



Republic of the Philippines  
**DEPARTMENT OF ENERGY**

DEPARTMENT CIRCULAR NO. DC2014-08-0013

**ADOPTING NEW MECHANISMS AND PROCEDURES IN THE REGISTRATION OF ALL SUBCONTRACTS AND AGREEMENTS ENTERED INTO BY PETROLEUM SERVICE CONTRACTORS UNDER PRESIDENTIAL DECREE NO. 87, AS AMENDED, AND COAL OPERATING CONTRACT HOLDERS UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED, AMENDING FOR THIS PURPOSE OFFICE OF ENERGY AFFAIRS CIRCULAR NOS. 82-09-09, 82-0909A, 89-01-02 AND 89-08-09**

WHEREAS, Section 5 (h) of Republic Act No. 7638 or the "Department of Energy Act of 1992", as amended, states that the Department of Energy (DOE) shall exercise supervision and control over all government activities relative to energy projects;

WHEREAS, Presidential Decree No. 1354, which imposes final income tax on subcontractors and alien employees of Petroleum Service Contractors and subcontractors engaged in petroleum operations in the Philippines mandates the registration of subcontracts with the Bureau of Energy Development (BED);

WHEREAS, the Office of Energy Affairs (OEA) issued OEA Circular Nos. 82-09-09, 82-09-09A and 89-08-09 mandating, for cost recovery purposes, the registration with the BED of all subcontracts entered into by Coal Operating Contract ("COC") holders not later than 30 days from execution thereof;

WHEREAS, the OEA (now the DOE) also issued OEA Circular No. 89-01-02 requiring the submission of two (2) copies of subcontracts entered into by petroleum Service Contractors (the "Service Contractors") under Presidential Decree No. (PD) 87, as amended, for registration and approval by the BED not later than 60 days from execution thereof, for cost recovery purposes;

WHEREAS, it has been observed in actual practice that the period prescribed in the abovementioned Circulars within which to submit the subcontracts are not sufficient resulting in late submission especially since the Service Contractors, in the interest of economy and efficiency, have resorted to submitting these subcontracts in bulk, especially those executed or entered into overseas; and

WHEREAS, it is in the best interest of the Government and the Service Contractors/COC holders to simplify and rationalize the registration/approval of the subcontracts/agreements entered into under PD 87, as amended, and PD 972, as amended, by clarifying the procedures and lengthening the period with which to submit these subcontracts to the DOE.

NOW, THEREFORE, for and in consideration of the foregoing premises and pursuant to Section 5 (h) of Republic Act No. 7638, the following procedures and additional rules and regulations are hereby issued for strict compliance by the Service Contractors and COC holders:

**Section 1. Scope and Application.** This Circular shall govern the registration of all subcontracts and agreements entered for Service Contractors under PD 87, as amended, and COC holders under PD 972, as amended.

**Section 2. General Provisions.** All Service Contractors and COC holders shall comply with the following procedures:

- a. All services covered by subcontracts or agreements to be entered into by Service Contractors and COC holders with their subcontractors and/or service providers in pursuance of their SCs or COCs shall be included and incorporated in their Work Program (WP) that is submitted to and approved by DOE;
- b. All activities under the COC may be allowed to be subcontracted except those work/activities related to coal mining, coal extraction and other activities related to coal production which shall be performed directly by the COC holder. To ensure that all subcontracts for coal operations shall comply with this provision, these subcontracts or agreements, subject to Section 2.d hereof, shall be submitted for registration and approval prior to the actual implementation thereof;
- c. Administrative contracts under PD 87, as amended, as defined under Section 2.f of Revenue Regulation No. 15-78<sup>1</sup>, need not be registered with the DOE. However, a copy of each administrative contract shall be nonetheless be furnished the DOE for records purposes;
- d. All subcontracts or agreements entered into by Service Contractors and COC holders with subcontractors and/or service providers on or after the effectivity date of this Circular, which are sought to be cost recovered under PD 87 and PD 972, respectively, shall be submitted to DOE for registration not later than six (6) months from the date of execution thereof: *Provided*, That for the purposes of this Section, date of execution shall mean:
  - (i) the date of signing by all the parties of the subcontract or agreement if all made on the same date, or
  - (ii) if a subcontract or agreement is signed on different dates, the date of signing by the last party to sign;
- e. Subcontracts or agreements shall be submitted in two (2) original or certified true copies. Subcontracts executed pursuant to PD 87, as amended, shall contain a provision regarding the deductions, withholding and remittance of final income tax imposed in relation to Section 1 of PD 1354, from the gross income paid by Service Contractor to the subcontractor. If by the nature of the subcontract and/or agreement, the contract value and the applicable tax to be withheld or

