Factors and Considerations in Determining the Appropriate Approved Budget of Contract (ABC)

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I. Course Outline.

The course covers:

1. Overview of the various procurement laws of the Philippines;
2. The coverage of R.A. No. 9184;
3. The pertinent provisions of R.A. No. 9184;
4. The pertinent provisions of the 2016 IRR of R.A. No. 9184;
5. The pertinent provisions of the Simplified Bidding Documents (PBD 6th Edition) for the Procurement of Goods & Services, and Infrastructure Projects:
   a. Instructions to Bidders;
   b. Bid Data Sheet;
   c. General Conditions of Contract; and,
   d. Special Conditions of Contract.
6. Manual of Procedures for the Procurement of Goods & Services, Infrastructure Projects, and Consulting Services.
7. Sample Technical Specifications – Procurement of Goods

II. The Procurement Laws of the Philippines.

The following are the various procurement laws:

1. Republic Act No. 9184 – Government Reform Act of 2003.
2. Republic Act No. 6957 As Amended by Republic Act No. 7718 – BOT/PPP Law.
3. Republic Act No. 10752 – Law on the Acquisition of Right of Way Site or Location for National Government Infrastructure Projects.
4. Executive Order No. 423, 30 April 2005 (2013 NEDA Guidelines - Joint Venture Scheme.
5. Procurement Funded from Foreign Grants Covered by R.A. No. 8182 As Amended by R.A. No. 8555 – Official Development Assistance (ODA) Procurement.

Procurement activities can be undertaken only through said laws.

Whatever award of contract, it can only be done through or source its efficacy from any of said laws, or in some clear instances, combination of said laws.

Example : Contract for infrastructure project (R.A. No. 9184) which include the relocation of public utilities (R.A. No. 10752).

III. Republic Act No. 9184 – Government Reform Act of 2003.

The subject matter Approved Budget of Contract (ABC) refers to that of R.A. No. 9184.

The 2016 IRR of R.A. No. 9184 does not apply to the following procurements:

1. Procurement of goods, infrastructure and consulting services funded from foreign grants covered by R.A. No. 8182 As Amended by R.A. No. 8555 – Official Development Assistance (ODA) Procurement *(Section 4.4 (a), 2016 IRR, R.A. No. 9184);*
2. Acquisition of real property which shall be governed by Republic Act No. 10752 – Law on the Acquisition of Right of Way Site or Location for National Government Infrastructure Projects *(Section 5 (n), R.A. No. 9184; Sections 4.4 (b) & 5 (aa) 2016 IRR, R.A. No. 9184)*; and,
3. Public-Private Sector infrastructure or development and other procurements under Republic Act No. 6957 As Amended by Republic Act No. 7718 – BOT/PPP Law (*Sections 4.4 (c), 2016 IRR, R.A. No. 9184).*

However, a portion or component of a project covered by the above-stated laws, in some applicable circumstances, can be or must be procured using R.A. No. 9184 and its 2016 IRR.

Examples:

a. The portion financed by GOP of a project procured under foreign loan (R.A. Nos. 8188/8555, and procurement procedure of the foreign loan provider), in whole or in part, maybe procured through, R.A. No. 9184 or in the case of the necessary ROW strictly through R.A. No. 10752;

b. Projects while may be funded through foreign loan maybe procured through R.A. No. 9184 and its 2016 IRR, pursuant to Section 4.3 of the 2016 IRR of R.A. 9184.

"<u>Unless</u> the Treaty or International or Executive Agreement <u>expressly provides another or different procurement procedures and guidelines</u>, R.A. 9184and this IRR shall apply to Foreign-funded Procurement of Goods, Infrastructure Projects, and Consulting Services by the GoP.

The Gop negotiating panel <u>shall, as its default position</u>, <u>adhere</u> to R.A. 9184 and this IRR, <u>or at the very least, selection through competitive bidding</u>, in all Foreign-funded Procurement. If the treaty or International or Executive Agreement states otherwise, then the negotiating panel shall ensure that <u>the reasons for the adoption of a different rule or method of procurement are clearly reflected in the records of the discussion</u>."

c. In the case of the LRT Line 2 East Extension Project, Package 1 (Viaduct) and Package 2 (Stations) were procured separately both in terms of timing and mode.

Package 1 through R.A. No. 9184 – Procurement of Detailed Engineering Infra Project, was procured, awarded and implemented first due to lack of enough funds for the whole project.

Package 2 through R.A. No. 9184 – Procurement of Design & Build Infra Project, was procured, awarded and implemented later after proper funding was obtained. It was a Design and Build Project since Package 1 at that time was already long underway in the implementation stage, and the exact location of the stations has not yet been determined. With a design & build scheme, it would be up to the contractor to do the detailed engineering based on the almost completed viaduct and the eventual actual location of the stations.

However, Package 3 (Electro-Mechanical Works: Power, Tracks, Signaling, Telecommunications) again was procured, awarded and implemented at a much later date after a Japanese loan was obtained to fund the same. The procurement process was through R.A. Nos. 8188/8555, specifically JICA procurement guidelines.

d. The LRT1 Cavite Extension Project was procured through R.A. Nos. 6657/7718 (BOT/PPP Law).

However, all the necessary ROW requirements were procured through R.A. No. 10752 (ROW Acquisition Law).

Further, while the ROWs were acquired through R.A. No. 10752, the demolition, transfer and reconstruction works of structures in some of the lots, were procured through R.A. No. 9184.

It should be noted that under the Concession Agreement of the concerned BOT/PPP Contract, it is the obligation of LRTA to deliver to the concessionaire, the ROW lots free of any structures.

When the Informal Settlers in the ROW lots were transferred to the Relocation Site, the trucking and bus services utilized for the activity, were procured through R.A. No. 9184.

The development and construction works for the relocation site and housing units was procured through R.A. No. 9184.

