

Civil Society Manual on Monitoring DPWH's Infrastructure Projects

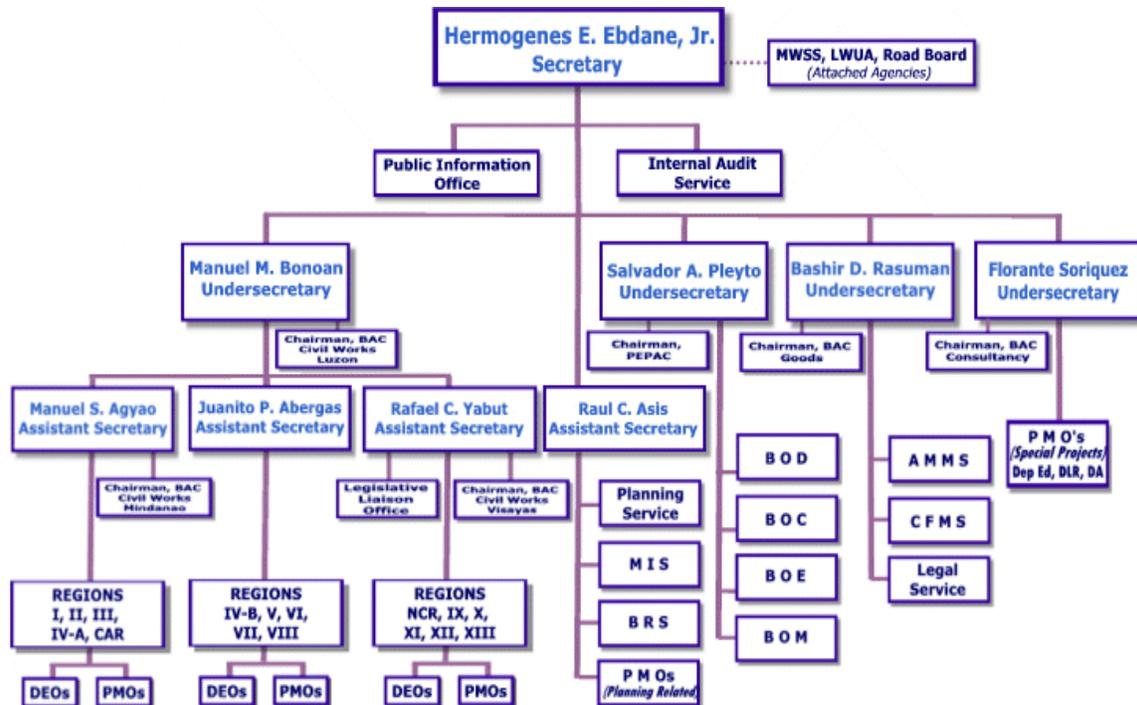
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Getting to Know the Department of Public Works and Highways

The Department of Public Works and Highways is the main government agency tasked to undertake and implement public infrastructure projects. The Department draws its mandate from Executive Order no. 124 of January 30, 1987, which renamed the Ministry of Public Works and Highways into the Department of Public Works and Highways (DPWH). Further E.O. 124 redefined the powers and functions of the DPWH.

The Department of Public Works and Highways, as the primary engineering and construction arm of the government, is responsible for the planning, design, construction and maintenance of infrastructures such as roads and bridges, flood control systems, water resource development projects and other public works in accordance with national objectives.¹ The Department shall perform these functions by continuously developing its technology for the purpose of ensuring the safety of all infrastructure facilities and securing for all public works and highways the highest efficiency and quality in construction.

The Department is currently organized in the manner as shown below²:



¹ http://www.dpwh.gov.ph/about_us/brief_history.htm

² http://www.dpwh.gov.ph/about_us/org_chart/index.htm

Acronyms:

AMMS - Administrative & Manpower Management Service	DEOs - District Engineering Office
BAC - Bidding and Awards Committee	IROW - Infrastructure Right-of-Way
BOC - Bureau of Construction	LLO - Legislative Liaison Office
BOD - Bureau of Design	MIS - Monitoring and Information Service
BOE - Bureau of Equipment	NCR - National Capital Region
BOM - Bureau of Maintenance	PMO's - Project Management Office
BRS - Bureau of Research and Standards	RESs - Regional Equipment Services
CAR - Cordillera Administrative Region	RB - Road Board
CFMS - Comptrollership & Financial Management Service	

The Department of Public Works and Highways has been consistently viewed by the public as one of the top most corrupt agencies³. In the latest Social Weather Stations' Enterprise survey (2006), DPWH ranked 2nd to the bottom (the bottom is Bureau of Customs) in terms of Net Sincerity in Fighting Corruption.

