



# MEMORANDUM

**LA - No. - No. 2011-0032**

## The Philippine Stock Exchange, Inc.

_____ Disclosures	_____ Stockholders' Meeting	Others: <u>Listing and</u>
_____ Dividend Notice	_____ SEC / Gov't Issuance	<u>Disclosure</u>
_____ Stock Rights Notice	_____ Transfer Agent's Notice	<u>Requirements</u>

To : **THE INVESTING PUBLIC AND MARKET PARTICIPANTS**

Subject : **SUPPLEMENTAL LISTING AND DISCLOSURE REQUIREMENTS FOR PETROLEUM AND RENEWABLE ENERGY COMPANIES**

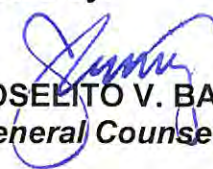
Date : **September 1, 2011**

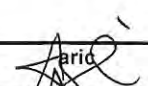

Please be informed that in a letter dated August 12, 2011, the Securities and Exchange Commission (the "Commission") advised the Exchange that the **Supplemental Listing and Disclosure Requirements for Petroleum and Renewable Energy Companies** (the "Supplemental Requirements") was approved by the Commission on August 11, 2011. We attach as Annex "A" a copy of the Supplemental Requirements duly signed by the authorized representatives of the Exchange and the Commission.

The Supplemental Requirements will take effect on **September 8, 2011**.

  
**MARSHA M. RESURRECCION**  
*Head, Issuer Regulation Division*

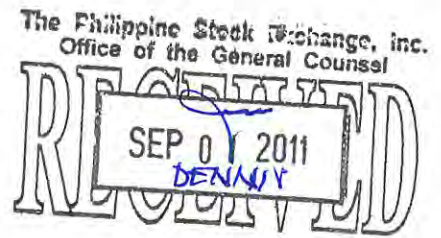
Noted by:

  
**JOSELITO V. BANAAG**  
*General Counsel*

					
Controllership / HR-Admin	Market Regulatory Division	Issuer Regulation Division	Technology/Market Operations	Capital Markets Dev't Division	CEO / OGC
Tel. No. 688-7560/7440/7460	Tel. No. 688-7559	Tel. No. 688-7501/7510	Tel. No. 688-7405/819-4400	Tel. No. 688-7590	Tel. No. 688-7400/819-4408



Republic of the Philippines  
Department of Finance  
Securities and Exchange Commission  
SEC Building, EDSA, Greenhills, Mandaluyong City  
Market Regulation Department



24 August 2011

**PHILIPPINE STOCK EXCHANGE INC.**

PSE Plaza  
Ayala Avenue  
Makati City  
Fax: 891-9004

*Attention: Mr. Hans B. Sicat, President*

Gentlemen:

Attached are **two (2) copies** of the approved PSE Supplemental Listing and Disclosure Requirements for Petroleum and Renewable Energy Companies, bearing the signatures of PSE representatives and countersigned by the Director, Market Regulation Department, SEC.

Please immediately post the rules in your website.

Very truly yours,

**JOSE P. AQUINO**  
Director





## SUPPLEMENTAL LISTING AND DISCLOSURE REQUIREMENTS FOR PETROLEUM AND RENEWABLE ENERGY ("RE") COMPANIES

### I. SCOPE

The applicant company must, at a minimum, demonstrate to the Exchange that:

1. The applicant Petroleum or RE company should either be an Operator or a Co-Venturer (for definition, a Co-Venturer is a company that holds adequate interest in a Service Contract having the same rights and obligations with all of the other co-venturers) of a valid and subsisting Service/Operating Contract duly approved and awarded by the Department of Energy (the "Department").
2. The applicant Petroleum or RE company should submit to the perusal of the Exchange the requirements set forth in the Checklist of Documentary Requirements for Petroleum and RE Companies in addition to the regular documentary requirements of the Exchange covering an Initial Public Offering or a Listing by Way of Introduction, whichever the case may be, under the Second Board Listing Rules of the Exchange.

Holding companies invoking the operational track record of its subsidiaries generating pre-tax profits from petroleum and RE operations in compliance with Article III Part D (First Board Listing) Section 1 of the Revised Listing Rules should likewise submit to the perusal of the Exchange the requirements set forth in the Checklist of Documentary Requirements for Petroleum and RE Companies in addition to the regular documentary requirements of the Exchange covering an Initial Public Offering or a Listing by Way of Introduction, whichever the case may be, under the First Board Listing Rules of the Exchange.

3. The applicant Petroleum or RE company should prove that it has the right to participate actively in the exploration for and/or extraction of natural resources through adequate control over the assets, or through adequate rights which gives it sufficient influence in decisions over the exploration for and/or extraction of natural resources.

In general, Petroleum and RE companies intending to apply its securities for listing in the Exchange should comply with the general listing requirements stipulated in the Second Board Listing Rules of the Exchange together with the Supplemental Listing and Disclosure Requirements applicable to Petroleum and RE companies. Further,

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**Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies**

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applicant Petroleum or RE companies who fail to meet the operating history requirement under the Second Board Listing Rules (Article III Part E – Second Board Listing) of the Revised Listing Rules shall be deemed compliant with the aforesaid requirement upon the applicant's compliance with the supplemental requirements for Petroleum or RE companies set forth in the succeeding section. The supplemental documentary requirements for Petroleum and RE companies shall also be applicable to listed companies which will undertake capital-raising activities through the Exchange, such as, but not limited to, follow-on offerings or stock rights offerings.

Further, existing listed companies and companies that will apply for initial listing with the Exchange under these Rules shall comply with the supplemental disclosure requirements specified in the Supplemental Disclosure Guidelines and Requirements for Petroleum and Renewable Energy Companies.

Furthermore, it should be understood that coal resources, albeit under the jurisdiction of the same bureau of the Department that oversees the prospective resources of petroleum and RE of the Philippines, should be excluded from the interpretation of the Listing Rules of the Exchange and the Supplemental Listing and Disclosure requirements for Petroleum and RE companies. The Exchange has the Philippine Mineral Reporting Code ("PMRC") in place which already sets the guidelines for the interpretation of the Exchange's rules governing mining companies, which includes coal resources. Hence, these rules shall only apply to the companies in the business of the exploration and development of Petroleum and RE assets.

In the course of the evaluation by the Exchange and the Securities and Exchange Commission (the "Commission") of the listing and registration applications of Petroleum and RE companies, the Exchange and the Commission may hold joint meetings with the Department and/or jointly endorse to the Department major issues concerning the Petroleum or RE assets of the applicant companies.

Finally, the submission by the applicant company of a Pre-effective Clearance issued by the Commission on the registration of the securities being applied for listing with the Exchange shall be construed as a clearance and confirmation by the Commission that all additional documentary and reportorial requirements governing the registration of Petroleum and RE companies have been submitted and cleared by the Commission.

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**Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies**

**II. SUPPLEMENTAL DOCUMENTARY REQUIREMENTS FOR PETROLEUM AND RENEWABLE ENERGY COMPANIES FOR INITIAL LISTING WITH THE EXCHANGE**

Applicant companies shall submit the additional documentary requirements enumerated in the table below in addition to the regular documentary requirements applicable to an Initial Public Offering or a Listing by Way of Introduction, whichever is applicable, which shall be deemed compliance with the Operating History requirement under the Second Board Listing Rules of the Exchange. Applicant companies must comply with all other listing requirements under the Second Board Listing Rules of the Exchange. Listed companies undertaking a Subsequent Public Offering or a Stock Rights Offering should likewise submit to the Exchange the additional documentary requirements set forth in the table below in addition to the regular documentary requirements applicable to the listing application.

