Republic of the Philippines

DEPARTMENT OF ENERGY
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

JOINT ADMINISTRATIVE ORDER NO. 2026-01

PROVIDING FOR THE GUIDELINES AND PROCEDURES FOR THE EVALUATION AND AWARD OF CONTRACTS AND AGREEMENTS INVOLVING CONFIRMED RESOURCES

(National Interest Evaluation Framework)

1.0. Legal Basis and Policy

It is the fundamental principle of the State that the exploration, development, and utilization of the country's natural resources must redound to the national interest. Consistent with Section 2, Article XII of the 1987 Constitution, which vests in the State the full control and supervision over such activities, and with the policy that natural resources are owned by the State and must be prudently and sustainably utilized for the benefit of the people, the Department of Energy (DOE) and the Department of Environment and Natural Resources (DENR) hereby adopt a fair, equitable, transparent, and comprehensive framework for the evaluation and award of service and/or operating contracts involving natural resources, particularly those involving confirmed resources or established reserves.

These Guidelines are further anchored on the charters and enabling laws of the DOE and the DENR, including Republic Act (R.A.) No. 7638, Presidential Decree (P.D.) No. 972, R.A. No. 7942, and their respective implementing rules, and Administrative Code of 1987 (Executive Order No. 292).

2.0. Principles

The evaluation and award of any service and/or operating contract involving natural resources shall be undertaken consistent with the following principles:

2.1 The national interest shall be the paramount consideration in every award of contract, taking into account, among others, the promotion of the country's energy security, economic development, and the prudent and sustainable utilization of its natural resources;

2.2 The evaluation of financial offers shall accord due consideration to securing the highest economic returns to the State through guaranteed, quantifiable, and enforceable economic benefits commensurate with the value of the resources within the pre-determined area;

2.3 Transparency shall be observed at every stage of the evaluation, competitive selection, and award process, including the wide and timely dissemination of contract opportunities, evaluation criteria, and results;

2.4 Open, transparent and competitive selection shall be the general rule; any resort to negotiated or alternative modes shall be the exception when authorized or permitted by law and shall be justified in writing and duly documented;

2.5 Accountability for the evaluation and award lies with the Head of the Implementing Agency, who shall exercise the diligence of a good father of a family in protecting the interest of the State;

2.6 Objectivity and non-discrimination shall govern the treatment of all proponents, and sustainability, environmental integrity, and the rights of affected communities and indigenous peoples shall be safeguarded through uniform, pre-disclosed, and measurable criteria and binding contractual undertakings; and

2.7 No contract shall be split, sub-divided, or structured for the purpose of evading the coverage, thresholds, or requirements of these Guidelines.

3.0. Purpose

These Guidelines are formulated to meet the following objectives:

3.1 To prescribe a uniform, comprehensive, and transparent framework for evaluating proposals for the development and production of confirmed resources or established reserves and the award of the corresponding contracts or agreements;

3.2 To ensure that the award of every such contract redounds to the national interest and secures for the State the highest economic returns through guaranteed, quantifiable, and enforceable benefits;

3.3 To institutionalize a coordinated, multi-sectoral evaluation process among the DOE, the DENR, and supporting agencies; and

3.4 To provide clear standards for the monitoring and enforcement of economic and other undertakings after the award of the contract.

4.0. Coverage

4.1 **Application.** These Guidelines shall apply to the evaluation of proposals, and award of contracts and agreements involving coal or minerals in confirmed commercial quantities by the DENR or the DOE, or by any of their attached agencies and bureaus, through competitive selection.

4.2 **Exclusions.** These Guidelines shall not apply to:

(a) Award of contracts and agreements relating solely to exploration, including activities undertaken to determine the existence, extent,

quality, and commercial recoverability of coal or mineral resources, without authorizing their commercial development or production; and

(b) Contracts governed by laws prescribing a specific procedure for their evaluation and award, where such contracts shall be evaluated and awarded in accordance with the requirements, criteria, and procedures prescribed by those laws and their implementing rules and regulations.

4.3 **Resolution of doubt.** In case of doubt as to coverage, the matter shall be resolved in favor of the application of these Guidelines.