The Department of Public Works and Highways is also one of the top government agencies allocated the biggest budget for its operations⁴. In 2005, the agency had a budget of P42 billion, 90% of which or P38 billion was allocated for infrastructure projects. This does not yet include infrastructure projects of other agencies implemented through/by DPWH, such as the Department of Education (school-building projects) and Congress. This general function of the Department – implementing infrastructure projects, oftentimes big-ticket items – makes it vulnerable to corruption.

The Government Watch project, in the development of its simple monitoring tool for infrastructure projects, aims to empower the layman-citizen who is the beneficiary of the infrastructure projects (roads, bridges, flood control). The tool shall teach the layman-citizen to exact what is due to his/her community – a stable, long-standing and appropriately priced infrastructure through which the local community can reap benefits from.

***Relevant Policies on Infrastructure Implementation
by the Department of Public Works and Highways***

There are important policies that govern the implementation of infrastructure projects by the Department of Public Works and Highways. While most would entail technical information and would then require technical appreciation, there are those that can be easily understood and followed by civil society organizations.

It is important for civil society organizations (CSOs) to understand and internalize these policies as they begin to monitor the implementation of infrastructure projects. These

³ Data show that since 2001, DPWH consistently places among the top 5 agencies viewed by the public to be corrupt. (www.sws.org.ph)

⁴ The other top agencies in terms of budget allocation are the Departments of Education, National Defense and Interior and Local Government.

policies set the bounds within which the investigative lens of the CSOs shall be focusing on. An understanding of these policies both gears up the CSOs on and limits them to only what they can examine.

Below is an enumeration of key policies, which form part of the Government Watch monitoring framework for DPWH-implemented infrastructure projects:

As per the General Appropriations Act⁵
Select Provisions only:

1. Work By Administration. Except as may be expressly authorized by the President of the Philippines, any project in this Act with a cost of Five Million Pesos (P5,000,000) or less, based on the approved program, may be done by administration or force account by the agency concerned. A project costing over Five Million Pesos (P5,000,000) may be undertaken by administration by the agency concerned only in case of: (i) emergency arising from natural calamities or where immediate action is necessary to prevent imminent loss of life or property, or to comply with government commitments; (ii) failure to award a contract after competitive public bidding for a valid cause; (iii) termination or rescission of contract; (iv) areas with critical peace and order problems as certified by the Local Peace and Order Council: PROVIDED, That prior authority shall be obtained from the Secretary of Public Works and Highways, if the project cost is Twenty Million Pesos (P20,000,000) or less, or from the President of the Philippines, upon the recommendation of the Secretary of Public Works and Highways, if the project cost is more than Twenty Million Pesos (P20,000,000).
2. Cost of Construction Projects. The cost of construction projects shall, in applicable cases, include expenses for the acquisition of Right-of-Way (ROW) and the removal or relocation of squatters and illegal occupants on the land or property: PROVIDED, That no portion of the appropriations authorized for ROW shall be realigned to other purposes.
3. Direct Release to Implementing Unit. Infrastructure funds and road maintenance funds shall be released directly to the actual implementing unit in accordance with their respective authority to implement.
4. Engineering and Administrative Overhead. In order to ensure that at least ninety six and one-half percent (96.5%) of the infrastructure fund released by the DBM is made available for direct implementation of the project, any authorized deduction from project funds for administrative overhead, pre-construction activities after detailed engineering, construction project management, testing and quality control, acquisition, rehabilitation and repair of heavy equipment, and other related equipment and parts used in the implementation of infrastructure projects and contingencies, shall not exceed three and one-half percent (3.5%) of the project cost: PROVIDED, That not more than one-half percent (0.5%) to be retained in the central office shall be used for said acquisition, rehabilitation and

⁵ Select notes from the General Appropriations Act (2005).

repair of equipment and parts. The DPWH shall submit to the DBM, the Senate Committee on Finance and the House Committee on Appropriations, a quarterly report of such disbursements. Violation of, or non-compliance with, this provision shall subject the government official or employee concerned to administrative, civil and/or criminal sanction under Section 43 of Chapter 5, Section 57 of Chapter 6, and Section 80 of Chapter 7, Book VI of E.O. No. 292.