The construction of the Zapote Depot, expansion of the Pasay Depot, and acquisition of the 4^{th} Generation 120 LRVs, were all procured using Japanese loan and through R.A. Nos. 8188/8555, specifically JICA procurement guidelines.

It should be noted that portion of the said Japanese loan was used for the LRT2 East Extension Project – Package 3 ((Electro-Mechanical Works: Power, Tracks, Signaling, Telecommunications) mentioned earlier.

The following are not considered procurement activities under R.A. No. 9184 and its 2016 IRR *(Section 4.5 (a) (b) (c) (d) (e) & (f), 2016 IRR, R.A. No. 9184)*:

1. Direct financial or material assistance given to beneficiaries in accordance with laws, rules and regulations, and subject to the guidelines of the concerned agency;
2. Participation in local or foreign scholarships, trainings, continuing education, conferences, seminars or similar activities that shall be governed by applicable COA, CSC, and DBM rules;
3. Lease of government-owned property as lessor for private use;
4. Hiring of job order workers;
5. Joint Venture under the revised NEDA Guidelines (GOCC and private entities), and Joint Venture Agreements by LGU with private entities;
6. Disposal of property and other assets of the government.

Note:

If the government shall provide the seminar or training, then the procurement of the venue, meals and/or training materials shall be covered by R.A. No. 9184.

If the government is the lessor then E.O. No. 301 dated 26 July 1987, and COA Circular No. 88-282A dated 31 March 1988 shall apply.

If the government is the lessee, then R.A. No. 9184 shall apply.

Hiring of Job Order Personnel is covered by CSC and DBM Guidelines.

Hiring of Contract of Service Personnel is covered by CSC and DBM Guidelines.

Engagement of Highly Technical Consultant is covered by R.A. No. 9184.

IV. Basic Concepts and Terminologies.

Project refers to a full and complete undertaking or works which when completed must be usable. The approval of the project must be for the complete undertaking or works.

A 2-story building complete with support structures, roof, walls, floors, stairs and other necessary implements is a project.

The approval must be for the complete building. There can be no project or approval thereof for the support structures alone, or for the stairs only.

Project Components not only refer to the different physical parts of the project but to all necessary undertakings to properly and fully complete the project.

Project components usually include:

consulting services for the design & detailed engineering	- separate cost / budget
site/location of the building	- separate cost / budget
right-of-way for the building	- separate cost / budget
relocation of utilities	- separate cost / budget
relocation of informal settlers	- separate cost / budget
Environmental Compliance Cert.	- separate cost / budget
Traffic Impact Assessment	- separate cost / budget
administrative requirements	- separate cost / budget
project itself	- separate cost / budget

Each of the components has their own respective costs that should be budgeted.

Each component may or can be subjected to their own procurement process and contract.

Project Cost not only refers to the necessary total amount of money to fully complete the project but to undertake all the project components.

Project Budget refers to the allotment and allocation of resources/money to fund the project cost.

Project Package/Project Phase refers to the division of the project into several logical segments, parts or portions for purposes of procurement and implementation as dictated by available budget, necessary timing and other compelling factors.

Each package/phase must have detailed engineering activities, and clear and delineated scope of work from the other packages/phases; and, must structurally sound and usable.

An example of project packages: LRT2 East Extension Project

Package 1	:	Viaduct
Package 2	:	Two (2) Stations
Package 3	:	Electro-Mechanical Systems Tracks, Power, Signaling & Telecomms

Project Contract refers to the agreement with the supplier or contractor for the project if procured in whole, or for each of the packages/phases, if procured separately.

Approved Budget of Contract (**ABC**) refers to the amount allotted for the agreement that shall be entered into with the supplier/service provider/contractor/consultant to implement the project (or for each package/phase if procured separately), and used as ceiling of bid price during procurement.

Contract Amount refers to the bid price which after validation/evaluation, does not exceed the ABC and the lowest bid among the compliant/responsive bids, and awarded to the winning bidder.

V. The Government Budget and the APP.

The government budget is prepared, finalized and approved on a yearly basis.

There is only one (1) year budget.

There is NO 2-year or 3-year or multi-year budget.

Procurement is based and done only in relation to the yearly budget (one year only).

Procurement can only be done if there is budget, and that budget is the yearly budget.

There can be NO procurement if there is NO budget, or if there is not enough budget to complete the project.

The budget for procurements (covered by R.A. No. 9184) must be included in the Annual Procurement Plan (APP) which is also on yearly basis only, and which APP must be in the over-all yearly budget. The APP is just but a part of the yearly budget.

Procurement starts from the publication of the Invitation to Bid and ends in the issuance and receipt of the Award of Contract.

Question: Can there be procurement without a duly approved APP and approved budget.
Answer: Yes.

After the Indicative APP and the proposed budget has been generated and initially approved and submitted for final approval by the proper approving authority in accordance with the pertinent procedures, the Procuring Entity can already start the procurement process short of award for projects not exceeding one (1) year. It means all the steps of the procurement process can already be undertaken, BUT no award can be made until and after the Final APP and Budget have been properly approved *(Section 7.6, 2016 IRR, R.A. No. 9184)*.

Note: The proposed budget must contain the full budget of the contract.

VI. Projects Requiring Funding Beyond the Annual Budget, and Implementation for Two (2) Years or More (Multi-Year Projects/Procurements).

Annual procurements, annual projects, or annual requirements are annual undertakings that are planned on a yearly basis; are included in the yearly APP; are pursued, procured, awarded and implemented every year; are completed within the budget year or within one (1) year period, or in some cases are completed within two (2) years or more (Multi-Year Projects/Procurements); and, whose full funding for their full completions are covered by the budget year concerned.

There are however Multi-Year Projects/Procurements which are undertakings that require implementation for two (2) years or more, and require funding beyond the one year budget. They are planned and included in the APP of the budget year; are procured, awarded and implemented in that budget year, but their completions go beyond the said budget year and would require two (2) years or more; and, whose full funding are not covered by the budget year concerned.