**Listing Applications – Additional Documentary Requirements for Petroleum and RE Companies**

- 1. Service Contract** – To be eligible for listing, the applicant company should provide the Exchange a certified true copy of the valid and subsisting Service Contract duly awarded by the Department of Energy (the “DOE”) to the consortium where the applicant company belongs to.

The applicant company should be able to demonstrate to the Exchange that it has the right to actively participate in the exploration for and/or extraction of natural resources through adequate control over the assets, or through adequate rights which give the applicant company sufficient influence in decisions over the exploration for and/or extraction of natural resources.

When applicable, as confirmed by the DOE, the Operator of the Petroleum Service Contract or the RE Developer of an RE Service 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 petroleum or RE operations.

**2. Service Contract Supporting Documents**

Petroleum Companies:

A copy of the complete filing of the Operator with the DOE, stamped received by the DOE, for the consortium’s application for a Service Contract as provided in



**Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies**

**Listing Applications – Additional Documentary Requirements for Petroleum and RE Companies**

DOE Department Circular No. DC2009-04-0004, or as may be amended or updated by the DOE.

The documents shall contain the latest available valid information on the Service Contract being applied for. The applicant company should demonstrate that it has, together with the consortium's Operator if the applicant is a co-venturer, sufficiently complied with the legal, technical, financial and economic requirements of the DOE. The applicant company shall likewise submit copies of all agreements executed, together with other co-venturers, with the Operator of the Service Contract.

For reference, attached as Appendix I is a copy of the DOE Department Circular No. DC2009-04-0004. Any amendment thereto shall be considered an integral part of this checklist.

RE Companies:

A copy of the RE Proposal of the RE Applicant/Developer filed with the DOE, stamped received by the DOE, covering its application for an RE Service/Operating Contract as provided in DOE Department Circular No. DC2009-07-0011, or as may be amended or updated by the DOE.

The applicant company must submit the complete set of documents required by the DOE for the application of an RE Contract under a particular contracting round covering the exploration, development and increase the utilization of RE such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy resources, and including hybrid systems.

Such application shall cover 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 RE assets with the DOE/Government to RE Contracts, and the issuance of DOE Certificate of Registration for RE Developers.

For reference, attached as Appendix II is a copy of the DOE Department Circular No. DC2009-07-0011. Any amendment thereto shall be considered an integral part of this checklist.

3. **Certificate from the Department of Energy** – The application for listing shall be supported by a Certification issued by the DOE attesting that (i) the applicant company's Service Contracts are valid, subsisting and are being developed in accordance with the currently approved Work Program; and (ii) the applicant is in good standing with the DOE. This Certification must not be more than three (3)



**Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies**

**Listing Applications – Additional Documentary Requirements for Petroleum and RE Companies**

months old from the date of filing of the listing application.

**4. Technical Report**

Petroleum Companies:

A report, prepared by a competent person or firm, containing relevant and specific information on the estimated potential or prospective resource and/or reserve potential covering the service contract area(s) prepared in accordance with the applicable standard for reporting petroleum assets. At a minimum, the applicant company must demonstrate to the Exchange that it has at least a portfolio of petroleum assets covered by its valid and existing Service Contracts approved by the DOE.

The technical report prepared by a competent person or firm covering petroleum assets under a valid and subsisting Service Contract must comply with a reporting standard acceptable to the DOE.

Further, in cases where the applicant company holds substantial interests in petroleum assets located in foreign jurisdictions aside from its petroleum assets covered by existing Service Contracts with the DOE, the applicant company shall submit to the Exchange a report on the petroleum resources and/or reserves prepared in accordance with the Petroleum Resource Management System (PRMS) promulgated by the Society of Petroleum Engineers (SPE), the World Petroleum Council (WPC), the American Association of Petroleum Geologists (AAPG), and the Society of Petroleum Evaluation Engineers (SPEE), or any other reporting standard acceptable to the Exchange from time to time. The applicant company shall likewise submit a letter of consent issued by the competent and authorized person or body who prepared the report to the publication of the report.

Valuations on the Petroleum and RE assets should likewise comply with globally accepted applicable standards, that are acceptable to the DOE, such as, but not limited to:

- (1) the Society of Petroleum Engineers-Petroleum Resources Management System (SPE-PRMS) – the most widely used international reporting standard for the classification of petroleum assets;
- (2) the VALMIN Code – the Code for the Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports, as prepared by the VALMIN Committee, a joint committee of the Australasian Institute of Geoscientists and the Mineral Industry Consultants Association as amended from time to time; or







**Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies**

**Listing Applications – Additional Documentary Requirements for Petroleum and RE Companies**

(3) any other code, reporting standard or format accepted by the DOE and the Exchange from time to time.

RE Companies:

The RE Applicant must submit a Technical Report prepared by a competent person or firm in accordance with the format acceptable to or prescribed by the DOE. RE assets located in foreign jurisdictions should likewise comply with globally acceptable reporting standards with prior clearance and approval by the Exchange.

For both Petroleum and RE Companies:

The technical reports on petroleum assets covered by Service Contracts must be supported by a (i) certified true copy of the DOE certification that the report complies with the reporting standards acceptable to the DOE; and (ii) written duly-authorized and signed consent of the applicant company and the competent and authorized person or firm who prepared the report to the publication of the report.

The summary and relevant sections of the report must be incorporated in the applicant company's Prospectus and, if necessary, in the Statement of Active Business Pursuits and Objectives.

5. If the applicant company is a party to a joint venture, the applicant shall submit the following documents:

- a. A copy of the Joint Venture Agreement;
- b. A certified true copy of the certification from the DOE that the entities that form part of the joint venture have complied with the applicable requirements of the DOE; and
- c. Any company, acting singly or forming part of a joint venture, that is organized in a foreign country shall submit the required documents, issued by the appropriate governing body and duly authenticated by the Philippine Consulate in the country where it is registered or where it operates.

6. Commitment to the Service Contract – The applicant company shall submit an undertaking to the Exchange that it shall maintain its participation in the Service Contract/s where the proceeds from the capital raising activity conducted through the Exchange will be allocated, for so long as such proceeds are not yet fully disbursed on the petroleum or RE project specified in the applicant company's public disclosures.





## Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies

**Listing Applications – Additional Documentary Requirements for Petroleum and RE Companies**

7. Escrow of Funds and Monitoring of Use of Funds – All of the funds to be raised by the applicant company shall be held under escrow. The Escrow Agent shall not release any portion of the funds for any purpose other than the disclosed intended use of proceeds and in accordance with the timetable of expenditure. Moreover, to ensure transparency in the use of proceeds, the applicant company shall submit a duly signed and notarized Corporate Secretary's Certificate stating that the applicant company shall disclose via the Exchange's Online Disclosure System ("ODiSy") any disbursements made in connection with the planned use of proceeds. Any reallocation on the use of proceeds as approved by the applicant company's board of directors, stockholders (when applicable) and the DOE should be disclosed via ODiSy. The applicant company shall submit quarterly and annual progress reports duly certified by its Chief Financial Officer or Treasurer to the Exchange via ODiSy. The periodic reports must be supported by an external auditor's certification on the accuracy of the information reported by the applicant company.

Should the Work Program disclosed in the prospectus be amended as approved by the DOE, the applicant company shall immediately disclose via ODiSy such amendments and the appropriate revisions to the allocation of funds generated through the capital raising activity conducted through the Exchange. Also, the applicant company must formally inform its stockholders, through the ODiSy, at least thirty (30) days prior to the implementation of any amendments to the disclosed Use of Proceeds schedule.