5. Liquidated Damages. Liquidated damages collected by the DPWH pursuant to R.A. No. 9184 shall be deposited with the National Treasury as income of the General Fund.

Republic Act 9184:

Government Procurement Reform Act (Select Provisions):

The Government Procurement Reform Act (R.A. 9184) lays down the governing rules on procurement of infrastructure projects. Some of these important guidelines critical to monitoring of infrastructure projects are the following:

- No bidding and award of contract for infrastructure projects shall be made unless the detailed engineering investigations, surveys and designs are completed except where detailed engineering designs form part of the bid.
- Acquisition of right-of-way is always a separate component of civil works acquisition. No bidding and award of contract for infrastructure projects shall be made unless right-of-way (ROW) has been acquired.
- No bidding and award of contract for infrastructure projects shall be made unless the necessary Environmental Compliance Certificate (ECC) has been acquired.
- As a general rule, procurement of infrastructure projects shall be done using competitive bidding method. This entails wide advertisement on the bidding that will be conducted. Only in exceptional cases will alternative methods of procurement be resorted to (e.g. negotiated procurement, sealed/open canvass, direct contracting, etc.)
- The flow of bidding is as follows with corresponding periods within which the specific stages must have been conducted⁶:
 - Pre-Procurement Conference
 - 2-week advertisement⁷
 - Submission of Eligibility Requirements
 - Pre-Bid Conference – should be conducted at least 12 calendar days before the deadline and receipt of bids
 - Submission and Opening of Bids (Technical and Financial Proposals)
 - Bid Evaluation and Ranking – must be completed within 15 calendar days from the deadline for receipt of proposals

⁶ Periods to be updated as per GPRA IRR-A amendment (2006).

⁷ For projects that cost more than P5M, newspaper advertisement is required. Advertisement must be posted in newspapers of general nationwide circulation within a maximum period of 14 calendar days and within a minimum period of 6 calendar days between publications. Postings in the Government E-Procurement System, the agency's website and any conspicuous place within the agency shall be continuous for 2 weeks.

- Post-qualification – must be completed within 7 calendar days but may be extended in exceptional cases to be approved by the Government Procurement Policy Board
- Awarding – must be conducted within 15 calendar days from the determination of the Bids and Awards Committee of the Lowest Calculated and Responsive Bid
- Contract Signing – must be conducted within 10 calendar days from receipt of the winning bidder of the Notice of Award
- Approval of the Contract – when further approval of higher authority is required, the approving authority for the contract is given a maximum of 20 calendar days to approve such contract from receipt thereof
- Notice to Proceed – shall be issued within 7 calendar days from the date of the approval of the contract

Contract Implementation Guidelines:

VARIATION ORDERS - CHANGE ORDER/EXTRA WORK ORDER/
SUPPLEMENTAL AGREEMENT

1. Variation Orders may be issued by the procuring entity to cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the preconstruction plans used for purposes of bidding and the "as staked plans" or construction drawings prepared after a joint survey by the contractor and the Government after award of the contract, provided that the cumulative amount of the Variation Order does not exceed ten percent (10%) of the original project cost. The addition/deletion of works should be within the general scope of the project as bid and awarded. A Variation Order may either be in the form of a change order or extra work order.
2. A Change Order may be issued by the implementing official to cover any increase/decrease in quantities of original work items in the contract.
3. An Extra Work Order may be issued by the implementing official to cover the introduction of new work necessary for the completion, improvement or protection of the project which were not included as items of work in the original contract, such as, where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or where there are duly unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work or character provided for in the contract.
4. Any cumulative Variation Order beyond ten percent (10%) shall be subject of another contract to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, the head of the procuring entity may authorize the variation order beyond ten percent (10%) but not more than twenty percent (20%) subject to the guidelines to be determined by the GPPB: *Provided, however,* That appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed

engineering design which failed to consider the Variation Order beyond ten percent (10%).

