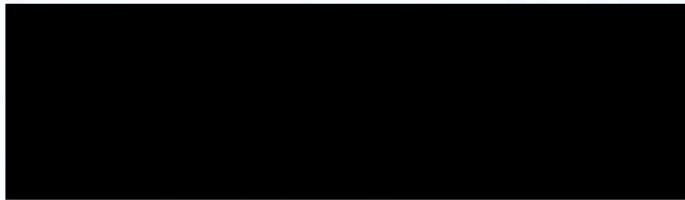


**NPM No. 13-2015**

7 May 2015



**Re: Approved Budget for the Contract as Basis for Award**

Dear [REDACTED]:

This refers to your letter<sup>1</sup> requesting our opinion regarding the applicability of DPWH Department Order (DO) Nos. 12 and 29, series of 2011 on the preparation of the bids by the prospective contractors.

As represented, DPWH RO III received separate Audit Observation Memorandum (AOM) for the following infrastructure projects:

1. Rehabilitation/Improvement of Existing Pavement Loading and Unloading Bays Right of Way, Bulacan, 2<sup>nd</sup> Congressional District, Balagtas and Bocaue, Bulacan;
2. Road Upgrading (Gravel to Paved) of Eastern Bulacan, Km. 90+157 to Km. 93+819.30 and Km. 81+409.30 to Km. 83+169.60; and
3. Improvement/Widening/Concreting of Manila North Road, (MNR) 2<sup>nd</sup> District, Tarlac.

It is further represented that in issuing the AOMs, COA referred to DPWH DO Nos. 12 and 29, series of 2011 and used the same in determining not only the reasonableness of the Approved Budget for the Contract (ABC), but also the bids of the contractor. During the contract review, COA made the observation that some of the items in the contracts were subjected to mark ups that exceeded the allowable tolerances provided in the said DOs; thus, resulting to the issuance of the AOMs. It is in this light that you are seeking the opinion of our office on whether such DOs are applicable only in the preparation of ABC or even in the preparation of the bids by the prospective contractors.

*[Handwritten mark]*

<sup>1</sup> With an attached copy of the following documents:

1. Three Audit Observation Memoranda (AOM) for the three mentioned projects;
2. Department Order No. 12, series of 2011, dated 14 March 2011, entitled *Preparation of Approved Budget for the Contract*; and
3. Department Order No. 29, series of 2011, dated 16 May 2011, entitled *Revised Guidelines on the Preparation of Approved Budget for the Contract*.


At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) render policy and non-policy opinions respectively, on matters purely pertaining to the interpretation of the procurement law and its associated rules and regulations. We note, however, that DPWH DO Nos. 12 and 29, series of 2011, were both issued by the Honorable DPWH Secretary to lay down policies, rules and procedures relative to the preparation of the ABC for DPWH projects. As such, DPWH is in the best position to determine the applicability of the provisions and stipulations provided under these DOs. In this regard, we shall limit our discussion on the interpretation of the relevant provisions of the procurement law, rules and regulations pertinent to the issues presented.

### **Approved Budget for the Contract as Basis for Award**

Section 5(b) of the IRR of RA 9184 defines ABC as the budget for the contract duly approved by the Head of the Procuring Entity (HOPE), as provided for in the relevant budget document, *i.e.*, General Appropriations Act, Corporate Budget, or Appropriation Ordinance.

For infrastructure projects, the ABC covers all individual cost components of civil works such as earthwork, roadwork, massive concreting, equipment rentals, fuel, labor, materials and overhead, including the cost of the approved construction safety and health program and security premiums, taxes, profit, cost of money, inflation, and contingencies among others.<sup>2</sup> In determining the ABC for the project, PEs, after conducting diligent market research, estimate the reasonable budget for all the cost components. The total of all estimated budget for these cost components then becomes the ABC for the particular infrastructure project.

Under Section 31 of RA 9184 and its IRR, the ABC shall be the upper limit or ceiling for bid prices, such that bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. Pointedly, Section 32.2.4 of the IRR of RA 9184 mandates that total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, which exceed the ABC shall be disqualified. It must be noted that the rules referred to "***total calculated bid prices that exceed the ABC***" as ground for disqualifying a bid. Thus, as long as the total calculated bid prices does not exceed the ABC, the bid shall be considered responsive, regardless whether some of the cost components of the bid exceed the estimated cost for an identified component.

Based on the foregoing, it is our considered view that the estimated budget for the cost components of an infrastructure project is used by PEs in determining the appropriate and reasonable amount of the ABC. On the other hand, the ABC, as the upper limit or ceiling for bid prices, is used by the bidder in submitting a responsive bid. Accordingly, bids that are within the ABC, even if the price offered for a particular component exceeds the identified estimated cost for such component, can be considered for award if proven to be the lowest calculated and responsive bid among all other bids. 

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<sup>2</sup> Generic Procurement Manual for Infrastructure Projects.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

(sgd.)

**DENNIS S. SANTIAGO**  
*Executive Director V*

11/13