Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. DC2020-02-0006

RULES AND REGULATIONS FOR THE SELECTION, REVIEW AND APPROVAL OF FARM-OUT OF PNOC EXPLORATION CORPORATION (PNOC EC) PETROLEUM SERVICE CONTRACTS (PSCs) IN FAVOR OF THIRD PARTIES AND FARM-IN OF PNOC EC INTO EXISTING PSCs

WHEREAS, Section 2, Article XII of the Constitution declares that all minerals, petroleum and other mineral oils, and other natural resources are owned by the State, and that the exploration, development, and utilization of these resources shall be under the full control and supervision of the State;

WHEREAS, Section 4, Presidential Decree No. (PD) 87, as amended, otherwise known as the *"Oil Exploration and Development Act of 1972"*, allows the Government to promote and undertake the exploration, development, and production of the country's indigenous petroleum resources by engaging technically competent and financially capable contractors through service contracts;

WHEREAS, Section 11 of PD 87 allows holders of service contracts to assign or transfer their rights thereto upon the prior approval of the Department of Energy (DOE);

WHEREAS, the DOE issued Department Circular No. DC2007-04-0003 entitled: *"Prescribing the Guidelines and Procedures for the Transfer of Rights and Obligations in Petroleum Service Contracts under Presidential Decree No. 87, as amended"* providing for the documents and information necessary for the review and approval of requests for transfers and assignments in PSCs;

WHEREAS, Executive Order (EO) No. 80 *entitled "Rationalizing the Rules for the Engagement of Third-Party Participants under Petroleum Service Contracts, Repealing for the Purpose Executive Order No. 556"* was issued permitting PNOC EC to enter into farm-in/farm-out agreements, among others;

WHEREAS, EO 80 directed the DOE to issue rules and regulations specifying the selection process to be observed by PNOC EC, in consultation with the Governance Commission for GOCCs (GCG) and taking into consideration provisions of existing government selection procedures that enhance transparency and objectivity in the selection process;

WHEREAS, the DOE, in compliance with its mandate and in accordance with best practices widely adopted in the petroleum industry, shall ensure that the farm-in/farm-out arrangements by PNOC EC shall be in favor of technically competent and financially capable third-parties and shall support and promote in spreading the risks inherent in oil and gas exploration, development and production;

NOW, THEREFORE, in consideration of the foregoing premises, the following rules and regulations and guidelines shall be observed in the selection, review and approval of farm-in/farm-out arrangement of PNOC EC:

Section 1. **Scope and Application**. This Circular shall govern the following activities of PNOC EC:

a. Participation of third-parties ("Farminees") in PSCs awarded by the Government, through the DOE, to PNOC EC; and

b. Participation of PNOC EC in PSCs awarded by the Government, through the DOE, to third-parties ("Farmors").

Section 2. **Business Judgment**. In entering into commercial contracts and arrangements contemplated herein, PNOC EC shall observe sound business judgement and exercise extraordinary diligence, with paramount consideration to the national interest.

Section 3. **Farm-in/Farm-out**. Farm-in/farm-out refers to a practice, recognized and accepted in the oil and gas industry, of allowing third-party participation to spread the risks inherent in oil and gas exploration, development and production. The entity acquiring the participating interest considers the transaction as a "farm-in", while the entity transferring such interest considers the transaction as a "farm-out".

Section 4. **Farm-out Selection Committee.** The PNOC EC Board shall constitute a Farm-out Selection Committee ("FSC") for purposes of selecting a Third-Party Participant for the farm-in process, which shall be composed of four (4) members with legal, technical and financial expertise, and headed by the Senior Management representing the Implementing Unit. Once organized, the FSC shall continue to act as such unless reconstituted or its authority is revoked by the PNOC EC Board.

Section 5. **Responsibilities of the FSC**. The FSC shall be responsible for all aspects of the selection process, including, but not limited to the following:

a. Preparation of the selection/tender documents which shall comply with the general Terms of Reference (TOR);
b. Publication of the invitation to submit a proposal;
c. Qualification of prospective Third-Party Participants;
d. Conduct of pre-selection conferences;
e. Issuance of supplemental notices;
f. Interpretation of the rules regarding the selection process and the conduct of the selection process;
g. Evaluation of the financial and technical proposals;
h. Resolution of disputes between Third-Party Participants; and
i. Recommendation for the acceptance of the proposal and/or for the award of the PNOC EC participating interest.