5. In claiming for any Variation Order, the contractor shall, within seven (7) calendar days after such work has been commenced or after the circumstances leading to such condition(s) leading to the extra cost, and within twenty-eight (28) calendar days deliver a written communication giving full and detailed particulars of any extra cost in order that it may be investigated at that time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim.

ADDITIONAL/EXTRA WORK COSTING

1. For Variation Orders, the contractor shall be paid for additional work items whose unit prices shall be derived based on the following:
 - a. For additional/extra works duly covered by Change Orders involving work items which are exactly the same or similar to those in the original contract, the applicable unit prices of work items original contract shall be used.
 - b. For additional/extra works duly covered by Extra Work Orders involving new work items that are not in the original contract, the unit prices of the new work items shall be based on the direct unit costs used in the original contract (e.g. unit cost of cement, rebars, form lumber, labor rate, equipment rental, etc.). All new components of the new work item shall be fixed prices, provided the same is acceptable to both the Government and the contractor, and provided further that the direct unit costs of new components shall be based on the contractor's estimate as validated by the procuring entity concerned via documented canvass in accordance with existing rules and regulations. The direct cost of the new work item shall then be combined with the mark-up factor (i.e. taxes and profit) used by the contractor in his bid to determine the unit price of the new work item.
2. Request for payment by the contractor for any extra work shall be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record of amount for which he claims payment. Said request for payment shall be included with the contractor's statement for progress payment.

CONDITIONS UNDER WHICH CONTRACTOR IS TO START WORK UNDER VARIATION ORDERS AND RECEIVE PAYMENTS

1. Under no circumstances shall a contractor proceed to commence work under any change Order or Extra Work Order unless it has been approved by the head of the procuring entity or his duly authorized representative. Exceptions to the preceding rule are the following:
 - a. The Regional Director or equivalent official may, subject to the availability of funds, authorize the immediate start of work under any Change or Extra Work Order under any or all of the following conditions:
 - i. In the event of an emergency where the prosecution of the work is urgent to avoid detriment to public service, or damage to life and/or property; and/or

- ii. When time is of the essence; *Provided, however,* That such approval is valid on work done up to the point where the cumulative increase in value of work on the project which has not yet been duly fully approved does not exceed five percent (5%) of the adjusted original contract price whichever is less; *Provided, further,* That immediately after the start of work, the corresponding Change Order or Extra Work Order shall be prepared and submitted for approval in accordance with the above rules herein set. Payments for works satisfactorily accomplished on any Change Order or Extra Work Order may be made only after approval of the same by the head of the procuring entity or his duly authorized representative.
- b. For a Change Order or Extra Work Order involving a cumulative amount exceeding five percent (5%) of the original contract, no work thereon may be commenced unless said Change Order or Extra Work Order has been approved by the Secretary or his duly authorized representative.

SUSPENSION OF WORK

1. The procuring entity shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to *force majeure* or any fortuitous events or for failure on the part of the contractor to correct bad conditions which are unsafe for workers or for the general public, to carry out valid orders given by the procuring entity or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The contractor shall immediately comply with such order to suspend the work wholly or partly.
2. The contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the contractor to the district engineer/regional director/consultant or equivalent official, as the case may be, due to the following:
 - a. There exist right-of-way problems which prohibit the contractor from performing work in accordance with the approved construction schedule.
 - b. Requisite construction plans which must be owner-furnished are not issued to the contractor precluding any work called for by such plans.
 - c. Peace and order conditions make it extremely dangerous, if not possible, to work. However, this condition must be certified in writing by the Philippine National Police (PNP) station which has responsibility over the affected area and confirmed by the Department of Interior and Local Government (DILG) Regional Director.
 - d. There is failure on the part of the procuring entity to deliver government-furnished materials and equipment as stipulated in the contract.
 - e. Delay in the payment of contractor's claim for progress billing beyond forty-five (45) calendar days from the time the contractor's claim has been certified to by the procuring entity's authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.

3. In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the contractor, the elapsed time between the effective order of suspending operation and the order to resume work shall be allowed the contractor by adjusting the contract time accordingly.

