GUIDELINES GOVERNING A TRANSPARENT AND COMPETITIVE SYSTEM OF A WARDING RENEWABLE ENERGY SERVICE/OPERATING CONTRACTS AND PROVIDING FOR THE REGISTRATION PROCESS OF RENEWABLE ENERG...

Read online (full-text search, related cases, audio case brief): https://batas.org/library/d576b8136c43/

WHEREAS, pursuant to Article XII, Section 2, of the 1987 Philippine Constitution, all forces of potential energy and other natural resources within the Philippine territory belong to the State and their exploration, development and utilization shall be under the full control of the State;

WHEREAS, Republic Act (R.A.) No. 9513, otherwise known as the “Renewable Energy Act of 2008,” provides that it is the policy of the State to encourage and accelerate the exploration, development and increase the utilization of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems;

WHEREAS, the Implementing Rules and Regulations (IRR) of R.A. No. 9513 mandates the Department of Energy (DOE) to issue a regulatory framework containing the guidelines governing a transparent and competitive system of awarding Renewable Energy Service/Operating Contracts from pre-development to development/commercial stage, among others;

WHEREAS, biofuels, which are defined as fuels made from biomass, are considered renewable energy resource under the scope of biomass energy;

WHEREAS, Joint Administrative Order (JAO) No. 2008-1, Series of 2008, otherwise known as the “Guidelines Governing the Biofuel Feedstocks Production, and Biofuels and Biofuel Blends Production, Distribution and Sale,” was issued for the accreditation of biofuel producers, among others, under R.A. No. 9367 otherwise known as the “Bio-fuels Act of 2006;”

WHEREAS, R.A. No. 7638, as amended, otherwise known as the “Department of Energy 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, among others;

NOW, THEREFORE, in consideration of the foregoing premises, the DOE hereby issues the following guidelines:

CHAPTER I. GENERAL PROVISIONS

SECTION 1. Title. – This Circular shall be known as the “Guidelines Governing a Transparent and Competitive System of Awarding Renewable Energy Service/Operating Contracts and Providing for the Registration Process of Renewable Energy Developers.”

SEC. 2. Scope. – This Circular shall provide the guidelines on the award of Renewable Energy Service/Operating Contracts (RE Contracts) covering both the pre-development and development stages either for power or non-power applications, including the transition of the existing service contracts and agreements on the

exploration, development or utilization of Renewable Energy (RE) resources with the DOE/Government to RE Contracts, subject to Rule 13, Section 39 of the IRR of the Act, and the issuance of DOE Certificate of Registration for RE Developers.

SEC. 3. Definition of Terms. – As used in this Circular, the following terms shall be understood to mean, as follows:

(a) "Act" shall refer to R.A. No. 9513, otherwise known as the "Renewable Energy Act of 2008;"

(b) "Blocking System" shall, for purposes of this Circular, refer to the subdivision of the Philippine territory by the DOE, into meridional blocks of half (1/2) minute of latitude and half (1/2) minute of longitude with Geographic Projection and Datum of the Philippine Reference System (PRS) of 1992. One (1) meridional block shall have an area of eighty one (81) hectares. Each block shall be designated a block number which shall be used exclusively in identifying the coverage of a contract area;

(c) "Commercial Operation" shall refer to the phase of RE development when the RE Developer has completed its commissioning and test operations and is ready to sell or apply its produced energy, as duly confirmed by the DOE;

(d) "Declaration of Commerciality" shall refer to a written declaration by the RE Developer, duly confirmed by the DOE Secretary, stating that the project is commercially feasible;

(e) "Financial Closing" shall refer to the stage when the RE Developer has established, based on the DOE's criteria and procedures, its financial capability to implement its RE project;

(f) "Frontier Areas" shall refer to areas with RE resource potentials but without sufficient available technical data as determined by the DOE and are not ready for immediate development and utilization;