*Note: In no case shall an applicant company be allowed to raise funds from the public solely to satisfy the minimum financial requirements of the DOE to bid for a service contract. The funds must be used to support funding requirements under the work program of the applicant company's existing service contract(s) described under requirement no. 1 of these supplemental requirements. The funds may also be partially used to support funding requirements to bid for or acquire subsequent service contracts.*

8. DOE-certified report on the corporate backgrounds of all the member-companies of the consortium covering the areas covered by the Service Contract/s. Such information should include details on, among others, the complete list of the members of the member-company's Board of Directors and their respective profiles, the capital and ownership structure, and the profile of the major shareholders of each member-company. In cases where the applicant company is restricted from obtaining any of the required information regarding the member-companies of the consortium, the applicant company must inform the Exchange in writing regarding such restriction. The Exchange shall then directly obtain the information from the DOE.

**Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies****Listing Applications – Additional Documentary Requirements for Petroleum and RE Companies**

For consortiums formed to explore and develop Petroleum and RE assets located in foreign jurisdictions, the applicant company should likewise submit a report on the corporate backgrounds of all the member-companies of the consortium. Such information should include details on, among others, the complete list of the members of the member-company's Board of Directors and their respective profiles, the capital and ownership structure, and the profile of the major shareholders of each member-company.

9. All requirements listed herein which refer to (i) written official acts and/or public records of official acts of a foreign authority or public officer, (ii) private documents, such as but not limited to certifications, which have been executed and acknowledged before a foreign notary public and/or officially kept as a public record in a foreign country are required to be authenticated by the Philippine Embassy or consul located in the place of execution or custody of said document.

10. Other documents which may be required by the Exchange, including but not limited to updates on previous documents submitted and copies of material contracts which were not previously submitted to the Exchange.





**Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies**

**III. SUPPLEMENTAL DISCLOSURE GUIDELINES AND REQUIREMENTS FOR PETROLEUM AND RENEWABLE ENERGY COMPANIES**

The additional disclosure requirements set forth in the table below shall be applicable to the following listed companies of the Exchange:

1. Companies whose primary purpose is to engage in the exploration and development of Petroleum and/or RE assets;
2. Companies who regularly engage in Petroleum and/or RE exploration activities;
3. Companies with an equity or participating interest in companies or partnerships regularly engaged in Petroleum and/or RE exploration activities, the value of which is at least ten percent (10%) of the book value of the listed company; or
4. Such other companies as may be deemed by the Exchange to ensure full, fair and accurate disclosures of material information.

<b>Continuing Listing Requirements – Additional Requirements for Petroleum and RE Companies</b>
<b>A. Additional Structured Reports</b>
<p>1. Annual Verification: Companies are required to submit a Certification from the DOE that their Service Contracts are still valid and subsisting and that they have no pending violations with the DOE. Should the company have any outstanding obligation or pending violation with the DOE, the said DOE Certification must be supported by a detailed explanation on the nature of the obligation or violation and the status thereof.</p> <p>An equivalent verification issued by the appropriate regulatory body on the company's contracts relating to Petroleum and/or RE assets located in foreign jurisdictions must be submitted to the Exchange.</p> <p>The Annual Verification must be submitted on or before the end of March of each calendar year. <i>(Section 17.15 of the Revised Disclosure Rules)</i></p>
<p>2. Annual Reports: Companies must include the following information in the relevant section of their Annual Reports (SEC Form 17-A):</p> <p>(a) Summary of the company's declared and DOE-verified resources and/or reserves with a clear statement of the basis of such resources and/or reserves (e.g., valid technical report prepared by a competent person or firm, independent consultant's report, etc.). The summary shall include, among others, the details on the expenditures incurred on the exploration and/or development activities, including explanations for any material variances with the Work Program as approved by the DOE;</p>

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**Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies****Continuing Listing Requirements – Additional Requirements for Petroleum and RE Companies**

- (b) Detailed description of the company's petroleum and/or RE properties including a summary in tabular format of the: service contract(s), company's interest, partners, operator/contractor, issue date, expiry date, location and status;
- (c) Detailed discussion of the RISKS associated with the company's business, including, but not limited to, technical risks, operational risks, equity partnership risks, foreign currency risks, financial risks, environmental risks, political and regulatory risks.

3. **Monitoring of the Use of Funds:** Companies who conducted fund-raising activities, such as an initial public offering, follow-on offering or stock rights offering, through the Exchange shall submit the following reports via ODiSy to ensure transparency in the use of funds:

- (i) Any disbursements made in connection with the planned use of proceeds from the offering;
- (ii) Quarterly Progress Report on the application of the proceeds from the offering on or before the first fifteen (15) days of the following quarter; The Quarterly Progress Reports should be certified by the reporting listed company's Chief Financial Officer or Treasurer;
- (iii) Annual summary of the application of the proceeds on or before January 31 of the following year. The Annual Summary Report should be certified by the reporting listed company's Chief Financial Officer or Treasurer; and
- (iv) UNSTRUCTURED REPORT – Approval by the listed company's Board of Directors, stockholders (when applicable) and the DOE of any reallocation on the planned use of proceeds, or of any change in the Work Program.

The listed company shall submit an external auditor's certification on the accuracy of the information reported by the listed company to the Exchange in the listed company's quarterly and annual reports as required in items (ii) and (iii) above. The said quarterly and annual reports must include a detailed explanation for any material variances with the Work program or the represented Use of Proceeds in the offering prospectus, as approved by the DOE.

The listed company must formally inform its stockholders, through the ODiSy, at least thirty (30) days prior to the implementation of any amendments to the disclosed Use of Proceeds schedule.

**B. Unstructured Reports**

- 1. A report that contains any petroleum discovery, resource or reserve estimates, or well drilling operations, tests and/or results, must be duly validated and approved by the



**Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies****Continuing Listing Requirements – Additional Requirements for Petroleum and RE Companies**

appropriate bureau or division of the DOE prior to its submission to the Exchange through the ODiSy. The report must:

- (a) include a clear statement regarding the DOE's validation or clearance on the information contained in the report;
- (b) specify the reporting standard used by the company and the competent person or firm;
- (c) when applicable, provide the names and brief background of the company's independent consultants, if the report is based on estimates prepared or reviewed by such independent consultants; and
- (d) include the risks associated to the report and clear cautionary statements relevant to the report.

2. A report that contains any petroleum discovery, resource or reserve estimates, or well drilling operations, tests and/or results covered by the company's petroleum or RE assets located in a foreign jurisdiction must:

- (a) include a clear statement on the basis of the information contained in the report, including, but not limited to, the information on the competent person or firm and the reporting standard used by the company;
- (b) when applicable, provide the names and brief background of the company's independent consultants, if the report is based on estimates prepared or reviewed by such independent consultants;
- (c) include the risks associated to the report and clear cautionary statements relevant to the report; and
- (d) include a clear statement regarding the appropriate regulatory body's validation or clearance on the information contained in the report .

3. A report on any change in the reporting standard adopted by the company, including the reasons for the change and the impact on the company's existing reported level of resources and/or reserves. The report shall state the required regulatory approvals by the DOE, or the appropriate foreign regulatory body, of the said change in the reporting standard.

The reporting standard adopted by the company on its Petroleum and/or RE assets covered by valid and subsisting Service Contracts should be acceptable to the DOE. Further, in cases where the company has petroleum assets located in foreign jurisdictions aside from its petroleum assets covered by existing Service Contracts with the DOE, the company shall submit to the Exchange a report on the petroleum resources and/or reserves prepared in accordance with the Petroleum Resource Management System (PRMS) promulgated by the Society of Petroleum Engineers (SPE), the World Petroleum Council (WPC), the American Association of



**Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies**

**Continuing Listing Requirements – Additional Requirements for Petroleum and RE Companies**

Petroleum Geologists (AAPG), and the Society of Petroleum Evaluation Engineers (SPEE), or any other reporting standard acceptable to the Exchange from time to time. The company shall likewise submit a letter of consent issued by the competent and authorized person or body who prepared the report to the publication of the report.

