager

Before negotiations, the Joint Venture submitted their Power of Attorney for authorized representatives to participate in the Contract Negotiation and to sign the Contract (Power of Attorney P/A-012-2011 dated May 13, 2011).

B. CONTENTS OF NEGOTIATIONS:

The two parties have negotiated and agreed the following contents:

1. Terms of Reference

- The Employer confirmed that there were no basic modifications of Terms of Reference (TOR) of the Request for Proposals. The Employer has only clarified details of requirements of the replacement cost surveys as follows:

**** Objectives of the Assignment**

Under the Replacement Cost Survey (RCS) the team shall verify and establish compensation rates for land, crops, trees, structures, and other non-land based income (e.g. fishponds) to ensure that Displaced Persons (DPs) are compensated at replacement costs.

*** Scope of Works**

***Approach Method:** The establishment of replacement costs will be carried out based on information collected from both Desk research and Direct interviews with people in affected area, both those persons who are affected and those not affected. Desk research will focus on relevant publications, materials of Government authorities, both at central and local levels. However, these materials will play the supporting role only. As the work is aimed at obtaining reasonable replacement costs for different types of affected assets, market evidences are the factors which most strongly base the formulation of these costs. Direct interviews with people in the affected area, both those, whose assets are affected by the Project and those, whose assets are not, will produce reliable data for establishment.*

***Basis for Valuation.** The basis for valuation assessment of both land and real estate should be (i) research and market investigations carried out by the RCS team, (ii) accumulated market evidence already held by the valuation organization, (iii) the results of any valuation surveys carried out by any other organization that is available and (iv) survey maps of the land to be valued and surrounding land. Valuation of land must be undertaken by a licensed Land Valuer.*

***Data collection.** The interviews will be conducted based on a pre-developed interview guide. Sample size will be determined by the RCS team for land, structures and other fixed assets.*

***Structures:** (a) Interviews with owners of structures (main materials they used for their current structures; type of shops where they bought construction materials; distance of transport, origin of the materials (local or overseas); costs of various materials; labor cost); and (b) interviews with construction contractors (main materials which are most used by the local people to build their structures; costs of those main materials; cost*

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of labor; average construction cost (cost per sq.m floor) for different types of houses according to different categories; and (c) validation of provincial construction prices (cost per sq.m floor for each category). Proposed compensation rates for structures will be based on sample of houses in each class to ensure that the rates established cover the whole range of houses in that class.

Land. Price of land will be differentiated based on the use of land, including: Residential land; Garden land; Agricultural land; Land with water surface for fishery cultivation; and Forest land.

The objective of this establishment is to determine whether the provincial prices are sufficient or not to purchase the same quality and quantity of land. The establishment of compensation for the loss of land is based on its market value. The best way to obtain this market value is to gather data of some sales of land, which have just taken place. However, the transfer of land use right does not always go along with such sales, which makes details of such sales not recorded. The team will make their best effort to collect sales evidence to support the verification of provincial prices. In addition, information to base the establishment will be collected from direct interviews with owners of land in Project affected area, including those, whose land is affected and those whose land is not. The interviews will cover the following issues: (i) recent land use rights transfer in the area and (ii) price, at which owners (affected and not affected persons) are willing to sell their land.

Apart from determining the rates for various types of land. The Land Valuer also need to determine the transaction costs involved such as administrative charges, taxes, registration and titling costs. The Land Valuer should bear in mind that when establishing replacement cost for each type of assets, transaction costs should be clearly specified and should be shouldered by the Project.

Crops and Trees. The objective of this establishment is to determine whether the provincial prices paid to DPs are equivalent, lower or higher than the average market price. The basis of the establishment is to determine the average market price for each type of crops and trees. The information to base the establishment will be collected from:

- Secondary sources: (a) publications of respective ministries (environment, agriculture, forestry and (b) publications of Price Committee (if available)
- Primary source: (a) interviews with people who own the same crops and trees in the locality. The interviews will cover price, at which owners are willing to sell each type of their crops and trees. The prices for perennial trees will be differentiated by the age of the trees and (b) market, team will investigate the sales price of outputs of different types of crops and trees in the market.