Section 6. **Qualifications of Third-Party Participants**. A Third-Party Participant may be any local/foreign individual company or group of companies forming a joint venture/consortium, organized or authorized for the purpose of engaging in petroleum exploration, development and production.

If the Third-Party Participant is a joint venture or consortium, it shall also submit a copy of the joint venture/consortium agreement to the FSC.

Section 7. **Farm-out Process and Third-Party Selection Procedure of PNOC EC PSCs**. The FSC shall comply with the following procedures in the farm out process and third-party selection for PNOC EC PSCs:

a. The FSC, upon due approval of the PNOC EC Board, shall cause the publication and posting of PNOC EC's invitation to submit proposals for its PSC being farmed-out;

b. Third-Party Participants shall, within fifteen (15) calendar days from publication, formally signify, through a letter of intent (LOI), their intention to submit proposals and participate in PNOC EC's farm-out process;

c. For Third-Party Participants who have submitted LOIs to PNOC EC, the FSC shall provide the TOR, as approved by the DOE, and its preferred form of the Farm-in Agreement. The FSC shall also conduct presentations and discussions with Third-Party Participants with submitted LOIs, as may be appropriate;

d. The Third-Party Participants with LOIs may conduct due diligence on the PSC being farmed-out by PNOC EC upon execution of a Confidentiality Agreement. Any cost or risk associated with the conduct of the due diligence shall be for the sole account of such Third-Party Participant;

e. The Third-Party Participants shall submit their farm-out proposal within sixty (60) calendar days from publication. The proposal shall consist of three (3) complete sets of legal, technical and financial requirements, and technical and financial proposals in accordance with the TOR;

f. The FSC shall open the submitted proposals immediately after the lapse of the deadline for its submission. Submissions with incomplete documentary requirements shall be automatically disqualified. The FSC shall not accept any additional documents after the deadline for the submission of proposals.

g. The FSC shall duly inform all Third-Party Participants whether their submissions are rated "Pass" or "Fail" and if their respective applications shall be subjected to further legal, technical and financial evaluation.

h. After the opening of the submitted proposals, the FSC shall immediately evaluate them based on the following criteria:

Legal Documents	-	Pass/Fail
Technical Proposal	-	70%
Financial Proposal	-	30%

After the review and evaluation, the FSC shall select the highest rated Third-Party Participant who meets the technical and financial requirements.

In case there is only one Third-Party Participant, the FSC shall ensure that the sole applicant meets the legal requirements and the minimum financial and technical requirements under the TOR.

The FSC shall complete the review and evaluation of the proposals within a period of seven (7) calendar days from the opening date and deadline of submissions.

i. The FSC shall endorse the highest rated Third-Party Participant to the PNOC EC Board of Directors for their approval. The PNOC EC Board of Directors shall act on the endorsement within fifteen (15) calendar days from receipt thereof.

   Once approved, the FSC shall inform the highest rated Third-Party Participant through a Notice of Award. PNOC EC and the highest rated Third-Party Participant (or the Farminee) shall then discuss, finalize and agree on the execution of the Farm-In Agreement ("FIA"), Joint Operating Agreement ("JOA"), and the Deed of Assignment (DA) within a period of fifteen (15) calendar days.

j. For PNOC EC, the agreed FIA, JOA and DA shall be reviewed by the Office of the Government Corporate Counsel (OGCC), pursuant to Section 12 hereof, who must favorably endorse these documents prior to being signed by both Parties.

k. Within a period of ten (10) calendar days from receipt of the favorable endorsement by the OGCC, the Parties shall then sign the FIA, JOA and DA. Within the same period, PNOC EC shall request the DOE's approval of the DA, as provided for under Section 10 hereof.

l. In case of a sole applicant, the FSC shall follow the same process in items (i) to (k) as herein provided.

