

**Administrative Order
No. 82
November 20, 1990**

**SUBJECT: Procedural Guidelines on the Award of
Mineral Production Sharing Agreement
(MPSA) Through Negotiation**

Pursuant to Section 6 of Executive Order No. 279, the following procedural guidelines on the award of MPSA through negotiation are hereby promulgated for the information and guidance of all concerned:

Section 1. Acceptance of MPSA Application/Proposal - An MPSA Application/ Proposal in twelve (12) sets shall be accepted upon payment to the DENR Regional Office concerned of the following fees:

- a) filing fee - P100.00 per application/proposal
- b) processing fee - P5,000.00 per application/proposal
- c) P.D. 1856 as amended, for a and b - P20.00 per application/proposal

Section 2. Minimum Requirements for MPSA - The minimum requirements for MPSA which shall be checked/verified by the Regional Technical Secretariat (RTS) within fifteen (15) days from submission, shall be the following:

- a) For Individuals
 - i. Certified photocopies of Income Tax Returns for the three (3) immediate preceding years;
 - ii. Proof of sufficiency of capital and/or credit lines;
 - iii. Sworn statement that applicant/proponent is not a dummy of any person or entity; and
 - iv. Authorization to the Secretary of the DENR or his representatives to verify submitted informations.
- b) For Corporations, Partnerships, Associations
 - i. Certified photocopy of Certificate of Registration issued by the Securities and Exchange Commission (SEC) or the concerned authorized government agency;
 - ii. Certified photocopy of the Articles of Incorporation, Partnership/Association and By-laws;

- iii. Personal data sheets of the current directors and officers, including their nationalities, bio-data and relevant experience or annual report;
- iv. Audited financial statement for the three (3) immediate preceding years, if applicable;
- v. Proof of sufficiency of capital and/or credit lines;
- vi. Authorization to the Secretary of the DENR or his representatives to verify submitted informations.

In addition to the above requirements, an applicant/proponent for an integrated MPSA shall submit a two-year exploration work program. Further, it shall commit itself to conduct Environmental Impact Assessment (EIA) and to comply with the requirements of Environmental Compliance Certificate (ECC). Such commitment shall be set forth in writing and the same shall be submitted before actual mining operation starts. Applicant/ proponent for a simple MPSA, on the other hand, shall submit a three (3) year construction and development work program or a three (3) year commercial production work program and an ECC.

For holders of unperfected mining rights, the following shall be submitted in addition to the aforesaid requirements:

- 1) Registration/recording of mining/quarry claim; as in case of assignee, duly registered deed of assignment, transfer, etc.;
- 2) Submission of survey returns or technical descriptions covering the subject claims;
- 3) Proof of compliance with the annual work obligations and occupation fees; and
- 4) Appropriate environmental report and anti-pollution measures proposed to be undertaken during the mining operations

Failure to submit the aforementioned requirements shall be a ground for non-processing of the MPSA application/proposal under consideration.

Section 3. Submission of Letter of Intent (LOIs) and MPSAs -
The following shall submit their LOIs and MPSAs within two (2) years from the effectivity of DENR A.O. 57 or until July 17, 1991.

- i. Declaration of Location (DOL) holders, mining lease applicants, exploration permittees, quarry applicants and other mining applicants whose mining/quarry applications have not been perfected prior to the effectivity of DENR Administrative Order No. 57.

- ii. All holders of DOL acquired after the effectivity of DENR A.O. No. 57.
- iii. Holders of mining leases or similar agreements which were granted after effectivity of 1987 Constitution.

Failure to submit letters of intent and MPSA applications/proposals within the prescribed period shall cause the abandonment of mining, quarry and sand and gravel claims.

Section 4. Area Clearance - Within fifteen (15) days from receipt of MPSA application/proposal by the Regional Office concerned, the Regional Technical Secretariat shall check thru map projection if the area is free from any conflict. If the area is found to be free from conflict, the RTS shall give written notice to the applicant/proponent to pay the corresponding occupation fee of ten pesos per hectare for non-reservation area and 100 pesos per hectare for reservation area within fifteen (15) days from receipt of said written notice. Provided, that failure to pay such fee within the prescribed period shall be a ground for non-processing of the proposal under consideration.

If the area is in conflict, the RTS shall resolve the same within five (5) days from date of discovery of the conflict.

Section 5. Survey of the Area Applied For - Within sixty (60) days from filing of the MPSA proposal, the applicant/proponent thereof shall file with the Regional Technical Director (RTD) for Mines an application for an order of survey and the RTD shall approve the same within five (5) days from submission of all the documents/survey requirements. Survey returns shall be submitted to the RED within one year from receipt of the order of survey. However, areas previously surveyed for mining purposes are exempted from this requirement. Failure to submit survey returns within the prescribed period shall be sufficient ground for cancellation.

Section 6. Publication of MPSA Application/Proposal - Within fifteen (15) days from submission of the survey returns, the Regional Executive Director (RED) shall cause the publication of the MPSA application/proposal once a week, for two (2) consecutive weeks in a newspaper of general circulation at the expense of the applicant/proponent. The RED shall also cause the publication of the MPSA application/proposal on the bulletin board of the Mines and Geosciences Bureau for two (2) consecutive weeks and shall require the applicant/proponent to post for the same period the MPSA application/proposal on the bulletin board of the municipal building of the municipality and in that of the DENR Regional Office, where the proposed MPSA contract area is located. Immediately after the expiration of the period of publication, the applicant/ proponent shall file with the RED an affidavit attesting to the fact that the

required publications have been complied with. However, previously published mining lease applications are exempted from the publications required under this section: Provided, that if no adverse claim/protest is filed within thirty (30) days after the first date of publication, the applicant/proponent shall deposit verification fee within fifteen (15) days from completion of the publication. Failure to do so within the period aforesaid shall be a ground for rejection of said MPSA.