As pointed out earlier the APP and the budget is good only for one (1) year.

Accordingly, a Multi-Year Project/Procurement that would require budget beyond the budget year cannot be procured or awarded.

The solution is to obtain from the proper authority:

a. Multi-Year Project Approval; and,
b. MYOA (MYCA), CBI.

Multi-Year Obligation Authority (MYOA), and now currently termed as Multi-Year Contracting Authority (MYCA) applies to national government project budgeting/funding.

Certificate of Budget Inclusion (CBI) is MCYA but refers to corporate project budgeting/funding of GOCCs.

Take note that a MYOA, MCYA or CBI is not a budget.

MYOA/MCYA/CBI are just formal and effective commitment from the budget authority that the required full funding for the completion of a multi-year procurement/project will be included in the yearly budget every year until the said required full and complete funding is budgeted until the completion of the project.

With the MYOA, MCYA or CBI, the Procuring Entity can already start the procurement process until award and contract signing even if the annual budget during the procurement year is not enough to cover the full funding/budget to complete the project.

ANNUAL PROJECT/PROCUREMENT/REQUIREMENT vs. MULTI-YEAR PROJECT/PROCUREMENT vs. MULTI-YEAR PROJECT/PROCUREMENT REQUIRING MYOA/MYCA/CBI

Annual Project/Procurement/ Requirement	Multi-Year Project/Procurement	Multi-Year Project/Procurement Requiring MYOA/MYCA
1. Procured Every Year.	1. Procured One (1) Time Only	1. Procured One (1) Time Only.

2. Separate Contracts Every Year.	2. One (1) Contract Only.	2. One (1) Contract Only (unless there are several packages procured separately).
3. Different Contractors Every Year (unless same contractor wins)	3. One (1) Contractor Only.	3. One (1) Contractor Only (unless there are several packages contracted separately).
4. Implementation is usually within the procurement year, or for one (1) year period only.	4. Implementation is two (2) years or more.	4. Implementation is two (2) years or more.
5. There is enough budget to cover the entire project/contract at the time of procurement/award.	5. There is enough budget to cover the entire project/contract at the time of procurement/award.	5. Not enough budget to cover the entire project/contract at the time of the procurement/award.
6. Annual Procurement Plan (APP).	6. APP for the procurement year.	6. MYOA/MYCA/CBI plus APP (for the procurement year).
7. Example: One (1) Year Janitorial Services Contract	7. Three (3) Year LRT2 Maintenance Contract (with full budget at the time of procurement/award).	7. Example: Three (3) Year Janitorial Services Contract (with budget available only for the 1st year at the time of procurement/award).

Question: Can procurement be conducted for a multi-year project (requiring MYOA) without the pertinent MYOA/MYCA/CBI?

Answer: No.

The "procurement short of award" provided by *Section 7.6, 2016 IRR, R.A. No. 9184* only covers annual projects/procurements/requirements and multi-year projects <u>with full budget pending approval</u>, but not multi-year projects requiring MYOA/MCYA/CBI.

The provision states:

"To facilitate the immediate implementation of procurement of Goods, Infrastructure Projects or Consulting Services, even <u>pending approval</u> of the <u>GAA</u>, <u>corporate budget</u> or appropriations ordinance, as the case may be, and notwithstanding Section 7.2 hereof, the Procuring Entity may <u>undertake the procurement activities short of award</u>.

NGAs, SUCs, Constitutional Commissions or Offices are encouraged to start their procurement activities immediately after the National Expenditure Program (NEP) has been submitted by the President to Congress, provided that the HoPE has approved the corresponding indicative APP. This will facilitate the awarding of procurement contracts after the enactment of the GAA, enabling the timely implementation and completion of programs and projects.

For a contract with a period not exceeding one (1) year, the ABC shall be based on the amount in the indicative APP as included in the proposed national budget submitted by the President to Congress; for GOCCs, on budget levels as proposed to the governing board; or for LGUs, on budget levels as proposed in the executive budget submitted to the Sanggunian. In the case of multi-year contracts, for which a MYOA or an equivalent document is required, the ABC shall be the amount reflected in the MYOA or equivalent document.

No award of contract shall be made until the GAA, corporate budget or appropriations ordinance, as the case may be, has been approved or enacted."

The following should be noted:

a. The above provisions speak of GAA, corporate budget and appropriations ordinance. It speaks of the annual budget – one (1) year only.
b. The above provisions speak of indicative APP, and as pointed earlier, APP only covers one (1) year or the budget year concerned.
c. The above provisions speak of contract not exceeding one (1) year.
d. The provisions refer to annual projects/procurements/requirements and multi-year projects with full budget in the subject GAA, corporate budget or appropriations, but said budget is still pending approval.
e. The above provisions clearly speak separately that for multi-year contracts in which a MYOA is required, and the ABC must be the amount reflected in the MYOA.
f. The above provisions presuppose that there is MYOA upon the ABC shall be based upon.
g. If there is no MYOA, then there is no ABC. If there is no ABC, then there can be no bidding.

The Supreme Court held in the case of *Jacomille vs. Abaya et al., G.R. No. 212381, 22 April 2015*:

"The Court holds that the first year of implementation of MVPSP was 2013 when the notice of award was issued on July 22, 2013. The issuance of the notice of award ignites the implementation stage of a project, and the procuring agency must ensure that funds are fully allotted therein. An agency can only issue a notice of award once the DBM has released a SARO or ABM for the full cost of the project. If the funds are not fully allotted to the project at the time the notice of award was issued, then MYOA will guarantee that the DBM commits to recommend to Congress the funding of the project until its completion. Thus, MVPSP is MYP, which involves MYC and requires MYOA.