Valuations on the Petroleum and/or RE assets located in foreign jurisdictions should likewise comply with globally accepted standards such as:

- (1) the Society of Petroleum Engineers-Petroleum Resources Management System (SPE-PRMS) – the most widely used international reporting standard for the classification of petroleum assets;
- (2) the VALMIN Code – the Code for the Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports, as prepared by the VALMIN Committee, a joint committee of the Australasian Institute of Geoscientists and the Mineral Industry Consultants Association as amended from time to time; or
- (3) any other code, reporting standard or format accepted by the DOE and the Exchange from time to time.

4. A report on a material transaction relating to an acquisition and/or any subsequent change in the direct and indirect ownership or interest in petroleum or RE assets shall include a discussion of the impact of the transaction on the listed company and, when applicable, a valuation report prepared by a competent person or firm in accordance with the adopted reporting standard. The report shall state the required regulatory approvals by the DOE, or the appropriate foreign regulatory body.

5. A report of fines or monetary sanctions of more than ₱50,000.00, and/or other penalties on the listed company or on its subsidiaries by regulatory authorities and the reasons therefore (*Section 4.4 (p) of the Revised Disclosure Rules*).

Other penalties, include, but are not limited to:

- (a) Suspension or termination by the DOE, or the appropriate foreign regulatory body, of an existing contract covering Petroleum and/or RE assets or any part thereof,
- (b) Suspension of exploration and/or development activities; and
- (c) Revocation by the DOE, or the appropriate foreign regulatory body, of the company's license, permit, certification or accreditation.

6. Other reports and material information that the Exchange may require to be disclosed to the investing public, or to the Exchange for evaluation purposes.





**Supplemental Listing and Disclosure Requirement for Petroleum and Renewable Energy Companies**

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**THE PHILIPPINE STOCK EXCHANGE, INC.:**

-----  
**HANS B. SICAT**  
President & CEO

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**JOSELITO V. BANAAG**  
General Counsel

**SECURITIES AND EXCHANGE COMMISSION:**

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**JOSE P. AQUINO**  
Director, Market Regulation Department



Republic of the Philippines  
**DEPARTMENT OF ENERGY**

02 APR 2009

DEPARTMENT CIRCULAR NO. DC2009-04-G004 9.5

**REITERATING A TRANSPARENT AND COMPETITIVE SYSTEM OF AWARDING  
 SERVICE/OPERATING CONTRACTS FOR COAL, GEOTHERMAL AND  
 PETROLEUM PROSPECTIVE AREAS REPEALING FOR THIS PURPOSE  
 DEPARTMENT CIRCULAR NO. DC2006-12-0014**

**WHEREAS**, Section 1 of Presidential Decree No. 1442, otherwise known as "*An Act to Promote the Exploration and Development of Geothermal Resources*," Section 4 of Presidential Decree No. 972, as amended, otherwise known as "*The Coal Development Act of 1976*," and Section 4 of Presidential Decree No. 87, as amended, otherwise known as the "*Oil Exploration and Development Act of 1972*," allow the Philippine Government to promote and undertake the exploration, development and production of the country's indigenous coal, geothermal and petroleum resources through service/operating contracts with contractors;

**WHEREAS**, Republic Act No. 7638, as amended, otherwise known as "*The Department of Energy (DOE) 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;

**WHEREAS**, on 22 December 2006, the DOE issued Department Circular No. DC2006-12-0014 providing for a transparent and competitive system for investment and public contracting rounds for awarding coal, geothermal and petroleum service/operating contracts;

**WHEREAS**, the DOE desires to adopt the most effective strategy for promoting and attracting local and foreign investment to further increase the exploration, development and production of prospective coal, geothermal and petroleum areas;

**WHEREAS**, the DOE reiterates and acknowledges the need to continue adopting a transparent and competitive system for awarding service/operating contracts for exploration, development and production of the country's coal, geothermal and petroleum resources;

**WHEREAS**, consistent with national interest, the DOE has, after consultation with stakeholders, resolved to enhance government participation, through the government corporate sector, in the exploration, development and production of indigenous oil and gas resources through the grant of option to PNOC to participate in petroleum service contracts;

**NOW, THEREFORE**, in consideration of the aforementioned premises, the following procedures shall govern the transparent and competitive system of awarding service/operating contracts for coal, geothermal and petroleum exploration, development and production.

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Energy Center, Merritt Rd., Fort Bonifacio, Taguig, Metro Manila, Philippines

Tel. Nos.: (Trunkline) 840-1401 to 21; Fax 840-1731; 840-2138; 840-2067 ; (632) 840-1731; (632) 840-2138; Telefax (632) 840-2067  
 Website: www.doe.gov.ph, E-mail: info@doe.gov.ph



## 1. Contracting Rounds

1.1 The Energy Resource Development Bureau (ERDB) shall determine prospective coal, or geothermal, or petroleum areas found in the Philippine territory; and its maritime zones including the continental shelf for inclusion in the competitive public contracting rounds. The DOE Secretary, based on reports submitted by ERDB, and if he deems fit, shall declare such areas open for competitive public contracting round. The DOE shall not accept any application or proposals for exploration, development and production service/operating contract except during the competitive public contracting rounds. No applications for small-scale mining permit for coal operations shall likewise be entertained in the offered areas until after service/operating contracts have been awarded.

1.2 The ERDB shall prepare the contracting round documents with a description of available data and the prospect of geothermal/coal/petroleum resources in each area. The DOE Contract Negotiating Panel (DOE-CNP per Department Order No. 2003-05-005) shall then disseminate information of the contracting round which shall include, among others, the following:

- a. Location Map and Technical Descriptions (TDs) of the area/s being offered during the contracting round;
- b. Schedule of activities for the contracting round; and
- c. Such other information as the DOE-CNP may deem appropriate

1.3 Interested parties for the contracting rounds on petroleum may access data available at DOE after payment of a Data Viewing Fee of Five Hundred United States Dollars (US\$500.00) for a two (2) day-day maximum visit. If the interested party decides to purchase the DOE data, the Data Viewing Fee will be credited to the total price of the purchased data.

1.4 Interested parties for the contracting rounds on coal, geothermal and petroleum areas shall submit complete set of documents for evaluation by the DOE-CNP. The DOE-CNP may require submission of additional information/documents, as may be necessary, during evaluation of the proposals for clarification purposes only. A non-refundable application fee of ONE HUNDRED THOUSAND PESOS (P 100,000.00) per area for petroleum and geothermal, and FIFTY THOUSAND PESOS (P 50,000.00) per area for coal shall be paid by the proponent upon submission of the proposal which shall include the following documents:

a. *Work Program*

a.1 Proposed oil/gas service contract, geothermal service contract or coal operating contract based on existing DOE Model Contracts;

a.2 Proposed work program (discussion on the application of the different exploration strategies and methodologies to be employed in delineating energy resources at depth with subsequent manpower complement should be in detailed narrative format and the Schedule of Activities in Gantt Chart) and minimum expenditure on annual/sub-phase basis for each proposed activity with respect to the area or areas specified in the proposal; and

a.3 Narrative presentation of data and information (such as geology, stratigraphy, geochemistry, geophysics, water or coal quality, resource estimate, resource indicators, etc.) suggesting presence of energy resources at depth.

b. *Financial Proposal and Documentation*

b.1 Audited financial statements and annual reports for the last three (3) years;

b.2 Duly filled-out information sheet;

b.3 Resume/profile of the prospective contractor, its incorporators, stockholders or officers;

b.4 Particulars of the kind of financial resources available to the prospective contractor including capital, credit facilities and guarantees so available; and

b.5 Certified copy of latest income business tax returns filed with the Bureau of Internal Revenue, and duly validated with the tax payment made thereon, if applicable.

c. *Legal Documentation*

c.1 Certified copy of Articles of Incorporation;

c.2 Certified copy of the by-laws of the prospective contractor;

c.3 SEC Registration Certificate; and

c.4 Certified copy of latest general information sheet submitted to the Securities and Exchange Commission.

d. *Technical Proposal and Documentation*

d.1 Particulars of the technical and industrial qualifications, eligibilities and work related experiences of the interested party and its employees;



d.2 Particulars of the technical and industrial resources available to the interested party for the exploration, development and production of geothermal, coal and petroleum resources;

d.3 Particulars on the experiences, achievements and tract records of the interested party and its employees related to technical and industrial undertakings; and

d.4 Particulars on organizational and management structures relative to Administration, Financial and Technical aspect of the interested party.