Replacement Cost = Current Market Value + Transaction Cost. Apart from determining the rates for land and non-land assets indicated above. The RCS team also needs to determine the transaction costs involved such as administrative charges, taxes, registration and building permit costs. The RCS team should bear in mind that when establishing replacement cost for each type of assets, transaction costs should be

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clearly specified to ensure that these expenses or costs are shouldered by the Project and should not be deducted from the compensation payment that each AP will receive. A separate section in the report should present how transaction costs are calculated.

*** Formal Outputs**

Based on the activities carried out, the consultant team should (i) present the methodology used and (ii) prepare a table and discuss among the team the unit rates to be applied for the project.

*** Working Schedule**

The tasks for the Replacement Cost Survey will be a critical input to the Detailed Measurement Survey (DMS) to be undertaken to prepare the detailed Resettlement Action Plan. To ensure that the results of the Replacement Cost Survey are available to be incorporated in the DMS it is expected that this work will be undertaken between June - December 2011 with the following inputs submission schedule:

N o.	Output	Hard copies		Date
		Vietnamese	English	
1	Inception report	6	6	1 month after beginning of the assignment
2	Replacement cost survey	6	6	06 month after signing of contract

*** Qualification and Experience Requirements**

The team will be composed of one senior social development consultant, at least 2 resettlement consultants and a team of enumerators, statistician and encoders. A licensed Land Valuer must be engaged as part of the team to prepare land valuations that are (i) prepared using internationally accepted methodologies, (ii) reflect market values and clear transaction costs and (iii) are independent.

Each member of the RCS team will have the following minimum qualifications and experience:

- (a) The consultants must hold a university degree with a minimum of Bachelor preferably with a major in social sciences;
- (b) The Land Valuer must hold all required licenses and registrations to practice as a land valuer in Vietnam;
- (c) The consultant must have at least 2 years working in similar field and that have experience in RCS for projects funded by WB or other international sponsors such as ADB;
- (d) Preferably RCS consultants should have experience in the management of projects;
- (e) Consultant must be fluent in written and spoken English.

*** Client's Inputs**

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The consultant shall report to the Vietnam Expressway Corporation (VEC), who will provide, free of charge, the RAs, and available related documents of the project.

VEC will assist in arranging access to, and coordination with relevant departments, local authorities and organizations in the three project provinces of Da Nang, Quang Nam, and Quang Ngai. "

- The Joint Venture and the Employer agreed (02) changes of sub-clauses 9 and 10 of clause 3.3.3 as follows:

+ Delete all contents of sub-clause (9) and replace by: *"Using a participatory approach, identify the impact of the expressway construction on local infrastructure, which will include consideration of pedestrian and vehicle accesses, and disruption to irrigation and other agricultural or community facilities. Based on consultations with local communities prepare plans and procedures for minimizing impacts on local communities both during and after construction of expressways. To the extent possible existing accesses should be reinstated through use of over and under passes. Where an access cannot be reinstated alternative routes must be provided."*

+ Delete all contents of sub-clause (10) which is already in Appendix I of Request for Proposals.

- Some contents in TOR were proposed in the negotiation meetings by the Joint Venture and agreed by the Employer (Details is enclosed at the Appendix 1).

- The Joint Venture confirmed to carry out all items specified in TOR.

- The Joint Venture committed to comply with report submission schedule specified in TOR.

2. Implementation Plan:

- The Joint Venture committed to submit the overall implementation plan of the Project within 4 (four) months from the commencement date of the services.

- The Joint Venture committed to submit Plan of contract packaging after receiving Notice to Proceed from the Employer.

- The Joint Venture committed to submit detailed work plans of survey works for the Employer's approval and promptly carry out relevant assignments of surveys after the Employer's approval.

- The two parties agreed that the Joint Venture start surveys, design activities in advance during implementation of signing the Contract and negotiation results approval procedures by the WB in order to accelerate the implementation progress of the Project as required by the Employer.

- The two parties agreed that design work and preparation of Bidding documents of the first 3 packages shall be completed not later than 9th month.

- The Joint Venture shall review and update implementation plan in compliance with actual situation.