5.0. Definition of Terms

As used in these Guidelines, the following terms shall mean:

5.1 **Confirmed Resources or Established Reserves.** Natural resource whose existence, quantity, quality, and commercial recoverability have been established through completed exploration, appraisal, or technical study to a level of certainty recognized under the applicable resource-classification standard, such that no further exploration or appraisal is required as a basis for proceeding to commercial development and production.

5.2 **Pre-Determined Area.** The specific geographic area, block, or tenement covered by a bid round.

5.3 **Economic Benefits.** The monetary returns accruing to the Government under a contract representing the government share and the components thereof as enumerated in Section 8.2, namely: the share of the Government in gross proceeds, net proceeds, or production, however denominated; royalties; signature, discovery, and production bonuses; and fixed or minimum annual payments accruing to the Government.

5.4 **Evaluation Committee.** The body constituted under Section 7 to evaluate offers and recommend the award of a contract.

5.5 **Financial Offer.** The component of a proponent's offer stating the economic benefits it undertakes to deliver to the State.

5.6 **Guaranteed, Quantifiable, and Enforceable Benefits.** Economic benefits that are (i) committed as a firm and unconditional obligation, and (ii) expressible in monetary terms or otherwise objectively measurable.

5.7 **Implementing Agency.** The DOE or the DENR, as the case may be, having primary jurisdiction over the natural resource that is the subject of the contract.

5.8 **Mine Closure Liability.** Any unfunded acknowledged or disputed obligation on the part of the Existing Holders on its expiring Existing Right, which for avoidance of doubt shall include the costs of restoration of mined out pits and other underdeveloped areas in the Contract Area that should have been

accomplished or completed based on the Operating Contract and the pertinent work programs agreed with the Implementing Agency and the costs of the Relevant Assets that have been recovered whether in part or in full, whether directly or indirectly, from the result of operations of the Contract Area.

5.9 **National Interest.** The collective and long-term welfare of the State and its people, encompassing but not limited to energy security, economic development, fiscal returns, and the prudent and sustainable utilization of natural resources.

5.10 **Proponent or Bidder.** Any qualified person or entity that submits an offer for a contract under these Guidelines.

5.11 **Supporting Agencies.** The Department of Finance (DOF) and the Department of Justice (DOJ) and such other agencies as may be called upon to support the evaluation process.

6.0. General Guidelines

6.1 **Paramount consideration.** Every contract shall be awarded through a process that upholds the national interest as the paramount consideration and that secures the highest economic returns to the State.

6.2 **Readiness to bid.** The Implementing Agency shall not proceed with the competitive selection process unless the pre-determined area, the resource classification, and the minimum work and economic requirements have been established and approved.

6.3 **Valuation of established reserves.** For pre-determined areas with confirmed resources or established reserves, the Implementing Agency may prepare or cause the preparation of a valuation of such resource or reserves to serve as a reference in setting reserve values and minimum economic thresholds. Any valuation so prepared shall not be disclosed to any proponent.

6.4 **Nature of financial offers.** Financial offers shall be expressed in guaranteed, quantifiable, and enforceable terms.

6.5 **Comprehensive evaluation.** The evaluation shall be comprehensive, addressing the legal, technical, financial, environmental, social, and national-security dimensions of each offer. No single dimension shall be assessed in isolation from the others.

6.6 **Carry-over into the contract.** The economic benefits, work commitments, and other undertakings offered by the winning proponent shall be fully and faithfully carried over into the contract, together with the instruments securing their enforcement.

6.7 **Integrity of the process.** All members of the Evaluation Committee and support staff shall execute the required disclosures and shall observe confidentiality and conflict-of-interest rules under Section 11.

6.8 **Anti-circumvention.** No contract shall be split, phased, or otherwise structured to bring it below any threshold or to avoid any requirement of these Guidelines.