As to the issue of when the MYOA should be secured by the procuring agency, DBM Circular No. 2004-12 does not provide for a time period. GPPB Circular No. 01-2009, GPPB Circular No. 2010-9 and DBM Memorandum October 18, 2010, nonetheless, state that MYOA must be secured before the procurement begins. This is in line with the policy of R.A. No. 9184 that a government project's budget must be fully appropriated at the start of the procurement process."

Question: Can a procurement for a multi-year project (requiring MYOA) that is already initiated (no award yet or award already issued) without the required MYOA, which essentially violates Section 7 of R.A. No. 9184, be cured by the belated issuance of MYOA/MYCA/CBI.

Answer: No.

1. One primary document required by DBM to process the issuance of MYOA is a certification from the PE that no procurement has been initiated *(put citation).*

2. *Section 20 of R.A. No. 9184* states:

   "x x x

   The pre-procurement conference shall assess the readiness of the procurement in terms of confirming the certification of availability of funds, as well as x x x."

In the light of the above provision, the bidding process failed to comply with the mandatory requirement of pre-procurement process. And, which process must be properly complied with prior to the publication of the Invitation to Bid.

The belated issuance of the MYOA would not be able to cure the defect of failing to take a mandatory step before the Invitation to Bid was published.

3. Section 21 of R.A. No. 9184 states:

   *"In line with the principles of **transparency** and **competitiveness**, all Invitation to Bid contracts under competitive bidding shall <u>be advertised</u> by the Procuring Entity in such manner and for such length of time as maybe necessary under the circumstances, in order <u>to ensure the widest possible dissemination</u> thereof x x x."*

   The Invitation to Bid shall contain, among others:

   x x x

   (d) The Approved Budget of Contract to be bid;
   (e) The source of funds;

   x x x."

   The requirement is that the biding should be transparent and competitive by advertising the Invitation to Bid which must contain the ABC and the source of funds.

   Accordingly, the belated issuance of the MYOA would not suffice the requirement that the ABC and source of funds should be published with the Invitation to Bid.

4. Clause 2, Section II Instructions to Bidders, 6th Edition Philippine Bidding Documents (for Procurement of Goods, and for Procurement of Infrastructure Projects), provides the following:

   "2. Funding Information

2.1. *The GOP through the source of funding as indicated below for [indicate funding year] in the amount of [indicate amount].*

2.2. *The source of funding is:*

[If an early procurement activity, select one and delete others:]

a. NGA, the National Expenditure Program.

b. GOCC and GFIs, the proposed Corporate Operating Budget.

c. LGUs, the proposed Local Expenditure Program.

[If not an early procurement activity, select one and delete others:]

a. NGA, the General Appropriations Act or Special Appropriations.

b. GOCC and GFIs, the Corporate Operating Budget.

c. LGUs, the Annual or Supplemental Budget, as approved by the Sanggunian.

The following should be noted:

a. Clause 2.1 speaks of funding year, meaning one (1) year annual budget.
b. Clause 2.2 speak of two (2) situations, one if the subject bidding is an early procurement, and another, if the subject bidding is not an early procurement activity.
c. In both situations, most especially, in the case of early procurement, Clause 2.1 speaks only of NEP (which is not yet the one (1) year annual budget, but in essence, a proposed one), proposed COB (not yet one (1) year COB), and proposed LEP (not yet the one (1) year LEP), on one hand; and, GAA, COB, and LGU Annual Budget (which are all one (1) year budgets only), on the other hand. <u>But there is no mention of MYOA.</u>
d. Clearly there can be no early procurement in cases of projects requiring MYOA.

   Unless there is MYOA (this a scenario where there is already a MYOA but the initial budget year is still pending approval).

e. Further, regular procurements (not an early procurement) require full funding from the subject annual GAA, COB or LGU Budget.

   If there is no full funding, and the project is multi-year, then MYOA is required.

5. The Supreme Court held in the case of *Jacomille vs. Abaya et al., G.R. No. 212381, 22 April 2015*:

   "The Court holds that the first year of implementation of MVPSP was 2013 when the notice of award was issued on July 22, 2013. The issuance of the notice of award ignites the implementation stage of a project, and the procuring agency must ensure that funds are fully allotted therein. An agency can only issue a notice of award once the DBM has released a SARO or ABM for the full cost of the project. If the funds are not fully allotted to the project at the time the notice of award was issued, then MYOA will guarantee that the DBM commits to recommend to Congress the funding of the project until its completion. Thus, MVPSP is MYP, which involves MYC and requires MYOA.

   As to the issue of when the MYOA should be secured by the procuring agency, DBM Circular No. 2004-12 does not provide for a time period. GPPB Circular No. 01-2009, GPPB Circular No. 2010-9 and DBM Memorandum October 18, 2010, nonetheless, state that MYOA must be secured before the procurement begins. This is in line with the policy of R.A. No. 9184 that a government project's budget must be fully appropriated at the start of the procurement process.

   x x x

   x x x The DOTC and the LTO likewise failed to secure the MYOA before the start of the procurement process even though MVPSP is MYP involving MYC. All these irregularities tainted the earlier procurement process and rendered it null and void."

VII. Application and Coverage of R.A. No. 9184 and its 2016 IRR *(Section 4, R.A. No. 9184).*

1. R.A. No. 9184 applies to the procurement of:

a. Goods and General Support Services;
b. Consulting Services; and,
c. Infrastructure Projects (Engineering Services).

It is important to know the difference between general support services from consulting services, and from engineering services.

In some tricky matter, what appears to be a general support service is in fact an engineering service.

Example: Ordinary repair service – Electrical engineering service.

Or a seemingly engineering service is in fact a consulting service.

Example: Geodetic Engineering service – Consulting service.

R.A. No. 9184 applies regardless of source of funds, whether local or foreign.

R.A. No. 9184 applies to all procurements by all branches and instrumentalities of government, its departments, offices and agencies including GOCCs, GFIs, and LGUs.