3. Personnel and Sub-Consultants:

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- The Employer requested and the Joint Venture confirmed not to replace personnel proposed in the Joint Venture's Proposals and such personnel shall be mobilized in compliance with technical proposal, except 02 personnel found to be unsatisfied, including: Local Resettlement Specialist (Le Dang Giang) and Local Training Specialist (Bach The Dung). The Joint Venture committed to promptly submit CV and related certificate of replacement experts for the Employer's review and approval.
- In case of replacement due to force majeure, the Employer shall only review and approve a replacement of a person with equivalent or better qualifications.
- Local cost estimators must have valuation certification in compliance with regulations of Vietnam.
- In case that the Joint Venture engages the Sub-consultants to carry out any part of services, they must submit capacity documents of sub-consultants to the Employer for review and acceptance in written before implementation.
- With respect to External Valuer Consultant, the Joint Venture must submit appropriate company profile with a copy of MOF license of proposed land valuation consultants to the Employer for review and approval.

4. Financial Proposals and Payment Conditions:

The Joint Venture proposed contents of financial negotiations enclosed with Letter No. DQEDD-VFC-03-11 dated May 26, 2011, therein mentioned: (i) review updated remuneration for consultants; (ii) review updated out of pocket and other expenses; (iii) contract payment provisions; (iv) insurances; (v) equipments; enclosed with table of updated total contract price in compliance with the above proposals.

The Joint Venture proposed to update remuneration rates for local consultants and other proposed rates because period from from submitting proposal to the contract negotiation (from June 2010 to May 2011) had been extended, defined minimum salary in Vietnam had changed; market prices had fluctuated increasingly referred to CPI index, price index of US dollars and gold in April 2011; survey unit price had been updated.

With regard to this, the Employer acknowledged the Joint Venture's proposal. However, according to clause 6.3 Instructions to Consultants, during financial negotiations, remuneration rates or other proposed rates shall not be mentioned. Therefore, the Employer confirmed that these rates would remain unchanged as in financial proposals of the Joint Venture.

4.1. Remuneration rates: shall follow financial proposal of the Joint Venture.

4.2. Out of pocket expenses: unit price shall follow to financial proposal of the Joint Venture; number of flights shall be adjusted complying to personnel mobilization schedule in the Joint Venture's proposal. (Total actual cost of flights shall not exceed its cost in financial proposal).

4.3. Miscellaneous Expenses: regarding office issue, the Employer requested the Joint Venture to place office in Da Nang to facilitate management of progress and quality; the Joint Venture explained kept their opinion on office arrangement in Ha Noi to facilitate themselves; on management of sub-consultants implementing detailed design of bridges

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and interchanges as in the Joint Venture's Proposals. The two parties agreed with the Joint Venture's proposal.

4.4. *Provisional sums:*

- The Joint Venture shall set up an implementation outline and detailed cost estimates to submit to the Employer for approval prior to implementation.
- The external valuer surveys item (clause 3.3.2, sub-clause 2(vii)): the Joint Venture confirmed to properly carry out this assignment in compliance with TOR and its cost shall not be taken out of provisional sums and contingencies.
- Provisional sums for design and supervision of construction of resettlement site was US\$ 200,000 in appendix of Request for Proposals, after negotiations it was agreed by both parties to be not included in work scope of the Joint Venture, so provisional sums for this item shall be deducted.

4.5. *Contingencies:* Contingencies are used for additional assignments that are unforeseen by the Employer. Prior to using contingencies, the Joint Venture must submit to the Employer for approval. The percentage of contingencies is 10%.

4.6. *Total contract price:* is JPY 463,338,527 and US\$ 6,174,100 including all taxes and fees in compliance with regulations; Contingencies is JPY 40,015.600 and US\$ 533,218.