6.9 **Resource-Specific Criteria.** Recognizing that natural resources are not similar in their nature or in the manner of their exploration, development, utilization, or extraction, the Implementing Agency may, for a particular contract or class of contracts adopt sub-criteria or indicators for any ranking factor or prescribe additional evaluation criteria relevant to the resource, the pre-determined area, or the mode of development concerned. Provided, that: (i) the national interest shall remain the paramount consideration, the sub-criteria or additional criteria shall not unnecessarily restrict or curtail competition, and the Financial Offer shall be the sole ranking factor, consistent with Sections 2.1 and 2.2 and (ii) any sub-criteria, or additional criteria in the evaluation of the proponent or proposals shall be approved by the Head of the Implementing Agency.

6.10 **Existing Holders**. Except as otherwise provided under applicable laws, all existing holders and operators of any contract, agreement, permit, lease, license, or other tenement or right to explore, develop, or utilize natural resources (each, an “Existing Right”) that intend to participate in the competitive selection for pre-determined areas they currently operate (the "Existing Holders") are required to properly account for all assets, equipment and facilities, whether movable or immovable, being used or that are necessary in the operations and that have been cost recovered, amortized, or depreciated during the term of their Existing Right, whether in full or in part (collectively, the "Relevant Assets"), which shall be turned over to the Implementing Agency at the end of the term of the contract. Existing Holders must not have any record of breach or unsatisfactory performance under the Existing Right. In determining compliance with this requirement, the Implementing Agency shall assess the Existing Holder's performance, including any actual or potential contractual non-compliance and the adequacy of the remedial measures necessary to address such non-compliance in its proposed work program.

7.0. The Evaluation Framework

7.1 **The Evaluation Committee.** For every contract, the Implementing Agency shall constitute an Evaluation Committee chaired by a senior official of the Implementing Agency and composed of representatives with legal, technical, and financial expertise. The Implementing Agency may request the DOE or DENR, as the case may be, to send a representative senior official to act as a member of the Evaluation Committee or resource person, on a per pre-determined area basis.

7.2 **Participation of Supporting Agencies**. The DOF and the DOJ may each designate a representative to sit as a member of the Evaluation Committee upon the written request of the implementing agency. The request shall state the scope and expected duration of the participation sought.

7.3 **Two-stage evaluation.** Offers shall be evaluated in two stages: (a) a pass/fail eligibility and responsiveness stage covering legal, technical, financial-capacity, environmental, and national-security requirements (as applicable); and (b) a ranking stage applied only to offers that pass the first stage.

7.4 **First stage — pass/fail.** The eligibility and responsiveness stage shall verify, at minimum:

(a) Legal eligibility, ownership and nationality requirements, and absence of disqualifications;

(b) Technical capability in downstream or upstream industries related to the contracted resource, and technical work program adequacy, with health, safety, and environmental compliance measures to undertake the resource operation covered by the contract. The technical work program shall be based on a common technical baseline applicable to all bidders.

(c) Financial capacity to fund the committed work program and undertakings;

(d) National-security and integrity clearances, where applicable; and

(e) The commitment to dedicate all or a defined portion of production to the domestic market, through sale or supply to domestic off-takers. The Implementing Agency shall determine the minimum volume or proportion of production to be so committed, and the priority and pricing basis therefor, taking into account the national interest, including the country's minerals security, energy security and domestic supply requirements. Compliance with these minimum requirements shall be a condition of eligibility.

7.5 **Second stage — ranking.** Only proposals that pass the first stage shall be evaluated and ranked in the second stage.

Ranking shall be based on: (a) the guaranteed, quantifiable, and enforceable economic benefits offered to the State; and (b) the commitment to sell or supply production to the domestic market. Economic benefits offered to the State shall carry the greater weight in the evaluation. The proposal obtaining the highest total weighted score shall be ranked first (Rank 1) and recommended for the award of the corresponding contract, subject to compliance with the requirements of this Framework.

Additional merit shall be assigned to binding domestic supply commitments exceeding the prescribed minimum requirements, based on objective and measurable criteria disclosed in the selection or bidding documents. These

may include additional volumes or proportions of production, longer supply periods, greater priority for domestic off-takers, and more favorable pricing terms.