Example: United Coconut Planters Bank was then considered to be a private bank. However, the Sandiganbayan and eventually the Supreme Court, declared the bulk of its shares and investments to be government owned, thereby converting UCPB into a government owned institution.

As a result, UCPB was constrained to follow R.A. No. 9184 in all its procurements, and for its officers and personnel to undergo trainings and seminars on R.A. No. 9184.

2. Goods and General Support Services *(Section 5 (h), R.A. No. 9184; Section 5(r) 2016 IRR)*.

a. Goods refers to:

Items, supplies and materials;

- needed in the transaction of public businesses; or,
- pursuit of any government undertaking, project or activity;

- whether in the nature of equipment, furniture, stationery, construction materials; or,
- personal property of any kind.

b. General Support Services refer to:

Any services except consulting services and infrastructure projects.

Non-personal or contractual services such as:

- repair/maintenance of equipment or furniture;
- trucking;
- hauling;
- janitorial
- security;
- related or analogous services.

Example of related or analogous services:

- lease of office space;
- media advertisements;
- health maintenance service;
- other services essential to the operations of the PE.

Take note of the phrase "general support" services.

- The moment the services fall out of the nature and character of being a general support to the day to day operations of the PE, it may become a consulting or engineering services.

3. Consulting Services *(Section 5 (f), R.A. No. 9184; Section 5 (i) 2016 IRR)*.

Consulting services refer to:

- Services for infrastructure projects; or,
- Other types of projects or activities of the government; and,
- Requiring adequate technical and professional expertise;
- That are external or outside of the personnel of the PE; and,
- That are beyond the capability and/or capacity of the government or of its personnel to undertake.

Examples:

- Advisory and review services.
- Pre-investment or feasibility studies.
- Design.
- Construction supervision.
- Other technical services.
- Special studies.

4. Infrastructure Projects *(Section 5 (k), R.A. No. 9184; Section 5 (u) 2016 IRR)*.

Infrastructure projects refer to:

- Construction,
- Improvement,
- Rehabilitation,
- Demolition,
- Repair,
- Restoration, or,
- Maintenance

Of:

- Roads,
- Bridges
- Railways
- Airports
- Seaports
- Communication facilities,
- Civil works components of IT projects,
- Irrigation,
- Flood control and drainage
- Water supply,
- Sanitation,
- Sewerage and solid waste management systems,
- Shore protection,
- Energy, power and electrification facilities,
- National buildings,
- School buildings

- Hospital buildings,
- Other related construction projects.

VIII. Approved Budget of Contract (ABC) *(Section 5(a), R.A. No. 9184; Section 5(b) 2016 IRR)*.

1. Refers to the budget of the contract, NOT of the project.

   Approved by the Head of the PE.

   It must be covered by the APP, and which APP must be included in the GAA or in the annual budget of the PE duly approved by the proper governing body of the PE (Congress, Board, Sanggunian).

   For Multi-Year Projects/Procurements requiring MYOA, the ABC shall be that incorporated in the project cost reflected in the MYOA.

2. The pre-procurement conference shall assess the readiness of the procurement in terms of confirming the certification of the availability of funds, as well as reviewing all relevant documents in relation to their adherence to law *(Section 20, R.A. No. 9184).*

   The ABC must be confirmed through the leadership of the BAC during the Pre-Procurement Conference before the Invitation to Bid is published *(Section 20.1, 2016 IRR, R.A. No. 9184)*.

3. "The requirement of availability of funds before the execution of a government contract *(Section 46, 47 & 48, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987; Sections 85, 86 & 87 of the Government Auditing Code)* has been modified by R.A. No. 9184. The said law presents a novel policy which requires, not only the sufficiency of funds at the time of the signing of the contract, but also upon the commencement of the procurement process."

   - *Jacomille vs Abaya et al., G.R. 212381, 22 April 2015*

4. Procurement Planning and Budgeting Linkage *(Section 7, R.A. No. 9184; Section 7.1 2016 IRR)*.

a. Procurement should be within approved budget of PE.
b. Must be meticulously and judiciously planned.
c. Procure only those crucial to the efficient discharge of government function.
d. Included in the APP.
e. No procurement shall be undertaken unless in accordance with the APP.
f. APP should be consistent with approved yearly budget of PE

Meticulous

synonyms *(legaldictioary.lawin.org)*

- careful
- alert
- diligent
- demanding
- detailed
- exacting
- mindful
- painstaking
- particular
- regardful
- rigorous
- thorough
- vigilant
- watchful

meaning *(google dictionary)*

- showing great attention to detail; very careful and precise.

Judicious

synonyms *(legaldictionary.lawin.org)*

- calculating
- careful
- cautious
- discerning

- discriminating
- enlightened
- perceptive
- mindful
- prudent
- reasonable
- reflecting
- rational
- sensible
- well considered
- wise

meaning *(google dictionary)*

- having, showing, or done with good judgment or sense.

g. Must include foreseeable emergencies based on historical records.

h. Consider appropriate timing/phasing of related project activities.

Foreseeable emergencies based on historical records.

- monsoon/typhoon season
- European holiday in August*

- emergencies will cause delay
- emergencies would require money to prevent them
- emergencies would require money to mitigate their effects
- emergencies would require money to address/resolve them
- include in the ABC the costs to protect on-going works, supplies, components & equipment

Timing and phasing of related project activities or project components.

- Engineering design before procurement
- Acquisition of ROW before procurement
- Acquisition of site location before procurement
- Deployment of consultant vis-à-vis pertinent project activity/package/phase.
- Availability of storage facility vis-à-vis delivery of goods.

Example : MRT3 Dalian trains were stabled at LRT1 facilities when the upgrading of the MRT3 stabling yards was not completed on time.

- Availability of necessary facility vis-à-vis pertinent activity.

Example : Maintenance contractor would not be able yield the use of train maintenance pit to the train rehabilitation contractor.