(g) "RE Applicant" shall refer to any entity, whether individual or juridical, local or foreign, including joint venture or consortium of local, foreign, or local and foreign firms, subject to the limitations provided in Section 6 hereof, which applies for the assessment, exploration, extraction, harnessing, development, utilization or commercialization of RE resources;

(h) "RE Application" shall refer to the legal, technical, financial and other pertinent documents submitted by the RE Applicant in accordance with the requirements for direct negotiation of RE Contracts under Section 10 of this Circular;

(i) "RE Developer" shall refer to individual/s or juridical entity created, registered and/or authorized to operate in the Philippines in accordance with existing Philippine laws and engaged in the exploration, development or utilization of RE resources and actual operation of RE systems/facilities. It shall include existing entities engaged in the exploration, development and/or utilization of RE resources, or the generation of electricity from RE resources, or both;

(j) "RE Proposal" shall refer to the legal, technical, financial and other pertinent documents submitted by the RE applicant in accordance with Section 9 on the open and competitive selection process of this Circular;

(k) "Work Program" shall refer to plans, programs, and activities, including the corresponding budgetary requirements, for the performance of obligations under the RE Contract, including, but not limited to, plans for exploration, development, production or utilization; and

(l) "Working Capital" shall refer to the RE Applicant's net liquid assets (quick assets less current liabilities) consisting primarily of cash, temporary investments, short term current receivables and deposits.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

CHAPTER II. RESERVICE/OPERATING CONTRACTS

SEC. 4. Nature of RE Contract. – An RE Contract is a service agreement between the Government, through the President or the DOE, and an RE Developer over an appropriate period as determined by the DOE in which the RE Developer shall have the exclusive right to explore, develop or utilize a particular RE area: Provided, That an agreement between the Government and the RE Developer for the exploration, development or utilization of biomass resources shall be covered by an RE Operating Contract only, subject to the provisions of Section 25 of this Circular: Provided, further, That JAO No. 2008-1, Series of 2008 under R.A. No. 9367 shall govern the registration and accreditation of biofuel producers, in lieu of an RE Contract.

a. Stages of RE Contract – The RE Contract shall be divided into two (2) stages, namely:

i. Pre-Development Stage – involves the preliminary assessment and feasibility study up to financial closing of the RE project; and
ii. Development/Commercial Stage – involves the development, production or utilization of RE resources, including the construction and installation of relevant facilities up to the operation phase of the RE facilities.

b. Conversion of RE Contract:

i. From Pre-Development Stage to Development/Commercial Stage

– Upon Declaration of Commerciality by an RE Developer and after due confirmation by the DOE, the RE Developer shall apply for the conversion of the RE Contract, prior to its expiration, from Pre-Development Stage to Development/Commercial Stage. The Declaration of Commerciality shall be based on the feasibility studies and/or exploration activities conducted by the RE Developer.

The RE Developer of an RE Contract shall secure permits, clearances or certificates such as, but not limited to, Environmental Compliance Certificate (ECC), Certificate of Non-Coverage (CNC), Water Rights Permit, Free and Prior Informed Consent (FPIC), Certificate of Non-Overlap, Local Government Unit (LGU) endorsement and all other regulatory requirements from other government agencies which are applicable to the RE activities/operations.

ii. From Existing Service Contract/Agreement on RE Resources to RE Contracts under the Act and this Circular – For an existing RE project, the contract holder may elect to convert its Service Contract/Agreement under applicable laws by applying for an RE Contract under the Act and this Circular. The approval of such application shall be carried out on the basis of its prior rights over the contract area.

Any individual or juridical entity with a valid and existing service or development contracts and agreements with the DO E/Government for the exploration, development or utilization of RE resource shall be deemed provisionally registered as an RE Developer under the Act, which registration shall subsist until the issuance of DOE Certificate of Registration provided for under Section 18 of the IRR. For this purpose, the DOE shall issue the corresponding provisional certificate of registration, pursuant to Section 39 of the IRR, upon receipt of the RE Developer’s letter of intent for conversion to RE Contract.