For financial, legal and technical documentation, if the interested party is a joint venture, all entities forming part of the joint venture shall comply with the above requirements. In addition, the interested party shall submit a copy of the joint venture agreement. Furthermore, any interested party, acting singly or forming part of a joint venture, that is organized 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 country where it is registered or where it operates.

1.5 The DOE CNP shall open the submitted proposals relative to the contracting round during the first working day after the announced deadline for submission of proposals. No proposals or contracting documents shall be accepted on the designated day of the opening of proposals.

1.6 The DOE CNP shall then conduct evaluation of the submitted proposals based on the following criteria:

a.	Work program	-	30%
b.	Financial qualification	-	30%
c.	Technical qualification	-	30%
d.	Legal qualification	-	10%

1.7 The DOE CNP, for sufficient and valid cause, may at any given time reject any or all proposals submitted.

The DOE shall discuss with the highest-ranked proponent to finalize the contract details. No material deviation from the DOE model contract shall be allowed at any given time. The winning proponent shall be charged a processing fee of Php 1.20/hectare for geothermal, Php 0.48/hectare for petroleum and Php 30,000.00 per block for coal based on DOE's Schedule of Fees and Charges in compliance with EO 197. The DOE CNP shall then make a recommendation to the DOE Secretary for any award of service / operating contracts based on the discussions. The DOE shall formally inform all the proponents of the results of the evaluation.

2. **Contract Areas.** The definition and delineation of prospective coal, geothermal and petroleum contract areas shall be in accordance with the provisions of applicable government laws, rules and existing procedures such as the National Integrated

Protected Areas System (NIPAS) Law and the Indigenous People's Right Act (IPRA), among others.

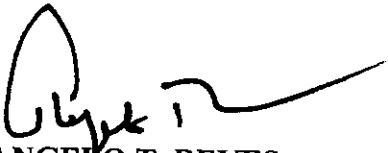
3. **Frontier Areas.** Privately identified coal, geothermal and petroleum frontier areas with no available technical data may be allowed to be offered through negotiated contracts.

4. **Separability Clause.** If for any reason, any section or provisions of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

5. **Repealing Clause.** The provisions of Department Circular No. DC2006-12-0014 is hereby repealed. All other department circulars, which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

6. **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.

Issued this \_\_\_\_ day of \_\_\_\_\_, 2009 in Fort Bonifacio, Taguig City, Metro Manila

  
ANGELO T. REYES  
Secretary

 Republic of the Philippines  
DEPARTMENT OF ENERGY

IN REPLYING PLS CITE:  
SE09-012258



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Republic of the Philippines  
**DEPARTMENT OF ENERGY**

JUL 12 2009

**DEPARTMENT CIRCULAR NO. DC2009-07-0011**

**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 "Biofuels 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. RE SERVICE/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 on-going 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 protection/conservation and social acceptability plans, among others.
  - iii. *Key Personnel Experience* – The key personnel of the RE Applicant must have sufficient and relevant work experience in connection with the project being applied for. For this purpose, the Curriculum Vitae of the management and technical personnel must be submitted.
  - iv. *List of Existing Company-owned Equipment (if any) for RE Operations and Any Lease Agreement of RE Equipment* – This shall be evaluated based on the technical and environmental soundness, sufficiency, and appropriateness of company-owned and leased equipment that will be used for the project.
- d. **Financial Requirements** – The RE Applicant must have adequate capability to provide the financial requirements to sustain the proposed Work Program for the exploration activities or conduct of feasibility studies during the Pre-Development Stage, and detailed engineering/geological/ industrial design for the development and operation of facilities during Development/Commercial Stage, as the case may be. This financial capability shall be measured in terms of:
- i. Audited Financial Statements for the last two (2) years and unaudited Financial Statement if the filing date is three (3) months beyond the date of the submitted audited Financial Statement;
  - ii. Bank certification to substantiate the cash balance in the audited Financial Statement or updated Financial Statement;
  - iii. Projected cash flow statement for two (2) years;
  - iv. List of company-owned equipment/facilities available for the proposed RE projects;
  - v. If the RE applicant, on account of its infancy, is unable to produce the requirements in sub-paragraphs (i) to (iii) above, it shall submit an audited Financial Statement and duly certified and/or notarized guarantee or Letter of Undertaking/Support from its parent company or partners to fund the proposed Work Program. In the case of foreign parent-company, the audited Financial Statement and the guarantee or Letter of Undertaking/Support shall be duly authenticated by the



Philippine Consulate Office that has consular jurisdiction over the said parent company; and

- vi. Proof of the ability of the RE Applicant to provide the required minimum amount of Working Capital which shall be equivalent to 100% of the cost of its work commitment for the first year of the proposed Work Program.

The legal, technical and financial requirements shall be as enumerated in the Checklist of Requirements (**Annex "B"**).

**SEC. 7. Payment of Application and Processing Fees.** – The RE Applicant shall pay the prescribed application and processing fees for each RE Proposal or RE Application. No RE proposal/application shall be accepted without due payment of application and processing fees. *Provided*, That the payment shall be made only upon submission of complete documentary requirements and receipt of order of payment from REMB.

### ***Part 2. Procedure for Awarding of RE Contracts***

**SEC. 8. Modes of Awarding RE Contract.** – RE Contracts shall be awarded through an open and competitive process of selection or by direct negotiation.

**SEC. 9. Open and Competitive Selection Process.** – Unless as otherwise provided in Section 10 below, the DOE shall observe the following process:

- a. *Invitation for RE Project Proposals* – All areas for open and competitive selection shall be posted by the DOE in its website. In the event that new areas have been identified, the DOE shall update its website and may include them in the areas to be published in preparation for the conduct of open and competitive selection of awarding RE Contracts. The publication of areas shall be made as often as practicable depending on the number of identified areas and type of RE resources, among others. Thereafter, invitations for open and competitive selection shall be published once every week for three (3) consecutive weeks in at least two (2) newspapers of general circulation. The DOE shall, likewise, post said invitation and the attachments in its website.

The invitation shall include information such as, but not limited to:

- i. Map of the area being declared open for RE project proposals;
- ii. Instructions to RE Applicants on the requirements for RE Contract proposal;
- iii. Schedules, including the deadline to submit, the date of opening, and period of evaluation of RE project proposals; and
- iv. Criteria for evaluation and the corresponding percentage/weight.

- b. *Creation of a Review Committee* – A Review Committee shall be created to evaluate the RE Proposals and Applications of RE Applicants and provide recommendations to the DOE Secretary for the award of RE Contracts.

The said Committee shall be composed of the following: the Assistant Secretary in charge of the REMB as Chairperson, the representative from the Office of the Renewable Energy Management Bureau (REMB) Director as the Vice-Chairperson, and one (1) representative each from the concerned division of the REMB, Compliance Division of the Financial Services, and Contracts Division of the Legal Services, as members. The Review Committee shall be assisted by a Secretariat from the REMB.

In the event that a foreign corporation shall be the winning or qualified RE Applicant, the RE Contract shall be awarded in accordance with the provisions under Sections 11 and 23 hereof.

