



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. DC2007-04-0003 *q/s*

PRESCRIBING THE GUIDELINES AND PROCEDURES FOR THE TRANSFER OF RIGHTS AND OBLIGATIONS IN PETROLEUM SERVICE CONTRACTS UNDER PRESIDENTIAL DECREE NO. 87, AS AMENDED

WHEREAS, Section 11 of Presidential Decree No. 87 ("PD 87"), as amended, provides that the rights and obligations under a petroleum service contract shall not be assigned or transferred without the prior approval of the Department of Energy (DOE);

WHEREAS, the DOE fully recognizes that in petroleum exploration, development and production projects, an existing service contractor may transfer or assign wholly or partly its rights, interest and obligations to another entity which can contribute both financial resources and technical expertise in undertaking the obligations under the service contract, and in the process, spread the risks thereon;

WHEREAS, with the huge investment and technical expertise required in petroleum exploration, development and production projects, these transfers and assignments prove to be effective arrangements in enabling parties to pool their financial resources and technical expertise together to jointly undertake such projects.

WHEREAS, there is a need to rationalize transfers or assignments of rights and obligations in petroleum service contracts to ensure that the assignees or transferees possess the requisite financial capability, legal qualification and technical expertise and experience to undertake obligations and commitments under such service contracts;

NOW, THEREFORE, in consideration of the foregoing premises, the following guidelines and procedures shall be observed for the transfer or assignment of rights and obligations in petroleum service contracts executed under P.D. 87, as amended.

Section 1. *Transfer or assignment of rights and obligations.* - The rights and obligations under a petroleum service contract executed under PD 87, as amended, shall not be assigned or transferred without the prior approval of the DOE: *Provided*, That the transfer or assignment of contractual rights and obligations in service contracts to an affiliate of the transferor or assignor shall be automatic, if the transferee or assignee is as qualified as the transferor or assignor to enter into such contract with the government: *Provided*, further, That the affiliate relationships between the original transferor/assignor or a company which holds at least fifty percent of the contractor's outstanding shares entitled to vote, and each transferee/assignee shall be maintained during the existence of the service contract.

Section 2. *Procedure for transfer or assignment of rights and obligations under Service Contracts.* - All requests for approval of transfer or assignment of rights and obligations under a petroleum service contract shall be in writing, signed by an authorized officer or representative of the service contractor and addressed to and filed with the Office of the DOE Undersecretary in charge of the Energy Resource Development Bureau ("ERDB"), together with the following documents and/or information:

- a. History of Service Contract
 - i. Effective date of service contract;
 - ii. Original parties involved and extent of participating interest;
 - iii. Subsequent changes or variation in the service contract, if any; and
 - iv. Work accomplishments/updates on on-going activities.
- b. Proposal for Transfer or Assignment
 - i. Extent of interest that is the subject of the assignment or transfer;
 - ii. Reasons for the assignment to establish basis, reasonableness and urgency of the matter (e.g. financial constraints, logistic issues, etc.);
 - iii. Approval of the respective Board of Directors of the transferor/assignor and transferee/assignee.
- c. Technical Justification for the Transfer or Assignment
 - i. Implications of the proposed transfer and assignment on current Work Program, if any;
 - ii. Revised detailed Work Program and budget with specific timetable for each phase of the Work Program, if any; and
 - iii. Benefits and technical advantages in fulfilling work commitments under the service contract.
- d. Duly executed Deed of Assignment or Transfer
- e. Documents evidencing financial, legal and technical qualification of the prospective transferee or assignee
 1. *Financial Qualification*
 - i. Audited financial statements and annual reports for the last three (3) years; and
 - ii. Particulars of financial resources available to the prospective transferee or assignee including capital, credit facilities and guarantees to undertake its obligations under the service contract.
 2. *Legal Qualification*
 - i. Certified copy of Articles of Incorporation;
 - ii. Certified copy of the corporate by-laws;
 - iii. SEC Registration Certificate; and
 - iv. Certified copy of latest general information sheet submitted to the Securities and Exchange Commission.
 3. *Technical Documentation*
 - i. Technical and industrial qualifications, eligibilities and work related experiences of the prospective assignee/transferee and its officers and employees; and
 - ii. Technical and industrial resources available to the prospective assignee/transferee for the exploration, development and production

of petroleum resources, if applicable, depending on the participation of the prospective assignee/transferee in the service contract.

The DOE may require submission of additional information/documents. Furthermore, any prospective assignee/transferee organized and incorporated 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 area where it is organized or holds principal office.

Section 3. Within ten (10) working days from the DOE's receipt of the formal request for approval of the transfer or assignment, together with the complete set of documents, unless such period is extended by requiring further evaluation/information, the Contracts Division, Petroleum Resource Development Division and Compliance Division shall complete their legal, technical and financial evaluations on the qualification of the prospective assignee/transferee and issue a memorandum to the ERDB Director on the result of the evaluations.

Section 4. Within three (3) working days from receipt of the memorandum on the legal, technical and financial evaluation, unless such period is extended by requiring further evaluation/information, the ERDB Director shall issue a memorandum to the Undersecretary in charge of ERDB, through the Assistant Secretary, on the result of the evaluation, indicating among others, the following:

- a. Background of the Service Contract;
- b. Proposal and justification for the transfer of rights and obligations;
- c. Result of the legal, technical and financial evaluation; and
- d. Recommendation for approval or denial of the request.

Section 5. Within three (3) working days from the receipt of the ERDB Director's memorandum, unless such period is extended by requiring further evaluation, the Undersecretary shall advise the Secretary of his recommendations, through a memorandum, on the proposed transfer of rights and obligations under the service contract.

Section 6. Within five (5) working days from the Office of the Secretary's receipt of the Undersecretary's memorandum, unless such period is extended by requiring additional information, the service contractor shall be informed in writing of the Secretary's decision on the transfer or assignment of rights and obligations under the service contract.

Section 7. 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.

Section 8. This Circular shall take into effect fifteen (15) days after publication in two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 23rd day of March 2007 in Fort Bonifacio, Taguig City, Metro Manila.


RAPHAEL P. M. LOTILLA
Secretary