- Operational needs vis-à-vis pertinent activity.

Example : Operations Department would not be able yield a trainset currently needed in the revenue operations to the ACU replacement contractor.

- Requirement of one contractor in order for another contractor to perform its obligations.

Example : Maintenance contractor requiring from the Upgrading/rehabilitation contractor to submit Work Methodology which was not however required by the Employer from the latter.

- Compliance with regulatory requirements before actual implementation.

Example : Environmental Compliance Certificate (ECC)
Traffic Impact Assessment (TIA)

- Compliance with permits and clearances requirements before actual implementation.

Example : Building Permit
MMDA Clearances

5. In the Jacomille case, the Supreme Court stated the following:

"The above cited provisions of R.A. No. 9184 demonstrate that the law requires the availability of funds before the procuring entity commences the procurement of a government project. As early as the conception of the ABC, the procuring entity is mandated by law to ensure that its budget is within the GAA and/or continuing appropriation. In the procurement planning stage, the procuring entity is again reminded that all procurement must be within its approved budget. Also, <u>even before the issuance of the invitation to bid, the law requires a pre-procurement conference to confirm the certification that the funds for the government project are indeed available</u>."

Note : Procurement starts from the moment the Invitation to Bid is published.

"The Court holds that the first year of implementation of MVPSP was 2013 when the notice of award was issued on July 22, 2013. <u>The issuance of the notice of award ignites the implementation stage of a project</u>, x x x."

Note : Procurement ends with the issuance of Notice of Award.

IX. Factors and Considerations in the Procurement of Goods.

a. Technical Specifications, Terms of Reference

b. Quantity

- Minimum Order Requirement
- Bulk buying means lower unit prices
- Actual usage, procure only how many will be actually used in a given reasonable period
- Storage facility
- Stock / inventory level regulations
- Quality assurance, goods in storage for long period of time will lose some degree of efficacy.

c. Proper market research.

- Consider similar procurements of other agencies
- Consider historical prices/costs of other agencies

- Make sincere market research
- Asking quotation from one (1) supplier is not proper research.
- Provide proper technical specifications to all suppliers.

d. Inspection and Tests *(Clause 4, Section IV General Conditions of Contract, 6th Edition Philippine Bidding Documents; Manual of Procedures for the Procurement of Goods and Services)*.

- Costs shall be to the supplier, no extra cost to PE
- PE must specify what tests and inspection to be done
- PE must specify where should they be conducted

- If inspection/tests is not specified by PE but deemed necessary, then
- Costs and expenses shall be added to the contract price, and
- Additional time shall be given to supplier,
- Which in effect is a proper matter of an Amendment to Order, however the failure to identify such tests/inspections would show incompetence or negligence on the part of the concerned end user, and could be basis for possible administrative action against the concerned personnel.
- The PE must bear its own costs and expenses in connection with its attendance at inspections such as travelling, and board and lodging expenses.
- These costs should be made part of the <u>Administrative Costs</u> of a Project included in the Project Cost and outside of the ABC.

e. Incidental Services *(Clause 12.1 Section II Instruction to Bidders; Clause 1 Section V Special Conditions of Contract, 6th Edition Philippine Bidding Documents).*

- Performance or supervision of on-site assembly and/or start-up of the supplied goods.
- Furnishing of tools required for assembly and/or maintenance of supplied goods.
- Furnishing of detailed operations and maintenance manual for each of the appropriate unit of the supplied goods.
- Performance, supervision or maintenance and/or repair of the supplied goods, for the period of time agreed upon, provided that this service shall not relieve the supplier of any warranty obligations.
- Training of the PE's personnel at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance and/or repair of the supplied goods.

There must be: Training Module
Training Materials & Literatures
Training Instructors
Venue
No. of Trainees

f. Spare Parts *(Clause 1 Section V Special Conditions of Contract, 6th Edition Philippine Bidding Documents).*

- Include other pertinent components.
- Include sufficient inventories of consumable spare parts.
- Must be listed in the Section VI Schedule of Requirements.

g. Transportation *(Clause 12.1 Section II Instruction to Bidders; Clause 1 Section V Special Conditions of Contract, 6th Edition Philippine Bidding Documents).*

- Includes proper packaging.
- Includes storage.
- Delivered in destination specified in the contract.

h. Insurance *(Clause 12.1 Section II Instruction to Bidders; Clause 1 Section V Special Conditions of Contract, 6th Edition Philippine Bidding Documents).*

i. Taxes and Duties *(Clause 12.1 Section II Instruction to Bidders; Section III Bid Data Sheet, 6th Edition Philippine Bidding Documents).*

- Must be Delivered Duties Paid (DDP).

j. Bid Security *(Section 27, R.A. No. 9184)*.

k. Performance Security *(Section 29, R.A. No. 9184).*

l. Warranty *(Clause 5, Section IV General Conditions of Contract, 6th Edition Philippine Bidding Documents).*

m. Inflationary Factors.

- Consider the time when APP was prepared, and the actual time of bidding.
- Consider the time when the last procurement of similar item was made and the actual time of bidding

n. Foreign Currency Fluctuations.

X. Factors and Considerations in the Procurement of General Support Services.

Note : Some of the factors and considerations with respect to the procurement of goods apply in the procurement of general support services.

a. Terms of Reference / Scope of Works.

b. Industry Regulated Rates.

- Already includes compensation and benefits due to personnel, taxes due to the government, and management/administrative fees and profits.
- PADPAO rates for Security Guards

c. Mandated Minimum Wages, and Employee Benefits and Additional Compensations.

- 13th Month Pay
- Overtime Pay
- Rest Day & Holiday Pay
- Night Shift Differential
- Regional Minimum Wages

d. Required equipment, machineries and implements.

e. Necessary and required consumables.