Each proposal shall specify its domestic supply commitment and the arrangements for fulfilling it. The commitments forming the basis of evaluation and award shall be incorporated as firm and enforceable obligations in the contract and shall be subject to monitoring and enforcement under Section 12.

The Implementing Agency shall prescribe and disclose in the selection or bidding documents the relative weights, scoring methodology, and common basis for comparing proposals. The methodology shall avoid double counting benefits under the economic benefits and domestic supply criteria.

7.6 **Minimum economic threshold.** Offers must meet or exceed the minimum economic threshold derived from the valuation under Section 6.3 and the minimum domestic supply commitment. An offer below the threshold shall be rejected notwithstanding its relative ranking.

7.7 **Disclosure of criteria.** The complete evaluation criteria, sub-criteria, formula, and minimum thresholds (except the confidential valuation) shall be disclosed in the selection/bidding documents before the submission of offers.

8.0. Evaluation and Securing of Financial Offers

8.1 **Qualifying financial offers.** To be credited, a financial offer must be (a) firm and unconditional, and (b) expressed in monetary terms or objectively measurable. The Implementing Agency may require that the economic benefits committed under a financial offer be secured through enforceable financial instruments, veritable parent company guarantee and/or remedies under the contract, including the duration of such security, as it may determine.

8.2 **Forms of guaranteed benefits.** The guaranteed economic benefits to be evaluated as the Financial Offer shall consist of the government share and its components, namely: the share of the Government in gross proceeds, net proceeds, or production, however denominated; royalties; signature, discovery, and production bonuses; and fixed or minimum annual payments accruing to the Government. Each shall be committed as a firm and unconditional obligation.

8.3 **Security and enforceability.** Guaranteed economic benefits shall be secured through appropriate instruments, which may include performance bonds, standby letters of credit, escrow arrangements, parent-company or third-party guarantees, and liquidated-damages and step-in provisions in the contract.

8.4 **Common basis of comparison.** Financial offers shall be compared on a common basis using a uniform discount rate, price assumptions, and valuation period fixed in the selection/bidding documents, so that all offers are evaluated

on comparable terms. Further, any Mine Closure Liabilities shall be deducted from the financial offers submitted for bid evaluation purposes only.

9.0. Process for Competitive Selection and Award

9.1 **Preparation of selection/bidding documents.** The Implementing Agency shall prepare and approve the selection/bidding documents, including the terms of reference, the evaluation criteria, the minimum economic threshold (kept confidential), the model contract, and the required forms of security.

9.2 **Invitation and dissemination.** Contract opportunities and selection/bidding documents shall be published and disseminated through the official websites of the DOE and the DENR and through such other means as will ensure the widest reach, for a reasonable period prior to the deadline for offers.

9.3 **Pre-bid conference.** The Implementing Agency shall conduct a pre-bid conference to clarify the requirements and criteria. Clarifications and amendments shall be issued to all prospective proponents through supplemental notices.

9.4 **Submission and opening of offers.** Offers shall be submitted in separately sealed technical and financial envelopes. Financial envelopes shall be opened only for offers that pass the first-stage evaluation, and their opening shall be recorded and, where practicable, made public.

9.5 **Evaluation and recommendation.** The Evaluation Committee shall evaluate the offers in accordance with Sections 7 and 8, prepare a written evaluation report identifying the highest-rated responsive offer, and submit its recommendation to the Head of the Implementing Agency.

9.6 **Post-evaluation clearances and award.** The Head of the Implementing Agency shall approve the award and issue the notice of award to the highest-rated responsive proponent.

9.7 **Post-qualification and contract signing.** The winning proponent shall post the required securities and execute the contract within the period fixed in the selection/bidding documents. Failure to do so shall be a ground for forfeiture of the bid security and award to the next highest-rated responsive proponent, or for a re-bidding.

9.8 **Protest mechanism.** A proponent aggrieved by the evaluation or award may file a written protest with the Head of the Implementing Agency within the period and upon payment of the fee fixed in the selection/bidding documents. The decision on the protest may be elevated in accordance with law.

