



## RESOLUTION NO. 20-2016

### APPROVING THE SUBMISSION OF COMMENTS ON HOUSE BILL NO. 182 ENTITLED ENERGY EFFICIENCY AND CONSERVATION ACT OF 2016

**WHEREAS**, the Government Procurement Policy Board - Technical Support Office (GPPB-TSO) received a letter from the House Committee on Energy requesting for DBM comments on House Bill (HB) No. 182 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 in the 17<sup>th</sup> Congress by Honorable Representative Eric L. Olivarez;

**WHEREAS**, HB 182 provides that the Department of Budget and Management (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 [Section 9(d), Chapter 2];

**WHEREAS**, Chapter 5 of HB 182 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 (Sec. 13);
2. Designated products shall provide information such as energy performance and other information that shall contribute to the general consumers’ awareness, knowledge and actions (Sec. 14);
3. All energy-consuming products, devices and equipment shall have Energy Label displayed (Sec.15);
4. There must be fuel economy performance labeling and technical information on fuel economy rating of the engine (Sec. 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 Department of Energy (DOE), in consultation with the DPWH (Sec. 17);

**WHEREAS**, the HB provides for the conduct of a periodic Energy Audit once every three (3) years by engaging either an in-house energy auditor or an accredited private energy service company or energy provider to Type 1 and 2 Designated Establishments, which include Government Building, or by voluntary submission to external audit or quality control assessment for other establishments which are not energy intensive [Sec. 18(a)(6), 20(a)(6) in relation to Sec.19(e), Sec. 21(e), and Sec.22];

WHEREAS, during the 8<sup>th</sup> Inter-Agency Technical Working Group (IATWG) on 9 September 2016, the GPPB-TSO made the following comments and observations on HB No. 182:

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 Department of Energy'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 acquisition of goods, infrastructure projects, and consulting services in relation to an identified appropriation. Thus, if an 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 the Guidelines and Procedures for Entering into Joint Venture Agreements Between Government and Private Entities<sup>2</sup>;
2. On the accreditation of ESCOs/Energy Efficiency Service Providers (EESPs), although not necessarily an accreditation of bidders which is proscribed by RA 9184, this accreditation of ESCOs/EESPs may also limit the government agencies to only accredited ESCOs/EESPs, 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

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

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

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, which approves to support the implementation of sustainable and/or green public procurement regime in the government acquisition system;

**WHEREAS**, during the said meeting, the IATWG agreed 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/EESP shall follow the processes and procedures laid down in RA 9184 and its revised IRR, except when the engagement is through Public-Private Partnership;
2. The accreditation of ESCOs/EESP should not be used to pre-qualify ESCOs/EESP that will be engaged by the procuring entities, to the exclusion and prejudice of other qualified and capable ones in the market; and
3. In the procurement of goods, government agencies shall be able to incorporate the minimum energy performance standards for equipment, products and devices in crafting their technical specifications, with assistance from DOE;

**WHEREAS**, during its 10<sup>th</sup> Regular Meeting on 23 September 2016, the salient features of HB No. 182, as well as the comments and recommendations of the IATWG and GPPB-TSO were presented, and after due deliberation and careful review, the GPPB resolved to adopt the foregoing recommendations and comments of the IATWG and GPPB-TSO, with some modifications;

**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 submission of comments on HB No. 182, thus:

1. For portions that will entail use of public funds, government agencies that will engage the services of ESCOs/EESPs shall follow the process and procedures laid down in RA 9184 and its revised IRR, except when the engagement is through Public Private Partnership;
2. The accreditation of ESCOs/EESPs should not be a requirement for pre-qualification to the exclusion and prejudice of other qualified and capable ones in the market; and
3. 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, with assistance from DOE.

This Resolution shall take effect immediately.

**APPROVED** this 23<sup>th</sup> day of September 2016 at the City of Manila, Philippines.

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**DEPARTMENT OF BUDGET AND  
MANAGEMENT**

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**DEPARTMENT OF EDUCATION**

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**DEPARTMENT OF FINANCE**

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**DEPARTMENT OF INFORMATION AND  
COMMUNICATIONS TECHNOLOGY**

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**DEPARTMENT OF NATIONAL  
DEFENSE**

(SGD)

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**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

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**DEPARTMENT OF TRANSPORTATION**

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**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

(SGD)

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**DEPARTMENT OF ENERGY**

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**DEPARTMENT OF HEALTH**

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**DEPARTMENT OF THE INTERIOR  
AND LOCAL GOVERNMENT**

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**DEPARTMENT OF PUBLIC WORKS  
AND HIGHWAYS**

(SGD)

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**DEPARTMENT OF TRADE AND  
INDUSTRY**

(SGD)

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**PRIVATE SECTOR REPRESENTATIVE**