

REITERATING A TRANSPARENT AND COMPETITIVE SYSTEM OF AWARDING SERVICE/OPERATING CONTRACTS FOR COAL, GEOTHERMAL AND PETROLEUM PROSPECTIVE AREAS, REPEALING FOR THIS PURPOSE DEPARTM...

DOE DEPARTMENT CIRCULAR NO. DC2006-12-0014, December 22, 2006

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WHEREAS, Section 1 of Presidential Decree No. 1442, otherwise known as “An act to Promote the Exploration and Development of Geothermal Resources,” Section 4 of Presidential Decree No. 972, as amended, otherwise known as “The Coal Development Act of 1976,” and Section 4 of Presidential Decree No. 87, as amended, otherwise known as the “Oil Exploration and Development Act of 1972,” allow the Philippine Government to promote and undertake the exploration, development and production of the country’s indigenous coal, geothermal and petroleum resources through service/operating contracts with contractors;

WHEREAS, Republic Act No. 7638, as amended, otherwise known as “The Department of Energy (DOE) Act of 1992,” mandates the DOE to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation;

WHEREAS, on 19 May 2003 and 20 April 2005, the DOE issued Department Circular No. 2003-05-005 and 2005-04-004, respectively, both providing for investment promotion and public contracting rounds for awarding coal, geothermal and petroleum service/operating contracts;

WHEREAS, the DOE desires to adopt the most effective strategy for promoting and attracting local and foreign investment to further increase the exploration, development and production of prospective coal, geothermal and petroleum areas;

WHEREAS, the DOE reiterates and acknowledges the need to continue adopting a transparent and competitive system for awarding service/operating contracts for exploration, development and production of the country’s coal, geothermal and petroleum resources;

WHEREAS, consistent with national interest, the DOE has, after consultation with stakeholders, resolved to enhance government participation, through the government corporate sector, in the exploration, development and production of indigenous oil and gas resources through the grant of option to PNOC to participate in petroleum service contracts.

NOW, THEREFORE, in consideration of the aforementioned premises, the following procedures shall govern the transparent and competitive system of awarding service/ operating contracts for coal, geothermal and petroleum exploration, development and production.

- Contracting Rounds

1.1 The Energy Resource Development Bureau (ERDB) shall determine prospective coal, or geothermal, or petroleum areas found in the Philippine territory and its maritime zones including the continental shelf for

inclusion in the competitive public contracting rounds. The DOE Secretary, upon the recommendation of the ERDB Director and the Undersecretary exercising supervision over ERDB, shall declare such areas open for competitive public contracting round. The DOE shall not accept any application or proposals for exploration, development and production service/operating contracts except during the competitive public contracting rounds. No applications for small-scale mining permit for coal operations shall likewise be entertained in the offered areas until after service/operating contacts have been awarded.

1.2 The ERDB shall prepare the contracting round documents with a description of available data and the prospect of geothermal/coal/petroleum resources in each area. The DOE Contract Negotiating Panel (DOE-CNP per Department Order No. 2003-05-005) shall then disseminate information of the contracting round which shall include, among others, the following.

- a. Location Map and Technical Descriptions (TDs) of the area/s being offered during the contracting round;
- b. Schedule of activities for the contracting round; and
- c. Such other information as the DOE-CNP may deem appropriate

1.3 Interested parties for the contracting rounds on petroleum may access data available at DOE after payment of a Data Viewing Fee of Five Hundred United States Dollars (US\$500.00) for a two (2) day maximum visit. If the interested party decides to purchase the DOE data, the Data Viewing Fee will be credited to the total price of the purchased data.