XI. Factors and Considerations in the Procurement of Infrastructure Projects.

Note : Some if not majority of the factors and considerations with respect to the procurement of goods and general support services apply in the procurement of infrastructure projects.

a. Detailed Engineering / Site Surveys & Investigation / Designs.

- No bidding and award of contract shall be made without detailed engineering, site surveys and investigations, and designs for the project have been sufficiently carried out *(Section 7, R.A. No. 9184; Section 7.1 & Section 17.6 2016 IRR; Manual of Procedures for the Procurement of Infrastructure Projects).*

- Construction Materials Investigation
- Technical Specifications
- Value Engineering Studies
- Quantity and Cost Estimates
- Program of Work
- Soils and Foundation Investigation
- Aerial, Hydrographic, Topographic, Hydrologic & Sub-Surface Surveys and Investigations, and Monumenting.
- Preparation of Site Plans

b. Right of Way Requirements.

    - ROW Acquisition Plan

c. Presence and Relocation of Utilities.

    - Relocation Plan

d. Presence and Relocation of Informal Settlers.

    - Relocation Plan
    - Social Preparation Plan
    - Relocation Site

e. Environmental Compliance Certificate

    - This is a project component, and is required before project procurement.
    - Usually included in the scope of work and deliverables of project consultant.

f. Traffic Impact Assessment (TIA)

    - TIA covers and assesses the effect of the project in the vehicular/pedestrian movements in the concerned area during the construction/implementation stage and specially when the project becomes operational.

- This is a project component and is required before project procurement.
- Usually included in the scope of work and deliverables of project consultant.

- Different from Traffic Mitigation/Management Plan during the construction stage.
- Requirements for re-routing of vehicular traffic.
- Proper and effective announcements to the public.
- Coordination with and Clearances from concerned LGUs and MMDA.
- Requirements for Traffic Signal Equipment.
- Requirements for vehicular and pedestrian Safety Implements like proper barricades, illuminations, pedestrian walkways, safety canopies and nettings.
- Requirements for traffic/road flagmen.

g. Key Personnel *(Clause 10.4, Section II Instructions to Bidders; Clause 10.4 Section III Bid Data Sheet, 6th Edition Philippine Bidding Documents)*.

- Must hurdle the minimum qualification requirements.
- They should not be evaluated and rated in the manner of Key Experts in the procurement of consulting service.

h. Major Equipment Units *(Clause 10.5, Section II Instructions to Bidders; Clause 10.5 Section III Bid Data Sheet, 6th Edition Philippine Bidding Documents)*.

- Minor equipment should not be required in the Technical Specifications.

i. Licenses and Permits *(Clause 20, Section II Instructions to Bidders; Clause 20, Section III Bid Data Sheet, 6th Edition Philippine Bidding Documents)*.

- Environmental Compliance Certificate
- Traffic Impact Assessment (TIA)
- Building Permit
- MMDA Clearances

j. Additional Contract Documents required by law and PE *(Clause 21, Section II Instructions to Bidders Clause 21, Section III Bid Data Sheet, 6th Edition Philippine Bidding Documents; Manual of Procedures for the Procurement of Infrastructure Projects)*.

- Construction Schedule
- S-Curve
- Manpower Schedule
- Construction Methods
- Equipment Utilization Schedule
- Site Development Plan
- Plans and Profile Sheets
- Drainage Details
- Structural Plans
- Typical Sections and Details

k. As-Built Drawings *(Clauses 15.1 & 15.2, Section IV General Conditions of Contract, 6th Edition, Philippine Bidding Documents).*

  - The PE may hold payment amounts for said As-Built Drawings, or if said As-Built Drawings are not approved by the PE.

l. Operating and Maintenance Manuals *(Clauses 15.1 & 15.2, Section IV General Conditions of Contract, 6th Edition, Philippine Bidding Documents).*

  - The PE may hold payment amounts for said Operating and Maintenance Manuals, Operating and Maintenance Manuals or if said are not approved by the PE.

m. Bill of Quantities *(Section VIII, Bill of Quantities, 6th Edition Philippine Bidding Documents).*

  - Necessary to enable Bids to be prepared efficiently and accurately.
  - Basis of itemized pricing for the Contract.
  - Must consider locations and circumstances of concerned works for proper costings.

n. Provisional Sums *(Section VIII, Bill of Quantities, 6th Edition Philippine Bidding Documents).*

  - To answer for possible physical contingencies and price increases.
  - The use and under whose authority must be stated in the SCC.
  - They cannot be used unless the contingencies for which they were established arises and only after approval of the PE.

o. Construction Safety and Health Program.

- Republic Act No. 11058 – An Act Strengthening Compliance with Occupational Safety and Health Standards and Providing Penalties for Violations Therefor.
- DOLE Department Order No. 198-2018 – IRR of R.A. No. 11058.
- The Philippine Occupational Safety and Health Standards issued by DOLE pursuant to Article 162 of the Labor Code of the Philippines, https://www.dole.gov.ph/php_assets/uploads/2019/04/OSH-Standards-2017-2.pdf.
- The law covers contractors and subcontractors <u>including those engaged in the projects of public sector.</u>
- Does not apply to the public sector. But will apply in the implementation of projects of the public sector.
- The total cost of implementing a duly approved OSH program shall be integral part of the <u>operations cost</u>.
- The total cost of implementing a duly approved OSH program shall be a <u>separate pay item in construction and in all contracting or subcontracting arrangements</u>.
- The employer, project owner, contractor, or subcontractor, if any, and any person who manages, controls or supervises the work being undertaken shall be jointly and solidarily liable for compliance with occupational safety and health standards including the penalties imposed for violation thereof.