SEC. 5. RE Contract Area. – The RE Contract area shall be defined through a Blocking System: Provided, That the Blocking System shall apply only to RE Contracts on ocean, solar, wind and geothermal resources.

Part 1. Application Requirements

SEC. 6. Application Requirements. – All applicants for the issuance of an RE Contract shall comply with the following requirements:

a. Who may apply – Any person, natural or juridical, local or foreign, may, subject to the limits herein set,

apply for RE contracts.

i. For RE Contract both during Pre-Development and Development/ Commercial Stages covering all RE resources and including hybrid systems, the RE Applicant must be a Filipino or, if a corporation, must be a Filipino corporation at least sixty percent (60%) of its capitalization must be owned by Filipinos and duly registered with the Securities and Exchange Commission (SEC), except in situations as provided for in sub-paragraphs ii and iii of this Section.

ii. In the case of the exploration, development or utilization of geothermal resources, the applicant may either be a Filipino, natural or juridical, or a foreign corporation.

iii. Consistent with Article XII, Section 2, of the 1987 Philippine Constitution and applicable existing laws, any foreign-owned corporation duly authorized to operate in the Philippines may apply for an RE Contract in the nature of a financial or technical assistance agreement for large-scale exploration, development or utilization of geothermal resources.

iv. In case the RE applicant is a joint venture or consortium, the partners of the joint venture or the members of the consortium shall organize themselves as a corporation registered under the Corporation Code of the Philippines.

To signify its intention to enter into RE contractual arrangements with the DOE, the RE Applicant shall submit a letter of intent, together with the duly accomplished RE Contract Application Form (Annex “A”[*]).

b. Legal Requirements – For an individual or single proprietorship, the RE Applicant shall submit a National Statistics Office (NSO)-certified true copy of birth certificate, business permit and other applicable documents. For juridical entity, the RE Applicant shall submit an original copy of certification from its Board of Directors or officers authorizing its representative to negotiate and enter into an RE Contract with the DOE, duly certified Articles of Incorporation or other equivalent legal document creating the same and latest General Information Sheet or equivalent legal documents showing the names of its officials, ownership, control and affiliates. In the case of foreign corporations, the documents to be submitted shall be duly authenticated by the Philippine Consulate having consular jurisdiction over the entity.

c. Technical Requirements – The RE Applicant must possess the necessary technical capability to undertake the obligations under the RE Contract in terms of the following:

i. Track Record or Experience – By himself, the corporation itself, through the member-firms, in case of a joint venture/consortium, or through employment of service providers, the RE Applicant shall include in its technical submission proof of its ongoing or completed contracts/agreements similar to or congruent with the nature of project/work being proposed to be covered by an RE Contract involving a specific RE resource. The individual firms may individually specialize on any or several stages of the RE Contract. A joint venture/consortium applicant shall be evaluated based on the individual or collective experience of the member-firms of the joint venture/consortium.

ii. Work Program – This shall be evaluated based on its viability, minimum expenditure commitments, detailed program of activities inclusive of environmental protection/conservation and social acceptability plans, among others.

iii. Key Personnel Experience – The key personnel of the RE Applicant must have sufficient and relevant work experience in connection with the project being applied for. For this purpose, the Curriculum Vitae of the management and technical personnel must be submitted.

iv. List of Existing Company-owned Equipment (if any) for RE Operations and Any Lease Agreement of RE Equipment – This shall be evaluated based on the technical and environmental soundness, sufficiency, and

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

appropriateness of company-owned and leased equipment that will be used for the project.

