

[DOE DEPARTMENT CIRCULAR NO. DC 2009-07-0011, July 12, 2009]

**GUIDELINES GOVERNING A TRANSPARENT AND COMPETITIVE
SYSTEM OF AWARDING RENEWABLE ENERGY
SERVICE/OPERATING CONTRACTS AND PROVIDING FOR THE
REGISTRATION PROCESS OF RENEWABLE ENERGY DEVELOPERS**

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.

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 DOE/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