4.7. *Payment for contract.*

* Payment under Lump-sum shall be made according to the following schedule:

- The 1st payment: Twenty five percent (25%) of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same.
- The 2nd payment: Fifteen percent (15%) of the lump-sum amount shall be paid upon submission of the Inception Report.
- The 3rd payment: Twenty five percent (25%) of the lump-sum amount shall be paid upon submission of Interim Report, basic design report and Prequalification Documents;
- The 4th payment: Twenty percent (20%) of the lump-sum amount shall be paid upon submission of Monthly Progress Report No.9, and Detailed design reports and bidding documents of the first 3 packages.
- The 5th payment: Ten percent (10%) of the lump-sum amount shall be paid upon submission of Detailed design reports and bidding documents of the remained packages, Draft Final Project Completion Report; and completion of the following works: Review and update FIA, EMP, EMDP, RAP; Construction method and schedule; Preparation of implementation program; Study and design of ITS and toll collection system; Cost estimate; and Expressway operation and maintenance.
- The 6th payment: Five percent (5%) of the lump-sum amount shall be paid upon approval of the Final Report.
- The bank guarantee shall be reimbursed to the Joint Venture when the total payments reach fifty (50) percent of the lump-sum amount.

* Provisional sum items shall be paid as follows:

- Pegging out for land acquisition item will be paid in accordance with unit price. Payment schedule shall be as below:

+ Payment shall be made up to 70% of approved amount, after the Joint Venture hand-overs all land acquisition pegs of main route to the local authorities.

+ The remaining amount shall be paid after completion of assignments.

+ Payment of provisional sum shall be at the same timing of the above lump-sum payment.

(Contract payment amount includes corporation income taxes).

4.8. *Insurances:* The Joint Venture committed to purchase necessary types of insurance complying with regulations of law, including those specified in special conditions of the Contract (clause 3.4).

4.9. *Taxes and duties in accordance with the Contract*

- The Joint Venture confirmed that personal income taxes (PIT) were included in remuneration rates in their financial proposal. The Employer shall support the Joint Venture for the necessary procedures for PIT exemption for all foreign experts.

- The Joint Venture proposed and the Employer agreed that the Joint Venture would be responsible for taxes registration, declaration and payment for all local taxes, fees and other payable in accordance with regulations and Vietnamese law, and shall provide the relevant information and evidence accurately, quickly and timely for the Employer's review and monitoring.

- Regarding VAT and corporation income taxes as stated in Appendix D and E of the Contract, the Employer shall reimburse the amount paid by the Joint Venture according to regulations of Vietnamese Law to the Joint Venture.

4.10. *Foreign exchange rate:* Foreign exchange rate for US dollar shall be the average inter-bank exchange rate published by the State Bank of Vietnam at the time of the Employer's approval for the payment.

The exchange rate for Japanese Yen shall be the exchange rate applied to calculate export and import duties published by the State Bank of Vietnam.

4.11. *Payment currencies:*

It was agreed to use payment currencies in accordance with the Joint Venture's Proposals (USD and JPY). The payment currencies would be supplemented VND for provisional sum items and local taxes.

5. Support for counterpart personnel

VEC shall facilitate the Joint Venture to collect documents and discuss with relevant agencies for project implementation purposes.

VEC shall support necessary procedures for international specialists working in Vietnam.

6. Equipment

The Joint Venture shall make and submit list of equipment to be purchased in connection with the Contract to the Employer. Such expensive equipment as Computer, Photocopy

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Machine, Printer and Software with the value more than USD 500 to be purchased for project operation purposes in accordance with the Joint Venture's proposals must be approved by the Employer.

The Joint Venture is responsible for handing-over purchased equipment to the Employer after contract completion.

7. Corruption prevention

Based on relevant regulations of the Government, provisions of Corruption prevention policy and Guidelines of WB, any payment, gift, commission, gratuity out of contract shall not be allowed during contract implementation.

8. Implementation evaluation

The Employer and WB shall supervise the Joint Venture during contract implementation. In case any professional staff of the Joint Venture is found to be unsatisfied, then the Employer shall request a replacement.

9. Contract languages

Languages used in the contract are English and Vietnamese whereas English will prevail. In addition, all reports and communications during contract implementation must be in English and Vietnamese whereas English will prevail.

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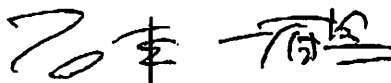


MAI TUAN ANH

General Director

Vietnam Expressway Corporation

THE JOINT VENTURE



ICHIZURU ISHIMOTO

Chief Negotiator of

The Joint Venture