



## RESOLUTION NO. 16-2017

### APPROVING THE SUBMISSION OF COMMENTS ON SENATE BILL NO. 30 ENTITLED ENERGY EFFICIENCY AND CONSERVATION ACT

**WHEREAS**, the Government Procurement Policy Board - Technical Support Office (GPPB-TSO) received a letter from the Senate Committee on Energy requesting for Budget and Management (DBM) comments on Senate Bill No. 30 entitled, “An Act Institutionalizing Energy Efficiency and Conservation, Enhancing the Efficient Use of Energy, Granting Incentives to Energy Efficiency and Conservation Projects, and for other Purposes” introduced by Senator Loren Legarda;

**WHEREAS**, Chapter 2, Section 9(d) of Senate Bill No. 30 provides that the DBM and Commission on Audit (COA) shall develop a mechanism to enable government agencies to procure energy savings performance contracts and other forms of off-sheet balance sheet project finance for energy efficiency projects, subject to existing legislations and policies;

**WHEREAS**, Chapter 5 of SB 30 provides for Energy Performance Standards and Labeling Requirements, thus:

1. All manufacturers, importers, distributors and retailers of energy-consuming products shall subject their energy-consuming products to energy performance testing to be conducted by the Department of Energy (DOE) (*Section 13*);
2. Designated products shall provide information such as energy performance and other information that will assist consumers to make informed decisions on these products (*Section 14*);
3. All energy-consuming products, devices and equipment shall have Energy Label displayed (*Section 15*);
4. There must be fuel economy performance labeling and technical information on fuel economy rating of the engine (*Section 16*); and
5. New construction and retrofit of buildings shall comply with the minimum requirements as specified in the Guidelines on Energy Conserving Design on Buildings issued by the DOE, in consultation with the Department of Public Works and Highways (DPWH) (*Section 17*);

**WHEREAS**, Chapter 5, Section 14 of the Senate Bill provides that the DOE, subject to procurement laws and regulations, may procure the services of or enter into an agreement or other arrangement with a qualified supplier or entity to carry out the examination and testing of energy-using products, subject to the Code of Practice on Energy Labelling of Products;

**WHEREAS**, the Senate Bill also includes the rules for the certification and accreditation for professional competency and services (*Chapter 4*), the types of designated

establishments (*Chapter 6*), and the incentives for energy efficiency and conservation projects (*Chapter 7*);

**WHEREAS**, Senate Bill No. 30 contains similar provisions with that of House Bill No. 182, entitled the “Energy Efficiency and Conservation Act of 2016”, where the GPPB, during its 10<sup>th</sup> Regular Meeting on 23 September 2016, already approved the submission of comments relative to the Bill;

**WHEREAS**, during the Inter-Agency Technical Working Group (IATWG) 2<sup>nd</sup> Meeting on 31 March 2017, the GPPB-TSO presented the request for comments on SB No. 30, including its salient features, and the previous comments and recommendations submitted by the GPPB on similar bills, and thereafter, the IATWG adopted the proposal of the GPPB-TSO to recommend to the GPPB the submission of Comments on Senate Bill No. 30 containing findings, comments and recommendations similar to those already indicated in the previous Comments submitted by the GPPB for House Bill No. 182, with some modifications.

**WHEREAS**, during the 2<sup>nd</sup> Government Procurement Policy Board (GPPB) and 3<sup>rd</sup> Inter-Agency Technical Working Group (IATWG) Joint Meeting on 10 April 2017, the GPPB-TSO made the following comments and observations on Senate Bill No. 30:

1. On the Energy Savings Performance Contracts, the Government Procurement Policy Board-Technical Support Office (GPPB-TSO) has previously issued a Non-Policy Matter opinion<sup>1</sup> involving the same matter, where the government is to engage energy service companies (ESCOs) to promote and expand energy efficiency and conservation among government buildings in line with Climate Change Commission’s National Climate Change Action Plan and the DOE’s Energy Management Program:
  - a. In the said opinion, it was explained that Republic Act No. (RA) 9184 provides the rules that should be followed in an acquisition of goods, infrastructure projects, and consulting services in relation to an identified appropriation. Thus, if the acquisition does not involve expenditure of funds in relation to an identified appropriation, RA 9184 and its revised Implementing Rules and Regulations (IRR) do not apply. In line with this, Section 4.4 of the revised IRR states that it shall not apply to activities involving public-private sector infrastructure or development projects and other procurement covered by RA 6957, as amended by RA 7718, except those portions financed by the government; and
  - b. In case of projects where the government entity partners with the private sector entity, where the latter shoulders the cost or where the former is set to earn or profit rather than spend public funds, commonly termed as Public Private Partnership, it is advisable to look into the applicability of the BOT Law, or EO 423 relative to

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<sup>1</sup> NPM No. 129-2012 dated 16 October 2012.

the Guidelines and Procedures for Entering into Joint Venture Agreements Between Government and Private Entities<sup>2</sup>;