d. Financial Requirements – The RE Applicant must have adequate capability to provide the financial requirements to sustain the proposed Work Program for the exploration activities or conduct of feasibility studies during the Pre-Development Stage, and detailed engineering/geological/industrial design for the development and operation of facilities during Development/Commercial Stage, as the case may be. This financial capability shall be measured in terms of:

i. Audited Financial Statements for the last two (2) years and unaudited Financial Statement if the filing date is three (3) months beyond the date of the submitted audited Financial Statement;
ii. Bank certification to substantiate the cash balance in the audited Financial Statement or updated Financial Statement;
iii. Projected cash flow statement for two (2) years;
iv. List of company-owned equipment/facilities available for the proposed RE projects;
v. If the RE applicant, on account of its infancy, is unable to produce the requirements in sub-paragraphs (i) to (iii) above, it shall submit an audited Financial Statement and duly certified and/or notarized guarantee or Letter of Undertaking/Support from its parent company or partners to fund the proposed Work Program. In the case of foreign parent-company, the audited Financial Statement and the guarantee or Letter of Undertaking/Support shall be duly authenticated by the Philippine Consulate Office that has consular jurisdiction over the said parent company; and

vi. Proof of the ability of the RE Applicant to provide the required minimum amount of Working Capital which shall be equivalent to 100% of the cost of its work commitment for the first year of the proposed Work Program.

The legal, technical and financial requirements shall be as enumerated in the Check-list of Requirements (Annex “B”[*]).

SEC. 7. Payment of Application and Processing Fees. – The RE Applicant shall pay the prescribed application and processing fees for each RE Proposal or RE Application. No RE proposal/application shall be accepted without due payment of application and processing fees. Provided, That the payment shall be made only upon submission of complete documentary requirements and receipt of order of payment from REMB.

Part 2. Procedure for Awarding of RE Contracts

SEC. 8. Modes of Awarding RE Contract. – RE Contracts shall be awarded through an open and competitive process of selection or by direct negotiation.

SEC. 9. Open and Competitive Selection Process. – Unless as otherwise provided in Section 10 below, the DOE shall observe the following process:

a. Invitation for RE Project Proposals – All areas for open and competitive selection shall be posted by the DOE in its website. In the event that new areas have been identified, the DOE shall update its website and may include them in the areas to be published in preparation for the conduct of open and competitive selection of awarding RE Contracts. The publication of areas shall be made as often as practicable depending on the number of identified areas and type of RE resources, among others. Thereafter, invitations for open and competitive selection shall be published once every week for three (3) consecutive weeks in at least two (2) newspapers of general circulation. The DOE shall, likewise, post said invitation and the attachments in its website.

The invitation shall include information such as, but not limited to:

i. Map of the area being declared open for RE project proposals;

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ii. Instructions to RE Applicants on the requirements for RE Contract proposal;

iii. Schedules, including the deadline to submit, the date of opening, and period of evaluation of RE project proposals; and

iv. Criteria for evaluation and the corresponding percentage/weight.

b. Creation of a Review Committee – A Review Committee shall be created to evaluate the RE Proposals and Applications of RE Applicants and provide recommendations to the DOE Secretary for the award of RE Contracts.

The said Committee shall be composed of the following: the Assistant Secretary in charge of the REMB as Chairperson, the representative from the Office of the Renewable Energy Management Bureau (REMB) Director as the Vice-Chairperson, and one (1) representative each from the concerned division of the REMB, Compliance Division of the Financial Services, and Contracts Division of the Legal Services, as members. The Review Committee shall be assisted by a Secretariat from the REMB.

In the event that a foreign corporation shall be the winning or qualified RE Applicant, the RE Contract shall be awarded in accordance with the provisions under Sections 11 and 23 hereof.

c. Criteria for Evaluation – The Review Committee shall set the rules for the evaluation of RE Proposals and Applications which shall be based mainly on legal, technical and financial criteria, taking into account the type of RE resource, RE Contract Stage being offered, and the size and location of the RE area, among others.

Evaluation of the RE Proposal on technical and financial criteria shall proceed only after the Review Committee has found that all the legal requirements are complied with.

d. Period of Evaluation – Only complete submissions will be evaluated by the Review Committee. The review of the RE Proposal shall be conducted within a reasonable period, as indicated in the Instruction to RE Applicants, from the date of opening of the RE proposal. The RE Applicant shall be notified by the DOE of the results of its evaluation.