- c. *Criteria for Evaluation* – The Review Committee shall set the rules for the evaluation of RE Proposals and Applications which shall be based mainly on legal, technical and financial criteria, taking into account the type of RE resource, RE Contract Stage being offered, and the size and location of the RE area, among others.

Evaluation of the RE Proposal on technical and financial criteria shall proceed only after the Review Committee has found that all the legal requirements are complied with.

- d. *Period of Evaluation* – Only complete submissions will be evaluated by the Review Committee. The review of the RE Proposal shall be conducted within a reasonable period, as indicated in the Instruction to RE Applicants, from the date of opening of the RE proposal. The RE Applicant shall be notified by the DOE of the results of its evaluation.

**SEC. 10. Direct Negotiation.** – Direct negotiation shall be allowed only in the following instances subject to confirmation by the REMB:

- a. *In case of Frontier Areas* – The negotiation shall be subject to the following conditions:
- i. In instances where there is only one applicant for an RE area and the submission is deemed to be incomplete, the said RE applicant shall be given thirty (30) days within which to complete its submission.
  - ii. In the event that there are two (2) or more interested applicants over the same RE area, the REMB shall prioritize and endorse to the Review Committee for evaluation the application of the RE Applicant whose submission was first received by the REMB. If the submission is deemed insufficient, the same shall be given thirty (30) days within which to complete its submission.



- iii. Should the RE Applicant fail to complete its submission within the prescribed period as stated above, it shall be automatically disqualified and, in the case of two or more applications, it shall lose its right as first proponent and the immediately succeeding application shall be considered.
  - iv. The RE Application over a specific Frontier Area shall, in the interest of transparency, be posted in the DOE website within five (5) working days from receipt of payment of application/processing fees until the award of the RE Contract.
  - v. Upon submission of the complete documentary requirements, the DOE and the RE Applicant shall negotiate the terms and conditions of the RE Contract within a maximum period of one hundred twenty (120) days.
- b. When, during the conduct of open and competitive selection process, any of the following circumstances exist:
- i. No RE Proposal was received by the REMB;
  - ii. No one among the applicants was able to meet the legal requirements, as determined by the Review Committee; or
  - iii. When one or more applicants met the legal requirements but after the evaluation of technical and financial proposals, no applicant was able to comply, as certified by the Review Committee.

the DOE may apply the mode of direct negotiation following the provisions under paragraph (a) above on Frontier Area.

### ***Part 3. Award of RE Contracts and Registration Procedure for RE Developers***

**SEC. 11. Award of RE Contract.** – The Review Committee shall, within one (1) week after the final evaluation of the RE project proposal and, in the case of RE Application, the negotiation of the terms and conditions of the RE Contract, recommend to the DOE Secretary the approval of the RE Contract. The DOE shall notify the winning or qualified RE Applicant of the award and the schedule of signing of the RE Contract.

*Provided*, That the RE Contract in the nature of a financial or technical assistance agreement shall be approved and executed by the President of the Philippines, upon the recommendation by the DOE Secretary.

**SEC. 12. Effectivity of the RE Contract.** – The RE Contract shall take effect on the effectivity date as stipulated in the signed RE Contract.

**SEC. 13. Posting of Performance Bond.** – Within sixty (60) days after the effectivity date of the contract and at the start of every contract year thereafter, the RE Developer shall post a bond or any other guarantee of sufficient amount,

but not less than the minimum expenditures commitment for the corresponding year.

**SEC. 14. Registration as an RE Developer.** – The DOE shall issue the Certificate of Registration to the RE Developer immediately upon the effectivity of the RE Contract whether during Pre-Development or Development/Commercial Stage.

Holders of valid and existing contracts or agreements on renewable energy resources awarded prior to the effectivity of the Act shall be issued a DOE Certificate of Registration as RE Developers only upon conversion of these contracts or agreements to RE Contracts pursuant to Section 4 (b) hereof.

### **CHAPTER III. SALIENT PROVISIONS OF THE RE CONTRACT**

#### ***Part 1: Standard Provisions***

**SEC. 15. Term of RE Contract.** – The RE Contract per RE resource type shall have a term of not exceeding twenty-five (25) years and renewable for not more than twenty-five (25) years: *Provided*, That the total period of the RE Contract from the Pre-Development to the Development/Commercial Stages shall not exceed fifty (50) years.

During Pre-Development Stage, the RE Contract shall have a term of two (2) years and may be extended for one (1) year subject to terms and conditions under the RE Contract: *Provided, however*, That in the case of a Geothermal RE Contract, the term may be extended for two (2) years and further extendible for one (1) year upon compliance by the RE Developer of the conditions stipulated in the RE Contract.

**SEC. 16. Obligations of the RE Developer.** – The RE Contract shall stipulate all the obligations of the RE Developer which shall include, among others, the following:

- a. Comply with all its work and financial commitment in carrying out its RE operations and provide all necessary services, technology, and financing in connection therewith;
- b. Observe applicable laws relating to labor, health, safety, environment, ecology and indigenous peoples rights, among others;
- c. Pay the government share and taxes, as may be applicable;
- d. Give priority in employment to qualified personnel in the area where the RE project is located and give preference to Filipinos in all types of employment for which they are qualified;
- e. Give preference to local companies/ agencies in entering into subcontracts on RE activities or services which the RE Developer may not carry out, upon

approval by the DOE, provided that these companies/agencies are competitive and the services required are locally available;

- f. Post a performance bond, if applicable, within the prescribed period;
- g. Maintain complete and accurate technical data and reports, and accounting records of all the costs and expenditures for the RE operations;
- h. Submit technical and financial reports in accordance with the format as prescribed by the DOE and in a timely manner;
- i. Be responsible in the proper handling of data, samples, information, reports and other documents; and
- j. Allow DOE personnel, at all reasonable times, full access to RE Contract area and to accounts, books, and other records relating to RE operations.

**SEC. 17. Rights of the RE Developer.** – Immediately upon effectivity of the RE Contract, the RE Developer shall be issued a DOE Certificate of Registration which shall qualify it to avail of the incentives and privileges under the Act.

**SEC. 18. Benefits to Host Communities.** – The RE Contract shall specifically include provisions on the benefits to host communities or local government units (LGUs) which comprise the allocation of such host Communities or LGUs from the Government Share in the exploration, development and utilization of the RE resources pursuant to Sections 20 and 21 of the IRR of the Act, among others. This may be stipulated as part of RE Developer's obligation to include in its Information, Education and Communication (IEC) Campaign information on benefits to host communities and LGUs where the RE project is located.

**SEC. 19. Disputes and Arbitration.** – In case of dispute between the DOE and the RE Developer relating to the RE Contract or the interpretation and performance of any of the clauses of the RE Contract, both parties shall seek to resolve such dispute or difference amicably or failing such amicable settlement, through referral to an expert, for technical disputes only.

All disputes which cannot be settled amicably within sixty (60) days, after the receipt by one party of a notice from the other party, of the existence of the dispute, shall be settled exclusively and finally by arbitration, upon written demand of either party.