1.4 Interested parties for the contracting rounds on petroleum, coal and geothermal areas shall submit complete set of documents for evaluation by the DOE-CNP. The DOE-CNP may require submission of additional information/documents, as may be necessary, during evaluation of the proposals for clarification purposes only. A non-refundable application fee based on DOE's Schedule of Fees and Charges in compliance with EO 197 shall be paid by the applicant upon submission of the application/proposal which should include the following documents:

a. Work Program

a.1 Proposed oil/gas service contract, geothermal service contract or coal operating contract based on existing DOE Model Contracts;

a.2 Proposed work program (discussion on the application of the different exploration strategies and methodologies to be employed in delineating energy resources at depth with subsequent manpower complement should be in detailed narrative format and the Schedule of Activities in Gantt Chart) and minimum expenditure on annual/sub-phase basis for each proposed activity with respect to the area or areas specified in the proposal; and

a.3 Narrative presentation of data and information (such as geology, stratigraphy, geochemistry, geophysics, water or coal quality, resource estimate, resource indicators, etc.) suggesting presence of energy resources at depth.

b. Financial Proposal and Documentation

b.1 Audited financial statements and annual reports for the last three (3) years;

b.2 Duly filled-out information sheet;

b.3 Resume/profile of the prospective contractor, its incorporators, stockholders or officers;

b.4 Particulars of the kind of financial resources available to the prospective contractor including capital, credit facilities and guarantees so available; and

b.5 Certified copy of latest income business tax returns filed with the Bureau of Internal Revenue, and duly validated with the tax payment made thereon, if applicable.

c. Legal Documentation

c.1 Certified copy of Articles of Incorporation;

c.2 Certified copy of the by-laws of the prospective contractor;

c.3 SEC Registration Certificate; and

c.4 Certified copy of latest general information sheet submitted to the Securities and Exchange Commission.

d. Technical Proposal and Documentation

d.1 Particulars of the technical and industrial qualifications, eligibilities and work related experiences of the interested party and its employees;

d.2 Particulars of the technical and industrial resources available to the interested party for the exploration, development and production of geothermal, coal and petroleum resources;

d.3 Particulars on the experiences, achievements and track records of the interested party and its employees related to technical and industrial undertakings; and

d.4 Particulars on organizational and management structures relative to Administration, Financial and Technical aspect of the interested party.

For financial, legal and technical documentation, if the interested party is a joint venture, all entities forming part of the joint venture shall comply with the above requirements. In addition, the interested party shall submit a copy of the joint venture agreement. Furthermore, any interested party, acting singly or forming part of a joint venture, that is organized in a foreign country shall submit documents equivalent to the above, issued by the appropriate governing body and duly authenticated by the Philippine consulate in the country where it is registered or where it operates.

1.5 The DOE CNP shall open the submitted proposals relative to the contracting round during the first working day after the announced deadline for submission of proposals. No proposals or contracting documents shall be accepted on the designated day of the opening of proposals.

1.6 The DOE CNP shall then conduct evaluation of the submitted proposals based on the following criteria:

a. Proposed work program - 40%

b. Financial qualification - 20%

c. Legal qualification - 20%

d. Technical qualifications - 20%

The DOE CNP, for sufficient and valid cause, may at any given time reject any or all proposals submitted.

1.7 The DOE shall discuss with the highest ranked proponent to finalize the contract details. No material deviation from the submitted proposal shall be allowed at any given time. The DOE CNP shall then make a recommendation to the DOE Secretary for any award of service/operating contracts based on the negotiations conducted. The DOE shall formally inform all the interested parties of the results of the evaluation.

- Contract Areas - The definition and delineation of prospective coal, geothermal and petroleum contract areas shall be in accordance with the provisions of applicable government laws, rules and existing procedures such as

the National Integrated Protected Areas System (NIPAS) Law and the Indigenous People's Rights Act (IPRA), among others.

- Option for PNOC to participate in Petroleum Service Contracts - For petroleum service contracts proposed under this Circular, an option shall be reserved for the Philippine National Oil Company (PNOC) for a maximum of ten percent (10%) equity participation in a proposed service contract involving one (1) or more Filipino participant or a maximum of fifteen percent (15%) equity participation in a proposed service contract involving no Filipino participant. Within thirty (30) days after the winning proponent is determined, PNOC shall give proper notice to the winning proponent and the DOE whether or not it decides to exercise said option.

- Separability Clause - If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

- Repealing Clause - The provisions of Department Circular No. 2003-05-005 and Department Circular No. 2005-04-004 are hereby repealed. All other department circulars, which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

- Effectivity - This Circular shall take into effect immediately after publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Adopted: 22 Dec. 2006

(SGD.) RAPHAEL P.M. LOTILLA

Secretary

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