9.9 **Failure of competitive selection process; alternative modes.** Where competitive selection fails, or where a negotiated or alternative mode is expressly allowed by law, the Implementing Agency shall document the legal and factual basis and shall apply the evaluation standards and thresholds of these Guidelines to the negotiated offer to the fullest extent practicable.

There shall be a failure of competitive selection in any of the following instances:

(a) None of the proponents is eligible;

(b) No proposals are received;

(c) None of the proponents are able to comply with the qualification requirements; and

(d) The winning proponent fails or is unable to enter into a contract with the Implementing Agency; and

(e) Such other grounds as may be provided by the Implementing Agency.

In the event of a failed competitive selection brought about by instances stipulated above, the Implementing Agency shall review the selection/bidding documents and conduct another competitive selection. In case of second failure of competitive selection, the Implementing Agency may resort to negotiated offer.

10.0. Inter-Agency Coordination and Support

10.1 **Department of Finance.** Upon the request of the Implementing Agency, the DOF shall provide advisory fiscal support, including guidance on valuation assumptions and revenue-security arrangements.

10.2 **Department of Justice.** Upon the request of the Implementing Agency, the DOJ shall provide advisory legal support, including the review of the model contract and the winning offer for legal sufficiency and enforceability, if necessary.

10.3 **Department of Economy, Planning, and Development.** The DEPDev may provide advisory support to ensure the alignment of the contract with national and sectoral development plans.

11.0. Confidentiality and Conflict of Interest

11.1 **Confidentiality.** The confidential valuation, minimum economic thresholds, and the contents of competing offers shall be kept confidential until the award, and thereafter only to the extent allowed by law.

11.2 **Conflict of interest.** Every member of the Evaluation Committee and support staff shall disclose any actual, potential, or apparent conflict of interest and shall inhibit from any matter in which such conflict exists.

11.3 **Liability.** Any violation of confidentiality or conflict-of-interest rules shall be a ground for administrative, civil, or criminal liability under existing laws, without prejudice to the invalidation of the affected proceedings.

12.0. Post-Award Monitoring and Enforcement

12.1 **Monitoring.** The Implementing Agency shall monitor the performance of the contractor's work commitments and economic undertakings against the schedule and metrics in the contract.

12.2 **Enforcement of guarantees.** The securities under Section 8.3 shall remain in force for the periods stated in the contract and shall be callable upon the contractor's failure to deliver a guaranteed benefit, subject to the cure periods provided.

12.3 **Remedies for non-performance.** Persistent or material failure to deliver committed economic benefits or work commitments shall be a ground for the imposition of penalties, forfeiture of securities, suspension, or termination of the contract, as provided therein and under existing laws.

13.0. Reporting Requirement

The Implementing Agency shall submit to the Office of the President, through the Executive Secretary, and furnish the DOF and the DEPDev, a report on the contracts awarded under these Guidelines within thirty (30) days from the award.

14.0. Amendments and Supplementary Issuances

To the extent necessary to further effectively implement and achieve the objective of these Guidelines and consistent with applicable laws, the DOE and the DENR may separately adopt and issue additional rules, regulations, or guidelines that will specifically apply to the sectors within their respective regulatory mandates.

15.0. Separability

If any provision of these Guidelines is declared invalid or unconstitutional, the other provisions not affected thereby shall remain in full force and effect.

16.0. Transitory Provision

These Guidelines shall apply to all contracts for which the invitation to bid has not yet been published as of the effectivity of these Guidelines and all evaluation or competitive selection processes that are ongoing as of the effectivity of these Guidelines but in which no contract has yet been awarded, at whatever stage such processes may then be.

17.0. Repealing Clause

The provisions of other circulars, orders, issuances, rules, and regulations which are inconsistent with the provisions of these Guidelines, are hereby repealed, amended, modified, or superseded accordingly.

18.0 Effectivity

These Guidelines shall take effect immediately after their publication in the Official Gazette or a newspaper of general circulation and after registration with the Office of the National Administrative Register (ONAR).

SHARON S. GARIN
Secretary
Department of Energy

JUAN MIGUEL T. CUNA
Secretary
Department of Environment and Natural Resources

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