SEC. 10. Direct Negotiation. – Direct negotiation shall be allowed only in the following instances subject to confirmation by the REMB:

a. In case of Frontier Areas – The negotiation shall be subject to the following conditions:

i. In instances where there is only one applicant for an RE area and the submission is deemed to be incomplete, the said RE applicant shall be given thirty (30) days within which to complete its submission.

ii. In the event that there are two (2) or more interested applicants over the same RE area, the REMB shall prioritize and endorse to the Review Committee for evaluation the application of the RE Applicant whose submission was first received by the REMB. If the submission is deemed insufficient, the same shall be given thirty (30) days within which to complete its submission.

iii. Should the RE Applicant fail to complete its submission within the prescribed period as stated above, it shall be automatically disqualified and, in the case of two or more applications, it shall lose its right as first proponent and the immediately succeeding application shall be considered.

iv. The RE Application over a specific Frontier Area shall, in the interest of transparency, be posted in the DOE website within five (5) working days from receipt of payment of application/processing fees until the award of the RE Contract.

v. Upon submission of the complete documentary requirements, the DOE and the RE Applicant shall negotiate

the terms and conditions of the RE Contract within a maximum period of one hundred twenty (120) days.

b. When, during the conduct of open and competitive selection process, any of the following circumstances exist:

i. No RE Proposal was received by the REMB;
ii. No one among the applicants was able to meet the legal requirements, as determined by the Review Committee; or
iii. When one or more applicants met the legal requirements but after the evaluation of technical and financial proposals, no applicant was able to comply, as certified by the Review Committee.the DOE may apply the mode of direct negotiation following the provisions under paragraph (a) above on Frontier Area.

Part 3. Award of RE Contracts and Registration Procedure for RE Developers

SEC. 11. Award of RE Contract. – The Review Committee shall, within one (1) week after the final evaluation of the RE project proposal and, in the case of RE Application, the negotiation of the terms and conditions of the RE Contract, recommend to the DOE Secretary the approval of the RE Contract. The DOE shall notify the winning or qualified RE Applicant of the award and the schedule of signing of the RE Contract.

Provided, That the RE Contract in the nature of a financial or technical assistance agreement shall be approved and executed by the President of the Philippines, upon the recommendation by the DOE Secretary.

SEC. 12. Effectivity of the RE Contract. – The RE Contract shall take effect on the effectivity date as stipulated in the signed RE Contract.

SEC. 13. Posting of Performance Bond. – Within sixty (60) days after the effectivity date of the contract and at the start of every contract year thereafter, the RE Developer shall post a bond or any other guarantee of sufficient amount, but not less than the minimum expenditures commitment for the corresponding year.

SEC. 14. Registration as an RE Developer. – The DOE shall issue the Certificate of Registration to the RE Developer immediately upon the effectivity of the RE Contract whether during Pre-Development or Development/ Commercial Stage.

Holders of valid and existing contracts or agreements on renewable energy resources awarded prior to the effectivity of the Act shall be issued a DOE Certificate of Registration as RE Developers only upon conversion of these contracts or agreements to RE Contracts pursuant to Section 4 (b) hereof.

CHAPTER III. SALIENT PROVISIONS OF THE RE CONTRACT

Part 1: Standard Provisions

SEC. 15. Term of RE Contract. – The RE Contract per RE resource type shall have a term of not exceeding twenty-five (25) years and renewable for not more than twenty-five (25) years: Provided, That the total period of the RE Contract from the Pre-Development to the Development/Commercial Stages shall not exceed fifty (50) years.

During Pre-Development Stage, the RE Contract shall have a term of two (2) years and may be extended for one (1) year subject to terms and conditions under the RE Contract: Provided, however, That in the case of a Geothermal RE Contract, the term may be extended for two (2) years and further extendible for one (1) year upon compliance by the RE Developer of the conditions stipulated in the RE Contract.