Section 8. **Farm-in Process of PNOC EC to existing PSCs.** PNOC EC may farm-in into existing PSCs under the following procedures:

a. PNOC EC shall conduct a preliminary technical evaluation of available PSCs.

b. If the preliminary technical evaluation is positive, PNOC EC shall submit an LOI to the Farmor informing PNOC EC's interest to evaluate the block and to request for farm-in terms and pertinent documents.

c. PNOC EC shall then conduct a preliminary economic and legal evaluation of the offered PSC and, if results are positive, shall proceed to a more comprehensive evaluation or due diligence. PNOC EC, at this stage, may enter into a Confidentiality Agreement or a Non-Disclosure Agreement, as the case may be, with the Farmor.

d. If the results of the due diligence examination or assessment is positive and encouraging, PNOC EC shall secure prior approval from the Board to farm-in into the offered PSC and the terms thereof. Once approved, PNOC EC shall negotiate the Board-approved farm-in terms with the Farmor.

e. Once the negotiating parties have reached an agreement on the farm-in terms and conditions, and secure the approval of their respective Board of Directors, PNOC EC and the Farmor shall finalize the FIA, JOA and DA.

f. For PNOC EC, the FIA, JOA and DA shall be reviewed by the OGCC, pursuant to Section 12 hereof and must favorably endorse these documents prior to being signed by both Parties.

g. After receipt of the favorable endorsement by the OGCC, the Parties shall then sign the FIA, JOA and DA.

h. The Farmor shall then request for the DOE's approval of the DA as provided under Section 10 hereof.

Section 9. **Farm-in by PNOC EC into existing PSCs with petroleum discoveries.** Following the procedure under Section 8 above, PNOC EC may farm-in into existing PSCs with petroleum discoveries which have been declared commercial and have field development plans approved by the DOE, provided that the Service Contractor agrees and consents to the proposed farm-in terms, which consent shall not be unreasonably withheld.

Section 10. **Evaluation and Approval by the DOE of the Transfer/Assignment.** Every farm-in/farm-out agreement under this Circular shall take effect upon approval thereof by the DOE after it has been determined that all aspects of the agreement, including the qualifications of the relevant Third-Party Participant and the selection process undertaken, comply with Presidential Decree (PD) 87, EO 80, this rules and regulations, and other applicable laws and issuances.

The procedure for the transfer or assignment of rights and obligations under these Service Contracts shall be in accordance with those provided under DOE Department Circular No. DC2007-04-0003 dated 23 March 2007.

Section 11. **DOE and GCG Monitoring**. In order to closely monitor the selection process of PNOC EC, the DOE and GCG may attend the proceedings of the FSC and may request relevant documents necessary for their evaluation.

Section 12. **Review by the Office of the Government Corporate Counsel (OGCC).** Prior to securing the approval of the DOE in accordance with Section 10 hereof and before its signing and execution, the OGCC shall review and issue its favorable endorsements to the draft FIA, JOA and DA between PNOC EC and the Farminee or Farmor, as the case may be, within a period of twenty (20) working days from receipt thereof. Copies of these documents shall then be forwarded to GCG for records purposes.

Section 13. **Confidentiality.** All data or information exchanged by and between the parties, pursuant to the process in Sections 7, 8, and 9, including the FSC's evaluation thereof, shall, at all times, be treated as confidential. For this purpose, only the FSC, the PNOC EC Board, the OGCC, the GCG and the personnel authorized in writing by the DOE Secretary to monitor the selection process shall have access to the information provided by the PNOC EC and Third-Party Participants.

At any time after the conclusion of the farm-in/farm-out process, a Third-Party Participant may demand the return of the confidential information it disclosed pursuant to the farm-in/farm-out contemplated under this issuance upon giving written notice to DOE, PNOC EC and/or other relevant government agencies. Within thirty (30) calendar days of receipt of such notice, the relevant recipient of such confidential information shall return all of the original confidential information and shall destroy or cause to be destroyed all copies in its possession and in the possession of persons to whom it was disclosed.

Section 14. **Reportorial Requirement.** The DOE shall submit regular reports to the Office of the President on the implementation of EO No. 80, copy furnished the GCG.

Section 15. **Duty to Extend Assistance.** The departments, bureaus, offices, agencies or instrumentalities of the Government, including GOCCs and government financial institutions, are hereby directed to extend assistance and support as may be necessary for the successful implementation of EO 80.

Section 16. **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.

Section 17. **Repealing Clause.** All circulars, orders and issuances contrary to or inconsistent with this Circular are hereby repealed, amended or modified accordingly.

Section 18. **Transitory Provision.** All DAs and FIAs signed and executed by PNOC EC for the farm-in or farm-out of participating interests in PSCs which are pending approval by the DOE shall comply with the provisions of this Circular.

Section 19. **Effectivity.** This Circular shall take into effect **fifteen (15) days** following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

A copy of this Circular shall be filed and registered immediately with the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR).

Issued this ____ day of ______________ 2020 at Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

ALFONSO G. CUSI
Secretary

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