**SEC. 20. Suspension and Termination of the RE Contract.** – The DOE shall have the power to suspend and terminate the RE Contract, after due notice to the RE Developer. The grounds for suspension and termination shall include, but not be limited to, the following:

- a. *Grounds for the Suspension/Termination of an RE Contract for the Pre-Development Stage:*
  - i. Non-compliance with the approved Work Program and any of the obligations;



- ii. Non-compliance with RE technical design standards adopted by the DOE;
  - iii. Non-observance of environmental regulations imposed by the Department of Environment and Natural Resources (DENR) during the conduct of feasibility study;
  - iv. Tampering or plagiarizing of technical design and feasibility study reports;
  - v. Non-posting of performance bond or any other guarantee within the period provided for in the RE Contract; and
  - vi. Non-payment of the financial obligations agreed upon under the contract.
- b. *Grounds for Suspension/Termination of an RE Contract for the Development/Commercial Stage:*
- i. Non-compliance with the terms and conditions of the RE Contract;
  - ii. Violation of the RPS rules, as may be applicable;
  - iii. Non-compliance with the approved Work Program and any of the obligations;
  - iv. Non-compliance with RE technical design standards adopted by the DOE;
  - v. Non-observance of environmental regulations imposed by the DENR during construction and operation;
  - vi. Tampering or plagiarizing of technical design, feasibility study, generation and operation reports;
  - vii. Non-remittance of government share;
  - viii. Non-payment of the financial obligations agreed upon under the contract; and
  - ix. Non-posting of performance bond or any other guarantee within the period provided for in the contract.

The termination shall not be effective if the failure of the RE Developer giving ground to the termination has been cured on or before the effective date of termination specified in the notice.

*Provided, however,* That RE Contract in the nature of a financial or technical assistance agreement shall be suspended or terminated by the President, upon recommendation by the DOE Secretary.

**SEC. 21. Confidentiality.** – All documents, information, data and reports generated by the RE Developer during its RE operations under the RE Contract

shall be kept confidential, and shall not be disclosed to any third party or to any affiliate not directly involved in the implementation of the RE Contract. Moreover, neither the DOE nor the RE Developer shall transfer, present, sell or publish confidential information in any manner without the consent of the other party: *Provided, however,* That the DOE shall have the right to use and make public data and information generated by the RE Developer with respect to the contract area after the expiration of the RE Contract.

**SEC. 22. Assignability/Transfer.** – All assignments of RE Contract shall be subject to prequalification and prior written approval of the DOE.

- a. The RE Developer may assign part or all of its rights and/or obligations under the RE Contract to its affiliate or any third party with prior notice to and approval by the DOE and in accordance with the following provisions:
  - i. The RE Developer shall submit to the DOE copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and
  - ii. The RE Developer shall guarantee in writing to the DOE the performance of the assigned obligations.
- b. The RE Developer may authorize its subsidiaries, branches or regional corporations to implement the RE Contract, but the RE Developer shall remain responsible for the performance of this RE Contract.

*Provided, however,* That in the case of an RE Contract in the nature of a financial or technical assistance agreement, it shall be assigned or transferred, in whole or in part, to a qualified person subject to the prior approval by the President: *Provided, further,* That the President shall notify Congress of every financial or technical assistance agreement assigned within thirty (30) days from the approval thereof.

## **Part 2. Special Provisions**

### **A. Geothermal Energy**

**SEC. 23. RE Contract in the Nature of an FTAA.** – The RE Contract that shall govern the large-scale exploration, development or utilization of geothermal energy resources by foreign-owned entities shall be in the nature of a Financial or Technical Assistance Agreement (FTAA).

Geothermal RE projects shall be classified as large-scale based on capitalization and other similar criteria as may be determined by the DOE.

The mode of awarding RE Contract to a foreign company shall be in accordance with the procedures set forth under Sections 9 and 10 hereof.

In the event that a foreign corporation qualifies for an RE project, the following requirements and/or terms and conditions shall be present in the RE proposal/application, for evaluation, and in the award and implementation of the RE Contract, in addition to the requirements provided under Section 6 hereof:

- a. A firm commitment in the form of a sworn statement, of an amount corresponding to the expenditure obligation that will be invested in the contract area as part of the RE Proposal/Application documents: *Provided*, That such amount shall be subject to changes as may be necessary to cover the cost of inflation and foreign exchange fluctuations;
- b. Representations and warranties that, except for payments for dispositions for its equity, foreign investments in local enterprises which are qualified for repatriation, and local supplier's credits and such other generally accepted and permissible financial schemes for raising funds for valid business purposes, the RE Developer shall not raise any form of financing from domestic sources of funds, whether in Philippine or foreign currency, for conducting its geothermal operations for and in the contract area;
- c. A stipulation in the RE Contract that the foreign RE Developers are obliged to give preference to Filipinos in all types of employment for which they are qualified and that technology shall be transferred to the same;
- d. If the RE Application/Proposal is found to be sufficient and meritorious in form and substance after evaluation, the DOE shall give the foreign RE Applicant the prior right to the area covered by such proposal. Thereafter, the DOE shall recommend its approval to the President.
- e. The President shall notify Congress of the RE Contract in the nature of financial or technical assistance agreements within thirty (30) days from approval and execution thereof; and
- f. Such other terms and conditions consistent with the Constitution, applicable laws and with the Act as the President, upon recommendation by the DOE Secretary, may deem to be in the best interest of the State and the welfare of the Filipino people.

The RE Developer shall manifest, in writing, to the President through the DOE Secretary, its intention to withdraw from the RE Contract, if in its judgment the project is no longer economically feasible, even after it has exerted reasonable diligence to remedy the cause or the situation. The Secretary shall, after due evaluation, recommend to the President the acceptance of the withdrawal: *Provided*, That the RE Developer has complied with or satisfied all its financial, technical and legal obligations. *Provided, further*, That upon withdrawal, the performance bond paid for under the RE Contract shall be forfeited in favor of the Government.

## **B. Hydropower Energy**

**SEC. 24. Impounding and Pumped-Storage.** – Applicants for the registration as Hydropower RE Developer, utilizing impounding and pumped-storage, shall be required to show proof of compliance with the internationally accepted norms and standards on hydropower development such as those of the World Commission on Dams, the International Energy Agency, among others.



The Hydropower RE Contract area shall not be defined using the Blocking System.

### **C. Biomass Sector**

**SEC. 25. Biomass Operating Contract.** – The RE Developers of biomass, biogas and methane-capture from organic wastes need not enter into a Pre-Development Service Contract due to the peculiar conditions and realities attendant to developing or utilizing such non-naturally occurring resources: *Provided, however,* That except in instances where the power to be generated is for own use, the Biomass RE Developers shall be required to obtain an Operating Contract to cover the project's Development/Commercial Stage wherein the developer shall commit to develop, construct, install, commission and operate an RE generating facility subject to the following:

- a. All Biomass RE Contracts shall be exempt from the payment of government share.
- b. In the event that there is excess capacity to be sold to any end-user, such biomass systems shall be covered by an RE Operating Contract with the DOE.
- c. The Biomass RE Operating Contract shall not include exclusivity of areas for feedstock sources and thus not covered by the Blocking System.

### **CHAPTER IV. RE PROJECTS FOR OWN-USE AND MICRO-SCALE RE PROJECTS FOR NON-COMMERCIAL OPERATIONS**

**SEC. 26. RE Projects for Own-use.** – RE Developers generating power for own-use shall register with the DOE to avail of any incentives under the Act. The DOE Certificate of Registration shall be issued upon complete submission of requirements which shall include, but not be limited to, the following:

- a. Letter of Intent;
- b. Project Description; and
- c. Proof of ownership of the RE facilities

**SEC. 27. RE Operating Contract for Micro-Scale Projects for Non-Commercial Operations.** – The issuance of RE Contracts for Non-Commercial Micro-Scale RE Project shall be governed by a simplified process of application and evaluation using the Checklist System. All interested applicants shall submit requirements to the REMB which shall include, among others, the following:

- a. Letter of Intent;
- b. Project Description;
- c. Work Plan;
- d. LGU endorsement/certification and any of the documents listed in the legal requirements provided in Section 6 (b) hereof, as may be applicable; and
- e. Other proof of sustained operations of the project as may be defined by the DOE.

**SEC. 28. Procedure and Requirements for Application.** – The DOE shall follow a set of simplified procedure and requirements prescribed in Section 6 for granting RE Contracts covering both RE Projects for Own-Use and Micro-Scale RE Projects for Non-Commercial Operations.