SEC. 16. Obligations of the RE Developer. – The RE Contract shall stipulate all the obligations of the RE Developer which shall include, among others, the following:

a. Comply with all its work and financial commitment in carrying out its RE operations and provide all necessary services, technology, and financing in connection therewith;
b. Observe applicable laws relating to labor, health, safety, environment, ecology and indigenous peoples rights, among others;
c. Pay the government share and taxes, as may be applicable;
d. Give priority in employment to qualified personnel in the area where the RE project is located and give preference to Filipinos in all types of employment for which they are qualified;
e. Give preference to local companies/ agencies in entering into subcontracts on RE activities or services which the RE Developer may not carry out, upon approval by the DOE, provided that these companies/agencies are competitive and the services required are locally available;
f. Post a performance bond, if applicable, within the prescribed period;
g. Maintain complete and accurate technical data and reports, and accounting records of all the costs and expenditures for the RE operations;
h. Submit technical and financial reports in accordance with the format as prescribed by the DOE and in a timely manner;
i. Be responsible in the proper handling of data, samples, information, reports and other documents; and
j. Allow DOE personnel, at all reasonable times, full access to RE Contract area and to accounts, books, and other records relating to RE operations.

SEC. 17. Rights of the RE Developer. – Immediately upon effectivity of the RE Contract, the RE Developer shall be issued a DOE Certificate of Registration which shall qualify it to avail of the incentives and privileges under the Act.

SEC. 18. Benefits to Host Communities. – The RE Contract shall specifically include provisions on the benefits to host communities or local government units (LGUs) which comprise the allocation of such host Communities or LGUs from the Government Share in the exploration, development and utilization of the RE resources pursuant to Sections 20 and 21 of the IRR of the Act, among others. This may be stipulated as part of RE Developer's obligation to include in its Information, Education and Communication (IEC) Campaign information on benefits to host communities and LGUs where the RE project is located.

SEC. 19. Disputes and Arbitration. – In case of dispute between the DOE and the RE Developer relating to the RE Contract or the interpretation and performance of any of the clauses of the RE Contract, both parties shall seek to resolve such dispute or difference amicably or failing such amicable settlement, through referral to an expert, for technical disputes only.

All disputes which cannot be settled amicably within sixty (60) days, after the receipt by one party of a notice from the other party, of the existence of the dispute, shall be settled exclusively and finally by arbitration, upon written demand of either party.

SEC. 20. Suspension and Termination of the RE Contract. – The DOE shall have the power to suspend and terminate the RE Contract, after due notice to the RE Developer.

The grounds for suspension and termination shall include, but not be limited to, the following:

a. Grounds for the Suspension/ Termination of an RE Contract for the Pre-Development Stage:

i. Non-compliance with the approved Work Program and any of the obligations;
ii. Non-compliance with RE technical design standards adopted by the DOE;
iii. Non-observance of environmental regulations imposed by the Department of Environment and Natural Resources (DENR) during the conduct of feasibility study;
iv. Tampering or plagiarizing of technical design and feasibility study reports;
v. Non-posting of performance bond or any other guarantee within the period provided for in the RE Contract;

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

and
vi. Non-payment of the financial obligations agreed upon under the contract.

b. Grounds for Suspension/ Termination of an RE Contract for the Development/Commercial Stage:

i. Non-compliance with the terms and conditions of the RE Contract;
ii. Violation of the RPS rules, as may be applicable;
iii. Non-compliance with the approved Work Program and any of the obligations;
iv. Non-compliance with RE technical design standards adopted by the DOE;
v. Non-observance of environmental regulations imposed by the DENR during construction and operation;
vi. Tampering or plagiarizing of technical design, feasibility study, generation and operation reports;
vii. Non-remittance of government share;
viii. Non-payment of the financial obligations agreed upon under the contract;
and
ix. Non-posting of performance bond or any other guarantee within the period provided for in the contract.