---

<sup>1</sup> "Regulations governing taxation of sub-contractors and alien individuals employed by service contractors and sub-contractors engaged in the Petroleum operations in the Philippines under Presidential Decree No. 87, as provided under Presidential Decree Number 1354 (October 10, 1978)

Section 2.f "Administrative contracts" refer to contracts entered into by the service contractor with domestic entities or individuals relating to the administrative operation of the service contractor's local office in the Philippines. Examples of administrative contracts are those covering janitorial services, lease of office space, staff houses, office cars and office equipment, maintenance service thereof and other contracts of similar nature."

paid is contingent or not yet determinable at the time of registration, the Service Contractor shall submit related documents evidencing compliance with the deduction, withholding and remittance of final income tax under PD 1354, within six (6) months from the end of the calendar year that the tax is paid or prior to the conduct of audit by the Compliance Division, Financial Services ("CD-FS");

- f. Subcontract or agreement which provides petroleum and/or coal as payment for the services of the subcontractor shall be deemed in excess of the authority granted by DOE to Service Contractors and COC holders, and accordingly is hereby prohibited.

**Section 3. Administrative Procedures.** The subcontracts or agreements shall be reviewed, evaluated and registered in the following manner:

- a. The subcontracts or agreements shall be submitted to the Records Division, Administrative Services for records purposes;
- b. The Records Division shall immediately endorse these subcontracts or agreements to the Energy Resource Development Bureau (ERDB) for evaluation to determine whether the subcontracts/agreements relate to petroleum/coal operations and that these are incorporated in the approved WPB under the particular SC or COC;
- c. In addition, all subcontracts or agreements under PD 972, as amended, shall be evaluated whether they comply with Section 2.b hereof;
- d. Furthermore, administrative contracts shall be evaluated by the ERDB whether or not they comply with Section 2.c hereof;
- e. All other contracts, agreements and other expenses not specified herein shall comply with applicable provisions of the Service Contract or COC and its Accounting Procedures;
- f. The ERDB shall thereafter forward the subcontracts to the Legal Services for review and evaluation to determine whether the Service Contractors or COC holders comply with the pertinent provisions of this Circular prior to the approval of the registration thereof.

**Section 4. Registration Procedure.** In case the subcontract or agreement complies with the provisions of this Circular, it shall be endorsed by the Legal Services to the ERDB for registration and a copy thereof furnished to the CD-FS. Thereafter, a registration notice shall be sent to the Service Contractor or COC holder by the ERDB stating that the subcontract or agreement has been registered in the DOE.

In instances where the subcontract or agreement is submitted beyond the prescribed period in Section 2.d of this Circular, the registration thereof shall only be allowed upon payment of the penalty as provided under Section 7 hereof. The ERDB shall forthwith inform the Service Contractor or COC holder of the amount to be paid and period within which the payment shall be made.

**Section 5. Nature of Subcontract.** The registration of the subcontract or agreement shall not be construed either as an assignment or transfer of rights and responsibilities under the Service Contract or COC. The Service Contractor and COC holder shall be fully responsible to the DOE for the work obligations and commitments under the Service Contract or COC. In addition, the Service Contractor and COC holder shall be responsible for the general safety, security and compliance to environmental rules and regulations, among others.

**Section 6. Existing Subcontract/Agreement.** All existing subcontracts or agreements entered into by Service Contractors and COC holders with subcontractors and/or service providers pursuant to the provisions of PD 87, as amended, and PD 972, as amended, prior to the effectivity of this Circular shall be registered with the DOE within a period of six (6) months from effectivity of this Circular, otherwise the application for registration thereof shall be automatically denied.

**Section 7. Penalty Provision.** In the event that the subcontracts and/or agreement are submitted beyond the prescribed period under this Circular, cost-recovery may be allowed subject to prior payment of a penalty in the amount of Ten Thousand Pesos (P 10,000) per subcontract and/or agreement. Failure to pay the penalty within a period of sixty (60) days from notice thereof shall result to the disallowance of the related expenditures as cost recovery.

**Section 8. Separability Clause.** If any provision of this Circular is declared unconstitutional, the remainder or the provisions not affected shall remain valid and subsisting.

**Section 9. Repealing Clause.** All circulars, orders, letters of instructions or issuances contrary to or inconsistent with this Circular are hereby repealed, modified or amended accordingly.

**Section 10. Effectivity.** This Circular shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Issued at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

  
CARLOS JERICHO L. PETILLA  
Secretary



IN REPLYING PLS CITE:  
SOE-JLP-14004927



AUG 01 2014