**SEC. 29. Registration as an RE Developer.** – RE Developers of RE Contracts for Non-Commercial Micro-Scale Projects shall register with the DOE to avail of any incentives and privileges under the Act. All such RE Developers shall be exempt from payment of the Government Share.

#### CHAPTER V. FINAL PROVISIONS


**SEC. 30. Separability Clause.** – If for any reason, any provision of this Circular is declared unconstitutional or invalid, the other parts or provisions not affected thereby shall remain in full force and effect.

**SEC. 31. Repealing Clause.** – The provisions of other department circulars which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

**SEC. 32. Effectivity.** – This Circular shall take into effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Issued this 12<sup>th</sup> day of July 2009 in Fort Bonifacio, Taguig City, Metro Manila.

  
**ANGELO T. REYES**  
Secretary

 Republic of the Philippines  
DEPARTMENT OF ENERGY  
IN REPLYING, PLS CITE:  
**SE09-014390**



ANNEX "A"

Application No. \_\_\_\_\_  
 O.R. No. \_\_\_\_\_  
 Date \_\_\_\_\_  
 Amount \_\_\_\_\_

**RE SERVICE/OPERATING CONTRACT APPLICATION FORM  
 (Republic Act No. 9513)**

**I. GENERAL INFORMATION**

- A. Name of Applicant: \_\_\_\_\_
- B. Authorized Representative: \_\_\_\_\_
- C. Business  
 Address/Tel./Fax \_\_\_\_\_  
 Nos./Email Address: \_\_\_\_\_
- D. RE Sector of interest: \_\_\_\_\_
- E. Area or Block/s No. and  
 Location applied for: \_\_\_\_\_
- F. Approximate area covered  
 (in has or sq. m): \_\_\_\_\_
- G. Brief description of  
 primary and secondary  
 purpose as authorized by  
 its Articles of Incorporation  
 (for juridical person only): \_\_\_\_\_

**II. COMPANY/BUSINESS BACKGROUND**

- A. Controlling Stockholders (for corporation only)  
 (List names of majority stockholders and the percentage of their  
 holdings)
 

a)	_____	%
b)	_____	%
c)	_____	%
d)	_____	%
e)	_____	%

- B. Company Directors and Officers  
 (List of Board Members and Company Officers)

NAME / POSITION

a) \_\_\_\_\_



- b) \_\_\_\_\_
- c) \_\_\_\_\_
- d) \_\_\_\_\_
- e) \_\_\_\_\_

C. Parent/Subsidiary/Affiliates  
(List Names, Addresses and Nature of Business)

- a) \_\_\_\_\_
- b) \_\_\_\_\_

D. No. of Years in Operation:

E. Description/History of the Company/Business:

- 1. Organizational structure
- 2. Ownership structure
- 3. Field of specialization

**III. TECHNICAL AND FINANCIAL CAPABILITIES**

A. Key Personnel in the Organization

- 1. Corporate officers/hierarchy/expertise
- 2. Staff members/experience

B. List of On-going or Completed RE or Energy-Related Contracts/Agreements

- 1. Brief description
- 2. Type of energy resource
- 3. Location
- 4. Contract term/implementation period
- 5. Client

C. Latest Financial Statements

- 1. Income Statement
- 2. Balance Sheet

**IV. CERTIFICATION:**

It is certified that the foregoing information are true and correct. It is understood that any omission or misinterpretations of the required information shall be sufficient cause for the rejection of this application.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Duly Authorized Representative

\_\_\_\_\_  
Name of Applicant

ANNEX "B"

**CHECKLIST OF REQUIREMENTS**  
**(Renewable Energy Service/Operating Contract under R.A. No. 9513)**

**I. RE Contract Application/Proposal**

**A. Legal Requirements**

1. Individual or Single Proprietorship:
  - a. Birth Certificate - duly authenticated by National Statistics Office (NSO);
  - b. Business Permit - certified true copy; and
  - c. Department of Trade and Industry (DTI) Registration (if applicable).
2. Corporation/Joint Venture/Consortium
  - a. Securities and Exchange Commission (SEC) Registration - SEC-certified;
  - b. By-Laws and Articles of Incorporation - SEC-certified;
  - c. Certification authorizing its representative to negotiate and enter into RE Contract with the DOE;
  - d. Business Permit;
  - e. Controlling Stockholders and Percentage of their Holdings;
  - f. Organizational Chart of the Company;
  - g. Parent/Subsidiary/Affiliates (if applicable); and
  - h. Company Profile.

**B. Technical Requirements**

1. Track Record or Experience;
2. Work Program with financial commitment per activities;
3. Curriculum Vitae of Management and Technical Personnel;
4. List of Technical Consultants with corresponding Contract between the Developer and Consultants showing their respective qualifications;  
and
5. List of existing company-owned and leased equipment appropriate for the RE project with corresponding description.

**C. Financial Requirements**

1. Audited Financial Statement for the last two (2) years and unaudited Financial Statement if the filing date is three (3) months beyond the date of the submitted Audited Financial Statement;
2. Bank certification to substantiate the cash balance (exact amount in words and numbers);
3. Projected cash flow statement for (2) years; and
4. For newly-organized or subsidiary corporation with insufficient funds to finance the proposed work program, it shall submit an Audited Financial Statement and duly certified and/or notarized guarantee or Letter of Undertaking/Support from its parent company or partners to fund the proposed Work Program. In the case of foreign parent-company, the Audited Financial Statement and the guarantee or Letter of Undertaking/Support shall be duly authenticated by the Philippine Consulate Office that has consular jurisdiction over the said parent company.

**D. Other Requirements**

1. Letter of Intent/ Application;
2. Duly accomplished RE Contract Application Form;
3. Map showing the applied area (RE area of application: in case of ocean, solar, wind, and geothermal, must conform with the DOE Blocking System);
4. Application/Processing fees; and
5. Draft Pre-Development or Development/Commercial Service Contracts.

**II. Requirements for Conversion from Pre-Development Stage to Development/Commercial Stage**

1. Letter of Declaration of Commerciality declaring the RE project is commercially feasible and viable; and
2. Feasibility study and/or detailed engineering design of the RE project with the following corresponding documents:
  - a. Resolution of Support from host communities and host municipality/ies;
  - b. Proof of Public Consultation;
  - c. Any form of legal documents showing the consent of the landowner if the project falls under a private land;



- d. Department of Environment and Natural Resources (DENR)  
Permits:
  - i. Environmental Impact Study
  - ii. Environmental Compliance Certificate (ECC) or Certificate of Non-Coverage (CNC)
  - iii. Forest Land Use Agreement (FLAg)/Special Land Use Agreement (SLUP) for area applied in public domain
- e. National Commission on Indigenous Peoples (NCIP): Free and Prior Informed Consent (FPIC)/Certificate of Pre-Condition or Certificate of Non-Overlap;
- f. National Transmission Corporation (TRANSCO):
  - i. Grid System Impact Study
  - ii. Interconnection Agreement, if applicable
- g. Energy (Electricity) Sales Agreement;
- h. Other clearances from other concerned agencies (*i.e.*, Maritime Industry Authority (MARINA), Bureau of Fisheries and Aquatic Resources (BFAR), Philippine Navy, Philippine Coast Guard, etc.);
- i. Proof of Financial Closing;
- j. Final area for development (geographical coordinates/PRS92);
- k. Payment of corresponding Application/Processing Fee; and
- l. Draft Development/Commercial RE Contract.

**III. Requirements for Conversion from Existing Contracts to RE Contracts**

1. Letter of Intent from the Developer requesting for the conversion of the existing Contract/Agreement to RE Contract;
2. Accomplishment report vis-à-vis work and financial program;
3. Updated Work Program; and
4. Such other documents that may be required by the DOE.