The termination shall not be effective if the failure of the RE Developer giving ground to the termination has been cured on or before the effective date of termination specified in the notice.

Provided, however, That RE Contract in the nature of a financial or technical assistance agreement shall be suspended or terminated by the President, upon recommendation by the DOE Secretary.

SEC. 21. Confidentiality. – All documents, information, data and reports generated by the RE Developer during its RE operations under the RE Contract shall be kept confidential, and shall not be disclosed to any third party or to any affiliate not directly involved in the implementation of the RE Contract. Moreover, neither the DOE nor the RE Developer shall transfer, present, sell or publish confidential information in any manner without the consent of the other party: Provided, however, That the DOE shall have the right to use and make public data and information generated by the RE Developer with respect to the contract area after the expiration of the RE Contract.

SEC. 22. Assignability/Transfer. – All assignments of RE Contract shall be subject to pre-qualification and prior written approval of the DOE.

a. The RE Developer may assign part or all of its rights and/or obligations under the RE Contract to its affiliate or any third party with prior notice to and approval by the DOE and in accordance with the following provisions:

i. The RE Developer shall submit to the DOE copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and
ii. The RE Developer shall guarantee in writing to the DOE the performance of the assigned obligations.

b. The RE Developer may authorize its subsidiaries, branches or regional corporations to implement the RE Contract, but the RE Developer shall remain responsible for the performance of this RE Contract.

Provided, however, That in the case of an RE Contract in the nature of a financial or technical assistance agreement, it shall be assigned or transferred, in whole or in part, to a qualified person subject to the prior approval by the President: Provided, further, That the President shall notify Congress of every financial or technical assistance agreement assigned within thirty (30) days from the approval thereof.

Part 2. Special Provisions

A. Geothermal Energy

SEC. 23. RE Contract in the Nature of an FTAA. – The RE Contract that shall govern the large-scale exploration,

development or utilization of geothermal energy resources by foreign-owned entities shall be in the nature of a Financial or Technical Assistance Agreement (FTAA).

Geothermal RE projects shall be classified as large-scale based on capitalization and other similar criteria as may be determined by the DOE.

The mode of awarding RE Contract to a foreign company shall be in accordance with the procedures set forth under Sections 9 and 10 hereof.

In the event that a foreign corporation qualifies for an RE project, the following requirements and/or terms and conditions shall be present in the RE proposal/application, for evaluation, and in the award and implementation of the RE Contract, in addition to the requirements provided under Section 6 hereof:

a. A firm commitment in the form of a sworn statement, of an amount corresponding to the expenditure obligation that will be invested in the contract area as part of the RE Proposal/Application documents: Provided, That such amount shall be subject to changes as may be necessary to cover the cost of inflation and foreign exchange fluctuations;
b. Representations and warranties that, except for payments for dispositions for its equity, foreign investments in local enterprises which are qualified for repatriation, and local supplier's credits and such other generally accepted and permissible financial schemes for raising funds for valid business purposes, the RE Developer shall not raise any form of financing from domestic sources of funds, whether in Philippine or foreign currency, for conducting its geothermal operations for and in the contract area;
c. A stipulation in the RE Contract that the foreign RE Developers are obliged to give preference to Filipinos in all types of employment for which they are qualified and that technology shall be transferred to the same;
d. If the RE Application/Proposal is found to be sufficient and meritorious in form and substance after evaluation, the DOE shall give the foreign RE Applicant the prior right to the area covered by such proposal. Thereafter, the DOE shall recommend its approval to the President.
e. The President shall notify Congress of the RE Contract in the nature of financial or technical assistance agreements within thirty (30) days from approval and execution thereof; and
f. Such other terms and conditions consistent with the Constitution, applicable laws and with the Act as the President, upon recommendation by the DOE Secretary, may deem to be in the best interest of the State and the welfare of the Filipino people.

