

NPM No. 047-2017

20 December 2017

DIR. PATRICK T. AQUINO, CESE
Director IV
ENERGY UTILIZATION MANAGEMENT BUREAU (EUMB)
DEPARTMENT OF ENERGY (DOE)
Energy Center, Rizal Drive, Bonifacio Global City,
Taguig City

Re: Procurement of Energy Efficient Goods -

Dear Director Aquino:

This refers to the Honorable Director's letter seeking opinion on whether the adoption of specific energy efficiency measures as provided in the 2017 General Appropriations Act (GAA) and as directed by His Excellency, President Rodrigo Roa Duterte, will merit government offices to resort to alternative methods of procurement.

It is represented that the 2017 GAA provided for the adoption of specific energy efficiency measures as follows:

Sec. 36. Energy Efficiency. All national government agencies, local government units and government owned and controlled corporations shall embark on energy efficiency measures and adopt the use of energy efficient lighting, such as light-emitting diode (LED) lamp in their office buildings, school buildings, hospitals, markets, parks, street lights and other public places. Ten percent (10%) of their service vehicle fleet shall use more energy efficient and environment-friendly alternative fuel vehicles such as electric vehicles (battery powered, hybrid, and plug-in hybrid), auto-LPG and natural gas as applicable.

Likewise, it was mentioned in the Honorable Director's letter that DOE was tasked to promulgate the necessary rules for the proper implementation of the said provision. And it is the understanding of the Honorable Director that the procurement of these alternative fuel vehicles through public bidding may be challenging for the government as these have not been mainstreamed yet in the transport sector. Hence, this request.

Guided by the provisions of Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR), the Procuring Entity (PE), through the Bids and Awards Committee (BAC), with approval of the Head of the Procuring Entity (HOPE), is in the best position to determine the correct method of procurement for all its projects taking into consideration all the surrounding conditions for each procurement.¹

¹ NPM No. 61-2014 dated 15 October 2014.

It bears stressing, however, that Section 10 of RA 9184 and its 2016 IRR mandate that all procurement shall be done through Competitive Bidding, except when resort to alternative methods of procurement is warranted by attending circumstances. Alternative methods of procurement may be resorted to only in highly exceptional cases provided in Sections 49 to 53 of RA 9184 and its 2016 IRR, including the *Consolidated Guidelines for the Alternative Methods of Procurement* (Guidelines) found in Annex "H" of the 2016 IRR of RA 9184. In addition, the selection of the alternative method of procurement is dependent on the presence or absence of specific conditions and requirements that justify the use of a particular alternative modality.

It is our considered view that in the procurement of energy efficient lighting, environment-friendly alternative fuel vehicles, or any energy-consuming products, devices and equipment, Procuring Entities may adopt the most suitable or appropriate method of procurement that it deems fit based on its identified needs and requirements and the best way these needs may be addressed and satisfied, taking into consideration that the primary mode of procurement is competitive bidding, and alternative methods of procurement may be resorted to only under highly exceptional circumstances provided for by the procurement law, its IRR and the associated Guidelines.

At this juncture, it is opportune to mention that the Government Procurement Policy Board (GPPB) through GPPB Resolution No. 22-2016, dated 23 September 2016, approved the prioritized list of ten (10) Common-Use Supplies and Equipment (CSE), and ten (10) Non-Common Use Supplies and Equipment (Non-CSE). The 10 CSEs² to be procured by the Department of Budget and Management - Procurement Service (DBM-PS), and 10 Non-CSEs³ to be procured by Procuring Entities in general have identified green and verifiable criteria. Once available, procuring entities are mandated to procure the green CSEs from the DBM-PS; and after the announcement of its mandatory implementation by the GPPB, Procuring Entities in the procurement of identified green Non-CSE shall procure the same mandatorily. Note that LED light/bulb is an identified CSE, and motor vehicle is an identified Non-CSE. Moving forward, the procurement of these goods shall comply with the green criteria approved by the GPPB, regardless of the procurement modality to be adopted.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

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² The mandatory procurement of CSEs by the DBM-PS shall commence in 2018. The 10 CSEs are: Multi-Copy Paper; Toilet Paper; Record Books; Cleaner; Trash Bag; Disinfectant Spray; Chairs; Detergent Powder; Liquid Hand Soap; and, **LED Lights/Bulbs**.

³ The mandatory procurement of Non-CSEs with green criteria by Procuring Entities shall be announced in due time. The 10 Non-CSEs are: Computer Monitors, Desktop Computers and Laptops; Air Conditioners; **Vehicles**; Fridges and Freezers; Copiers; Paints and Varnishes; Food and Catering Services; Training Facilities / Hotels / Venues; Toilets and Urinals; and Textiles / Uniforms and Work Clothes.