EXTENSION OF CONTRACT TIME

1. Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the contractor to an extension of contract time, the procuring entity shall determine the amount of such extension; provided that the procuring entity is not bound to take into account any claim for an extension of time unless the contractor has, prior to the expiration of the contract time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to the procuring entity notices in order that it could have investigated them at that time. Failure to provide such notice shall constitute a waiver by the contractor of any claim. Upon receipt of full and detailed particulars, the procuring entity shall examine the facts and extent of the delay and shall extend the contract time completing the contract work when, in the procuring entity's opinion, the findings of facts justify an extension.
2. No extension of contract time shall be granted the contractor due to (a) ordinary unfavorable weather conditions and (b) inexcusable failure or negligence of contractor to provide the required equipment, supplies or materials.
3. Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.
4. No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection.
5. Extension of contract time shall be granted for rainy/unworkable days considered unfavorable for the prosecution of the works at the site, based on the actual conditions obtained at the site, in excess of the number of rainy/unworkable days pre-determined by the government in relation to the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection, and/or for equivalent period of delay due to major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics, and for causes such as non-delivery on time of materials, working drawings, or written information to be furnished by the procuring entity, non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralyzation of construction activities, and other meritorious causes as determined by the Government's authorized Engineer and approved by the procuring entity. Shortage of construction materials, general labor strikes, and peace and order problems that disrupt construction operations through no fault of the contractor may be considered as additional grounds for extension of contract time provided they are publicly felt and certified by appropriate government agencies such as DTI, DOLE, DILG, and DND, among others. The written consent of bondsmen must be attached to any request of the contractor for extension of contract time and

submitted to the procuring entity for consideration and the validity of the performance security shall be correspondingly extended.

Exacting Begins

Identifying Targets

The Government Watch criteria in identifying infrastructure projects to be monitored had been: 1) geographical spread, 2) representation in terms of funding source, 3) representation in terms of type of infrastructure project (road, bridge and flood control), and 4) high budget projects. Target-identification was necessary for Government Watch because of sheer limitation in terms of coverage.

Target-identification is necessary for civil society organizations if the interest of the group is to approximately gauge the 'overall' performance of the agency. Nonetheless, spot-checking and/or random targeting of key infrastructure projects also serves the purpose of ensuring proper implementation of infrastructure projects.

What to Gather and What Information to Sift from the Collected Documents Documents-Analysis Approach:

The target has already been identified. Next step is to gather documents surrounding the procurement and implementation of the identified project. Documents to gather are as follows:

1. Contract
2. Accomplishment Reports/ Progress Reports
3. Variation Orders/Change Orders/ Extra Work Orders, if there are
4. Procurement-Related Documents
 - a. Abstract of Bids
 - b. Eligibility Documents of the Winning Contractor
 - c. Technical Proposal
 - d. Financial Proposal
 - e. Notice of Award

It is also very important to make a photo-documentation of the structure being monitored. This is for purposes of validation in terms of accomplishment.

The documents above contain a wealth of information regarding the status of the project. Below is an enumeration of some of the information that can be drawn from these documents and how it can be useful to CSOs for monitoring purposes.

Contract:

- a) Name of Contractor – Compare this to the Notice of Award. The bidding documents should be able to show that the said contractor was the Lowest Calculated and Responsive Bid (LCRB).

- b) Terms of the Contract (Program of Work)
- Period of implementation – This is important to take note of in following the progress of the project. Is there delay and what are the reasons for the delay? If the reported reasons have something to do with the weather, that is not good enough because weather is normally factored in when approximating the period of implementation. Exceptional cases of disparate
 - Technical specifications – This is important to note for validation purposes. A simple example is with roads. If in the contract, the specification is a concrete road, it better be concrete road that should be seen during field visit. Any deviation from the technical specification requires a variation/change/extra work order to support such deviation.
 - Status of equipment use – This can be compared with what the contractor had proposed during bidding in the submitted Technical Proposal. The contractor should abide by the terms of the submitted Technical Proposal as that formed part of the basis for awarding the contract to the contractor. Deviations from the Technical Proposal should be noted by the civil society monitor and included in the monitoring report.
 - Manpower for the project – Same as above. Information about who's who is also important in identifying the key people to interview (e.g. Project Engineer, Project Manager, etc.). On the end of DPWH, it would also be wise to note of the assigned Project Inspector and Project Manager.
- c) Notice to Proceed – Note the date of the notice to proceed. The notice should not have been issued prior to Notice of Award or after the actual start of the implementation of the project. This will be a strong indicator of the possible collusion between DPWH officials and the contractor for 'fixed' bidding
- d) Engineering and Administrative Overhead Cost – This should follow the formula that overhead cost should not exceed 3.5% of the total project cost.