The RE Developer shall manifest, in writing, to the President through the DOE Secretary, its intention to withdraw from the RE Contract, if in its judgment the project is no longer economically feasible, even after it has exerted reasonable diligence to remedy the cause or the situation. The Secretary shall, after due evaluation, recommend to the President the acceptance of the withdrawal: Provided, That the RE Developer has complied with or satisfied all its financial, technical and legal obligations. Provided, further, That upon withdrawal, the performance bond paid for under the RE Contract shall be forfeited in favor of the Government.

B. Hydropower Energy

SEC. 24. Impounding and Pumped-Storage. – Applicants for the registration as Hydropower RE Developer, utilizing impounding and pumped-storage, shall be required to show proof of compliance with the internationally accepted norms and standards on hydropower development such as those of the World Commission on Dams, the International Energy Agency, among others.

The Hydropower RE Contract area shall not be defined using the Blocking System.

C. Biomass Sector

SEC. 25. Biomass Operating Contract. – The RE Developers of biomass, biogas and methane-capture from

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

organic wastes need not enter into a Pre-Development Service Contract due to the peculiar conditions and realities attendant to developing or utilizing such non-naturally occurring resources: Provided, however, That except in instances where the power to be generated is for own use, the Biomass RE Developers shall be required to obtain an Operating Contract to cover the project's Development/Commercial Stage wherein the developer shall commit to develop, construct, install, commission and operate an RE generating facility subject to the following:

a. All Biomass RE Contracts shall be exempt from the payment of government share.
b. In the event that there is excess capacity to be sold to any end-user, such biomass systems shall be covered by an RE Operating Contract with the DOE.
c. The Biomass RE Operating Contract shall not include exclusivity of areas for feedstock sources and thus not covered by the Blocking System.

CHAPTER IV. RE PROJECTS FOR OWN-USE AND MICRO-SCALE RE PROJECTS FOR NON-COMMERCIAL OPERATIONS

SEC. 26. RE Projects for Own-use. – RE Developers generating power for own-use shall register with the DOE to avail of any incentives under the Act. The DOE Certificate of Registration shall be issued upon complete submission of requirements which shall include, but not be limited to, the following:

a. Letter of Intent;
b. Project Description; and
c. Proof of ownership of the RE facilities

SEC. 27. RE Operating Contract for Micro-Scale Projects for Non-Commercial Operations. – The issuance of RE Contracts for Non-Commercial Micro-Scale RE Project shall be governed by a simplified process of application and evaluation using the Checklist System. All interested applicants shall submit requirements to the REMB which shall include, among others, the following:

a. Letter of Intent;
b. Project Description;
c. Work Plan;
d. LGU endorsement/certification and any of the documents listed in the legal requirements provided in Section 6 (b) hereof, as may be applicable; and
e. Other proof of sustained operations of the project as may be defined by the DOE.

SEC. 28. Procedure and Requirements for Application. – The DOE shall follow a set of simplified procedure and requirements prescribed in Section 6 for granting RE Contracts covering both RE Projects for Own-Use and Micro-Scale RE Projects for Non-Commercial Operations.

SEC. 29. Registration as an RE Developer. – RE Developers of RE Contracts for Non-Commercial Micro-Scale Projects shall register with the DOE to avail of any incentives and privileges under the Act. All such RE Developers shall be exempt from payment of the Government Share.

CHAPTER V. FINAL PROVISIONS

SEC. 30. Separability Clause. – If for any reason, any provision of this Circular is declared unconstitutional or invalid, the other parts or provisions not affected thereby shall remain in full force and effect.

SEC. 31. Repealing Clause. – The provisions of other department circulars which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

SEC. 32. Effectivity. – This Circular shall take into effect fifteen (15) days following its publication in at least two

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

(2) newspapers of general circulation.

Adopted: 12 July 2009

(SGD.) ANGELO T. REYES
Secretary

---

[*] Text Available at Office of the National Administrative Register, U. P. Law Complex, Diliman, Quezon City.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.