



RESOLUTION NO. 10-2013

APPROVING THE ISSUANCE OF AN ADVISORY LETTER CLARIFYING PROCUREMENT ISSUES RAISED IN THE IMPLEMENTATION OF RETAIL COMPETITION AND OPEN ACCESS (RCOA)

WHEREAS, Republic Act No. (RA) 9184, otherwise known as the “Government Procurement Reform Act” and its revised Implementing Rules and Regulations (IRR) took effect on 26 January 2003 and 2 September 2009, respectively;

WHEREAS, RA 9184 and its IRR adopt the policy that procurement of infrastructure projects, goods and consulting services shall be competitive and transparent, and therefore shall go through public bidding, except as otherwise allowed under highly exceptional circumstances;

WHEREAS, the Government Procurement Policy Board issued Resolution No. 019-2006 dated 6 December 2006 which provides for the Guidelines on Procurement of Water, Electricity, Telecommunications and Internet Service Providers (WETI Guidelines). Under the WETI Guidelines, the procurement of electricity may be procured through Direct Contracting under Section 50(c) of the IRR of RA 9184 since electricity service providers are granted exclusive franchises to operate within a specific territory;

WHEREAS, Section 31 of RA 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law), promulgated on 8 June 2001 and took effect on 26 June 2001, provides for Retail Competition and Open Access (RCOA) on electricity distribution, which shall be implemented not later than three (3) years upon EPIRA Law’s effectivity;

WHEREAS, the Department of Energy (DOE) issued Department Circular No. 2012-05-0005 dated 9 May 2012 prescribing the general policies for the implementation of the RCOA;

WHEREAS, DOE created the RCOA-Steering Committee through Circular No. 2011-06-006 dated 17 June 2011, to provide the transition framework and synchronize the preparatory actions towards ensuring the sufficiency of existing rules, infrastructures and other institutional requirements necessary to achieve the goals of EPIRA;

WHEREAS, the Energy Regulatory Commission (ERC) issued Resolution No. 10, Series of 2011 declaring compliance with EPIRA prerequisites and the actual commencement of RCOA on 26 December 2011; and, Resolution No. 12, Series of 2012 providing for the “Resolution Adopting the Transitory Rules for the Implementation of Open Access and Retail Competition”;

WHEREAS, the following issues were raised on the implementation of RCOA:

1. What is the appropriate mode of procurement considering that RCOA opens the procurement of electricity to Retail Electricity Suppliers (RES)?

2. What are the factors to be considered in determining the Approved Budget for the Contract (ABC) since there are only limited consumption rates that ERC regulates?
3. What are the considerations in setting the technical specifications in the procurement of electricity since difficulties may be encountered in its preparation due to the limited technical-know-how of the concerned Contestable Customers (CCs)?

WHEREAS, during the 2nd Inter-Agency Technical Working Group (IATWG) and 2nd GPPB Meeting held on 15 February 2013 and 15 March 2013, respectively, the members of the Board discussed and deliberated on the concerns raised by the stakeholders that may affect the implementation of RCOA;

NOW, THEREFORE, for and in view of all the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the issuance of an Advisory Letter to DOE and ERC, to be signed by the Executive Director, addressing the identified procurement issues that may affect the implementation of Retail Competition and Open Access (RCOA), as follows:

1. The procurement of electricity involves the acquisition of goods.
2. The appropriate mode of procurement in areas where RCOA is being implemented is Competitive Bidding or Limited Source Bidding, the rules for which are set forth in RA 9184 and its associated IRR, including the corresponding Philippine Bidding Documents for Goods. Thus, the preparation of a new set of guidelines for the procurement of electricity from the Retail Electricity Suppliers (RES) is no longer necessary. However, in areas where RCOA is not yet implemented and exclusive franchises are still employed, the Guidelines on Water, Electricity, Telecommunications and Internet Service Providers shall govern the procurement.
3. In determining the ABC, the Contestable Customers should consider the different cost components *vis-a-vis* the technical specifications.
4. The Department of Energy and Energy Regulatory Commission, being the government agencies having the knowledge/expertise on the matter shall issue the guidelines on the preparation of the Generic Technical Specifications for the procurement of electricity under RCOA.

This Resolution shall take effect immediately.

APPROVED this 15th day of March, 2013 at Pasig City, Philippines.

(Sgd.)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(Sgd.)

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

(Sgd.)

DEPARTMENT OF FINANCE

(Sgd.)

DEPARTMENT OF HEALTH

**DEPARTMENT OF THE INTERIOR
AND LOCAL GOVERNMENT**

(Sgd.)

**DEPARTMENT OF NATIONAL
DEFENSE**

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

**DEPARTMENT OF TRADE AND
INDUSTRY**

(Sgd.)

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**

(Sgd.)

PRIVATE SECTOR REPRESENTATIVE

Attested by:

(Sgd.)

DENNIS S. SANTIAGO
Board Secretary, GPPB
Executive Director, GPPB-TSO