Accomplishment/Progress Report:

- a) Progress of the project – The accomplishment rate reported is based on the disbursement of funds for the project. This reported rate can be measured up against the actual physical accomplishment of the project.
- b) Problems Encountered
- c) Request or Recommendation for Variation/Change/Extra Work Orders
- d) Also note of the approving signatory of the accomplishment report

Variation/Change/Extra Work Order

- a) Changes in the original work plan and corresponding financial adjustment – This should be within the specified limitations as narrated in the Guidelines for Implementation as narrated above.
- b) Basis for the change – This should strictly follow the limitations set by the Guidelines for Implementation as narrated above.

Procurement Related Documents

- a) Abstract of Bids – How many bidders participated in the bidding? Are these the same people that get to participate in the bidding?

- b) Eligibility Documents – Supposedly the eligibility of the contractor has already been validated further through post-qualification. However, it is still wise for the CSOs to do further validation under circumstances possible to them. For instance, if it is within the CSO’s knowledge that the said contractor is not filing income tax return, then that should be basis for reporting.
- c) Technical Proposal – For comparison to the terms of the contract and actual conditions during implementation of the project (e.g. equipment and manpower committed to the project)
- d) Financial Proposal – This is important vis-à-vis the adjustments that will be made later on due to variation/change/extra work orders. The financial proposal should serve as the benchmark for costing according to specific works.
- e) Notice of Award

Analysis

The Government Watch approach is very simple. It is straightforward in its monitoring analysis by focusing on deviations. For infrastructure projects, these deviations are shown in terms of time, cost, quality, and regular procedures.

Time variance or delay in infrastructure project implementation is computed in this manner:

- $(\text{Actual Date Start} - \text{Original Date Start}) + (\text{Revised/Final Date of Completion} - \text{Original Date of Completion}) = \text{Total Delay}$
- OR
- $\text{Delay in start} + \text{Delay in completion} = \text{Total Delay}$
- OR
- $\text{Revised Implementation Period} - \text{Original Implementation Period} = \text{Total Delay}$

Delay is important to measure primarily because of the attached cost implications. This is particularly true for loan-funded projects, which carries with it a commitment fee that is paid by the recipient country for delayed disbursements to the donor country/institution. This is over and above the loan interest and the loan capital that are also paid out to the donor country/institution. Moreover, delays also entail opportunity cost borne by the beneficiary community.

Cost variance, in a similar manner, is computed as follows:

$\text{Original Contract Price} - \text{Revised Contract Price} = \text{Cost Variance}$

This measures the increase or decrease in project cost. Change in cost is indicative of many other changes in the work plan itself of the infrastructure project. It is suspected that this is where the adjustments. In all project cost increases, it is important for the CSOs to gather supporting documents that allowed these increases to happen, such as the variation orders.

The CSO should note of the requisite circumstances, without which would not warrant the issuance of the variation order. Cost variances often entail a corresponding change in work otherwise the variance would be in the nature of a price escalation.

Deviation in terms of quality is something easily verifiable by the eye. Inspection of quality is limited to a typical layman's capability to determine and distinguish these changes, such as:

- Road surface: concrete vs. asphalt vs. gravel
- Length/width of the road (limited further to practicable measurements)
- Thickness of the road

Other quality features of the infrastructure to be included in quality inspection shall depend on the personal capability of the layman-monitor – whether it is within his/her capacity to identify these features.

Deviation in terms of procedure is indicative of irregularity and possible culpable violation of state laws by the contractor and the Project Inspector of DPWH, at the very least. Below is a simple checklist for this purpose:

- Was the project procured through competitive bidding?
 - If NO, what alternative procurement method was used. Verify if the requisite circumstances in RA 9184 were present to warrant the use of the alternative procurement method.
- Was the Right-of-Way and Environmental Clearance Certificate acquired before the procurement of the project?
 - ▶ If NO, this is a red flag.
- Was the project started after Notice to Proceed?
 - ▶ If NO, this is a red flag