2. On the accreditation of ESCOs, although not necessarily an accreditation of bidders which is proscribed by RA 9184, this accreditation of ESCOs may also limit the government agencies to only accredited ESCOs, to the exclusion and prejudice of other qualified and capable ones;
3. On the Energy Performance Standards and Labeling Requirements, the Minimum Energy Performance Standards (MEPS) can be used by procuring entities in setting technical specifications for the procurement of goods. In such a case, however, there should be clear parameters on how to verify the Energy Efficiency criteria during post-qualification stage, with assistance from DOE in the development of such technical criteria. The use of MEPS supports the existing government policies on green or sustainable public procurement such as:
  - a. Executive Order No. 301, s. 2004, dated 29 March 2004, which mandates the establishment of a Green Procurement Program for all departments, bureaus, office and agencies of the executive branch of government. Its purposes are: to include environmental criteria in public tenders, whenever possible and practicable; and to establish the specifications and requirements for products and services to be considered environmentally advantageous; and
  - b. GPPB Resolution No. 15-2013, dated 10 May 2013, supporting the implementation of sustainable and/or green public procurement regime in the government acquisition system;
4. On the examination and testing of energy-using products, it seems to give DOE the option of whether to procure the said services pursuant to RA 9184 or enter into some other agreement or arrangement with qualified suppliers;
5. Lastly, it is observed that Senate Bill No. 30 did not include:
  - a. A definition of Energy Savings Performance Contracts, Energy Service Company, and Minimum Energy Performance Standards; and
  - b. A provision on the financing mechanism to be applied in the engagement of ESCOs not covered by procurement law (e.g. guaranteed-savings, shared-savings), which can be conferred with the Department of Budget and Management and Commission on Audit.

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<sup>2</sup> Issued by NEDA pursuant to Section 8 of EO 423.

**WHEREAS**, after due deliberation and careful review, the GPPB resolved to adopt the following recommendations of the GPPB-TSO, thus:

1. For portions that will entail use of public funds, government agencies that will engage the services of ESCOs shall follow the process and procedures laid down in RA 9184 and its revised IRR, except when the engagement is through Public Private Partnership. It is therefore suggested to include the following provision:

*“For portions that will entail use of public funds, government agencies that will engage the services of ESCOs shall follow the process and procedures laid down in RA 9184 and its revised IRR, except when the engagement is through Public Private Partnership or through Joint Venture with private entities including profit sharing scheme”;*

2. However, for the financial arrangement in the engagement of ESCOs, the GPPB will defer to the comments of the DBM and COA as they are the relevant government authorities on the matter;
3. The accreditation of ESCOs should not be used to pre-qualify ESCOs that will be engaged by the procuring entities, to the exclusion and prejudice of other qualified and capable ones in the market;
4. In the procurement of goods, government agencies shall be able to incorporate the minimum energy performance standards as green parameters or criteria for equipment, products and devices in crafting their technical specifications, as green parameters or criteria, with assistance from DOE;
5. Include a definition of Energy Savings Performance Contract, Energy Service Company, and Minimum Energy Performance Standards, and a provision on the financing mechanism to be applied in the engagement of ESCOs not covered by procurement law (e.g. guaranteed-savings, shared-savings), which can be conferred with the DBM and COA; and
6. Finally, rephrase Section 14, Chapter 5 of SB No. 30, thus:

*“The DOE, in the engagement of a qualified supplier or entity to carry out the examination and testing of energy-using products, shall follow the process and procedures laid down in RA 9184 and its revised IRR, except when the engagement would involved contractual arrangement under Public Private Partnership covered by RA 6957, as amended by RA 7718, or through Joint Venture with private entities involving profit sharing scheme.”*

**NOW, THEREFORE**, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and

approve the submission of Comments on Sensate Bill No. 30 adopting *in toto* the comments, observations and recommendation of the GPPB-TSO.

This Resolution shall take effect immediately.

**APPROVED** this 10<sup>th</sup> day of April 2017 at Pasig City, Philippines.

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**DEPARTMENT OF BUDGET AND  
MANAGEMENT**

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**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

(SGD)

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**DEPARTMENT OF EDUCATION**

(SGD)

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**DEPARTMENT OF ENERGY**

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**DEPARTMENT OF FINANCE**

(SGD)

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**DEPARTMENT OF HEALTH**

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**DEPARTMENT OF INFORMATION AND  
COMMUNICATIONS TECHNOLOGY**

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**DEPARTMENT OF THE INTERIOR  
AND LOCAL GOVERNMENT**

(SGD)

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**DEPARTMENT OF NATIONAL  
DEFENSE**

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**DEPARTMENT OF PUBLIC WORKS  
AND HIGHWAYS**

(SGD)

(SGD)

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**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

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**DEPARTMENT OF TRADE AND  
INDUSTRY**

(SGD)

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**DEPARTMENT OF TRANSPORTATION**

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**PRIVATE SECTOR REPRESENTATIVE**