- CSC/DOH/DOLE Joint Memorandum Circular No. 1-2020 – Occupational Safety and Health Standards for the Public Sector.

p. Traffic Mitigation/Management Plan

- Traffic mitigation/management during the construction stage.
- Requirements for re-routing of vehicular traffic.
- Proper and effective announcements to the public.
- Coordination with and Clearances from concerned LGUs and MMDA.
- Requirements for Traffic Signal Equipment.
- Requirements for traffic/road flagmen.
- Requirements for vehicular and pedestrian Safety Implements like proper barricades, illuminations, pedestrian walkways, safety canopies and nettings.

- Different from Traffic Impact Assessment (TIA) which covers and assesses the effect of the project in the vehicular/pedestrian movements in the concerned area during the construction/implementation stage and specially when the project becomes operational.
- This is a project component and is required before project procurement.

XII. Factors and Considerations in the Procurement of Consulting Services.

1. Remuneration Costs

    - Key Experts
    - Support Staff/Personnel
    - Basic rates
    - Manning schedule
    - Billing Factor/Multiplier

        i. Overhead Cost
        ii. Social Charges

        - Bonuses
        - Vacation/sick leave
        - Paid holidays
        - Medical Care
        - Pension Plan – Retirement and/or terminal pay
        - Company Insurance; and
        - Other benefits as required by law

        iii. Management Fee

2. Reimbursable Costs

    Include all other expenses associated with the execution of the services.

    a. Based on Agreed Fixed Rates

        i. Housing Allowance
            - Should not include food and laundry since these are

basic necessities that the consultant has to spend for even without the project.

ii. Per Diems

- Daily allowances given to the consultant personnel while on official trips.
- Be reckoned from a 24-hour day trip of at least 50 kilometers away from the station.

iii. For Foreign Consultants

- Miscellaneous international travel expenses such as, the cost of transportation to and from the airports, airport taxes, passports, visas, travel permits and vaccinations.

b. Based on Actual Cost

All other reimbursable costs that must be supported with invoices and/or other supporting papers.

i. International Travel

- Cost of full fare economy class air transportation, preferably through a Filipino-owned airline, by the most direct and expeditious air routes of the consultant's expatriate staff and their eligible dependents, i.e., wife and children under eighteen (18) years of age not to exceed two (2) children, from their point of origin.

ii. Domestic Travel

- Cost of full fare economy class air transportation and/or land transportation by the most direct and expeditious routes of the consultant's staff for official trips authorized by the agency and/or explicitly required in the contract.

iii. Domestic Transportation

- Cost of vehicles and equipment either through purchase or rental.

iv. Communication Expenses

- Telephone, mobile, two-way radio, telegrams, Internet, parcel, freight, courier, fax and etc.

v. Cost of Office/Engineering Supplies

vi. Cost of Preparing/Reproducing Drawings and Other Documents

vii. Cost of Field Office (rental or construction)

viii. Acquisition of Software Licenses

ix. Cost of other items deemed necessary for the project.

3. Contingency

Payments in respect of items of additional work within the general scope of services that:
- may turn out to be necessary as the study progresses, or
- costs that would exceed the estimates set forth.

These payments can be done only if:
- such costs are approved by the agency concerned prior to its being incurred,
- that they shall be used only in line with the unit rates and costs specified in the contract, and
- in strict compliance with the project needs.

Contingency amount must not exceed five percent (5%) of the amount of the contract.

XIII. Sample Technical Requirements

The following are some examples of technical requirements. Whether they are proper, correct, complete or not, they will have impact on the proper costing of the procurement.

- Complies with the following minimum requirements <u>unless specified</u>.

  *why not specify now.

- The vehicle shall be adequately powered to meet all requirements for their operations, including but not limited to:

  *why not put all the requirements now.

- The vehicle shall be equipped with all safety devices necessary to provide a safe working environment, including temporary grounding devices and at least two (2) search lights.

  *what are the safety devices?
  *what constitute safe working condition?

- The vehicle shall be provided with all tools and accessories necessary for maintenance and repair to make them complete operational unit such as but not limited to:

- The supply of vehicle shall include spare parts good for not less than two (2) years of operation. Provision of Initial Spare Parts and Consumables shall include but not limited to the following:

- Automatic and direct brakes acting on all wheels by means of brake disc and an emergency and parking brake system. Braking system must be compliant to UIC standards.

  *International Union of Railways (UIC)
  *what specific UIC standards?
  *what about other standards?
  *EN (European Norms) Standards

- Front and rear search and warning lights, standard and buffers and couplers consistent with LRTA Line 2 system.

  *what specific components of LRT2 system?
  *what exactly must it be consistent with?

- It must be noted that there is limited clearance for any stabilizer or outriggers within the confines of the mainline guide way beams and the contractor shall pay special attention to this limitation in the design of the required vehicle.

  *what is the clearance?

- Rail guidance system shall be equipped with, but not limited to the following features.

- The vehicle may or may not (optional) be equipped with lifting equipment (center jack/turntable) to enable to rotate other direction for faster travel.

  *why not decide now?
  *why let the bidder decide for you?

- Provide on-board trunked radio compatible with LRTA communication system and integrate with Line 2 radio system.

  *what is the complete specifications of the LRT2 radio telecoms?

- The vehicle cabin must be able to accommodate comfortable a minimum of six (6) passengers/crew.

  *what is considered comfortable?

- The Contractor shall be responsible for providing comprehensive technical and actual training on the operation, maintenance and troubleshooting of the equipment for at least ten (10) LRTA personnel. This shall include giving training manuals outlining the detailed procedures for each of the training course, as well as certificate of completion to each participant.

- The Contractor shall conduct relevant testing of the vehicle prior to its commissioning and final acceptance. Among the tests that shall be performed are low and high speed test for mainline and low speed test at depot stabling area.

  *what are the relevant testing?

- The Contractor shall submit all equipment manuals from the manufacturer such as but not limited to the following:
    - Operation and maintenance manual (2 copies)
    - Parts list and catalogue (copies)

- Warranty: Two (2) years on parts and services.

  *2-year warranty costs more compared to 1-year warranty.

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