Section 7. Adverse Claims - No adverse claim shall be accepted by RED unless verified and accompanied by the prescribed docket fee and proof of services upon the respondent. No adverse claim shall be entertained unless it contains the name/s of the adverse claimants/oppositors, their respective counsel, if any, detailed statements of the facts relied upon, the grounds of the adverse claims/ protest together with all supporting documents and data. Said adverse claim or any protest shall be resolved by the Regional Panel of Investigators (RPI) within thirty (30) days from referral.

Section 8. Verification of Area Applied For - After payment of the P1,000 per man per day verification fee, a geologist/mining engineer and a geodetic engineer both duly licensed and designated/deputized by the DENR Regional Executive Director shall conduct a field verification so as to confirm if the proposed contract area is indeed mineralized, correctly surveyed and properly monumented. Provided, that the minimum verification fee shall be P4,000. The verification team shall submit its report to RTS within 15 days from completion of verification. However, areas previously verified are exempted from this requirement.

Section 9. Acceptance and Evaluation of MPSA Proposal - Within fifteen (15) days from the submission of the verification report to the RTS, the latter shall forward its recommendation together with the MPSA application/proposal and its supporting documents to MGB Technical Secretariat for pre-evaluation. Within fifteen (15) days from receipt of the said recommendation and MPSA application/proposal, the latter shall refer the same for final evaluation to the Sub-Committee if the capital investment is less than one hundred (100) million pesos, or to the Negotiating Panel if the capital investment is at least one hundred (100) million pesos.

Section 10. Negotiation Between the Government and Applicant/Proponent - The MPSA Sub-Committee/Negotiating Panel, upon being satisfied of the terms and conditions of the MPSA applicant/proposal and the qualification of the applicant/ proponent, shall notify the Secretary of its recommendation that the MPSA application/proposal is acceptable. The Secretary, finding the recommendation proper, shall notify the applicant/proponent for the formal signing of the MPSA be remanded to the MPSA Sub-Committee/Negotiating Panel for negotiation. However, if the MPSA Sub-Committee/Negotiating Panel finds some of its terms and conditions unacceptable, a negotiation shall be conducted between the parties in order to conclude a

fair and mutually acceptable terms and conditions of the MPSA application/proposal. It is understood, however, that, in the MPSA, the DENR shall be referred to as the "Government" whereas the applicant/proponent shall be referred to as the "Contractor".

Section 11. Approval of MPSA - Within five (5) days from signing of MPSA by the Secretary, the DENR shall forward the same together with all the supporting documents to the President for approval.

Section 12. Registration and Issuance of MPSA - Upon approval of the MPSA by the President, the MPSA shall then be forwarded, through the DENR, to the MGB Technical Secretariat for MPSA numbering. Thereafter, the Contractor shall cause the registration of its MPSA with the Regional Office concerned after payment of the following fees:

- a) Registration fee - P100.00 per MPSA
- b) P.D. 1856, as amended - P10.00 per MPSA
- c) Regulatory fee - P10.00 per hectare per year during the first year of exploration plus a P5.00 yearly increment for the succeeding years.
- d) Exploration permit fee - P50.00 per hectare per year for offshore exploration instead of the regulatory fee.

It will only be after payment and registration is effected, that the MPSA contract may be released, through the RTS, to the Contractor.

Section 13. Non-Acceptance of Declaration of Location (DOL) - No DOL shall be accepted for Registration after fifteen (15) days from effectivity of these procedural guidelines.

Section 14. Issuance of Interim Mines Permit - All holders of published lease applications, pending quarry and sand and gravel applications, and expiring lease/quarry contracts and MPSAs pending negotiations may upon proper applications with the Secretary be issued Interim Mines Permits for a period of one year or until the issuance of permit, license or agreement whichever comes first subject to the following conditions:

1. That the applicant is already operating or about to operate subject to verification by the RTS;
2. That the applicant has already submitted a proposed MPSA;
3. That the applicant has submitted approved work program, surety bond to be determined by the RTD and an Environmental Clearance Certificate (ECC).

Provided, however, that progress production reports (quarterly) shall be submitted by the holders of the Interim Mines Permits covering the subject areas for the purpose of computing the share of the Government from production. Such interim share of the government shall be based on the MPSA proposal so long as it is not lower than one per cent (1%) of the gross output as defined in Administrative Order No. 57, Series of 1989 exclusive of the excise tax.

Section 15. Separability Clause - If any clause sentence, provision, section of this guidelines shall be held unconstitutional, the remaining parts of this guidelines shall not be affected thereof.

Section 16. Repealing Clause - All orders, rules and regulations inconsistent with or contrary to the provisions of this guidelines are hereby repealed or modified accordingly.

Section 17. Effectivity - This Administrative Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

APPROVED: NOVEMBER 20, 1990

FULGENCIO S. FACTORAN, JR.
Secretary