

Legal Update

Recent news in the Oil & Gas Sector

August 10th, 2018

National Hydrocarbons Agency's Permanent Competitive Procedure - 2018

On July 27, 2018, through Resolution 322, the National Hydrocarbons Agency ("**ANH**") ordered the opening of the so-called Permanent Competitive Procedure – 2018 for the award of Areas, which will be subject to the requirements and conditions established in Terms of Reference ("**TOR**") approved by the ANH through Agreement 004 of 2018, dated August 6, 2018.

All contracts with the ANH that will be entered into as a result of this Area award process will be governed by the model contract in force at the time of its execution. To date, the approved models are: (a) for Continental Areas, the model Continental Areas E & P Contract approved by the ANH through Agreement 004 of 2018; and (b) for Offshore Areas, the model Offshore Areas E & P Contract approved by the Board of Directors of the ANH through Minutes of Meeting No. 6 of 2018. To see our comments on the model Offshore Areas E & P Contract click [here](#). Technical Evaluation Agreements ("**TEAs**") and Special Contracts will be governed by the applicable model in force at the time of its execution.

Agreement 02 of 2017 of the ANH, published on May 18, 2017, introduced, as a novelty, among other mechanisms for the award of Areas, the so-called Permanent Competitive Procedure. Words written here with capital letters that are not defined have the meaning assigned to them in the Glossary of Terms contained in Annex 1 of Agreement 02 of 2017.

Under Agreement 02 of 2017, through the Permanent Competitive Selection Procedures the ANH must make a permanent public call for the award of Areas in order that: (i) companies registered and qualified to make proposals in the Registry of Interested Companies (also contemplated in Agreement 02 of 2017) present Proposals to the ANH for the selection of Areas and the awarding of E & P Contracts or TEAs, in accordance with the terms of reference issued by the ANH; and (ii) the ANH publishes the receipt of Proposals of this nature and publicly invites other companies interested in such Areas and Contracts, provided they meet the Capacity requirements for this purpose and have been prequalified or request such prequalification, to compete for the award of such Areas under Contracts, by submitting Proposals, within a certain period, in accordance with the same terms of reference. According to Agreement 02 of 2017, said terms of reference must provide that the companies who submit the initial Proposal will have the option to improve the Proposals submitted subsequently, always respecting the ANH's guiding principles set forth in Article 3 of Agreement 02 of 2017. Given that the ANH has not regulated the Registry of Interested Parties, the companies that wish to participate in the Permanent Competitive Procedure – 2018 must submit the required documents for prequalification by ANH, which prequalification shall valid for the entire process.

The Areas susceptible to award through this competitive procedure will be those included in the Map of Areas at the ANH's initiative, which will be published for a period of two months and available for receipt of Proposals for two more

months, from the date of publication of the Map of Areas. Areas previously delimited by the Board of Directors of the ANH may also be assigned through this procedure, at the request of companies previously prequalified by the ANH.

The acquisition of a data package for each area is an essential requirement to participate in the Procedure.

In summary, the procedure described the TOR is as follows:

1. Request for Prequalification and Proposals: Bidders must present the documents that accredit their Capabilities to Contract with the ANH, a Proposal for each Area and the applicable bid guarantee in a two month term from the date of publication of the Map of Areas. The ANH must define the mechanism for the delivery of the prequalification documents, in order to determine the order of arrival and thus establish who the first Proponent is. Each Proposal will remain closed until the stage of opening all Proposals.

2. Declaration of the First Bidder in areas offered by the ANH: Once the bidder has been authorized, it will obtain a personal identification number ("PIN") that will allow the bidder to present the financial proposal and bid guarantee. If the guarantee is submitted in due form and the bidder meets the minimum score set by ANH considering the type of Area, the bidder will be declared as the First Bidder for each Area. Otherwise, the ANH will continue with the next bidder in order of arrival according to the PIN.

3. Publication, Opening of Proposals and award to the first Proponent: the ANH will publish the name of the first Proponent and the identification of the Area subject of the Proposal, in order that other interested parties submit their prequalification applications and Proposals, for which the TOR grants a term of 30 days. If the ANH does not receive more Proposals for said Area, it will continue with the award process taking into account the only Proposal received.

4. Hearing for Opening of Proposals: Under the procedure established in the TOR, the ANH will open all Proposals received in respect to an Area and inform all interested parties of the information received.

5. Evaluation and qualification of Proposals: The TOR defines the formula adopted by the ANH for the evaluation of the Proposals, which includes the score obtained by each Proponent according to the type of Area, as well as the additional exploration activities and percentage of production (X%) offered. As tiebreaker criteria, the following have been established: (i) first, the largest offered participation in production (X%); (ii) second (if the tie persists) the best economic compensation offered to the ANH for the award of the Contract (a percentage in whole numbers equal to, or greater than 1% of the total score of the minimum and additional exploratory programs that the bidder has the power to offer only for cases of tie); and (iii) in the final instance, a draw with ballots shall be carried out.

Regarding the capacity evaluation, it is worth noting that the companies expect that the minimum scores required for the exploratory programs (which will be defined by the Board of Directors of the ANH depending on the type of Area) are competitive.

It is also worth noting that a concern has been raised because it will be the ANH, rather than the Proponent, who will define the order of preference in the allocation of Areas when the same Proponent submits several Proposals, in accordance with the score obtained when evaluating the financial capacity.

5.1. Evaluation of Technical Capacity: With regard to the evaluation of **Technical Capacity** of the companies, a minimum of perforated wells is not required, despite having been required in previous competitive processes.

For Onshore Conventional Areas it is required to accredit:

- Proved reserves for the last fiscal year not less than 2 million barrels equivalent.
- Minimum operated production of 1,000 equivalent barrels per day on average during two years in the last five years.

For Offshore Conventional Areas is required to accredit:

- Proved reserves for the last fiscal year not less than 50 million barrels equivalent.
- Minimum operated production of 20 thousand barrels equivalent per day on average during two years in the last five years.

5.2. Evaluation of Financial Capacity: The Financial Capacity will be determined, according to the type of Area, in points as follows:

For mature or explored Onshore Conventional Areas, a minimum score of 1,500 points is required.

For emerging or semi-explored Onshore Conventional Areas a minimum score of 1,200 points is required.

For immature or border Onshore Conventional Areas, a minimum score of 1,000 points is required.

For Offshore Conventional Areas, a minimum score of 24,000 points is required.

The scores are calculated according to the formulas established in the TDR.

Additionally, the ANH will evaluate the legal, environmental and corporate social responsibility capacities.

6. Award of Areas: Once the order of eligibility has been defined based on the criteria adopted by the ANH, the agency will notify the first Bidder. If the First Bidder does not top the order of eligibility list, the ANH will allow the first Bidder to improve upon the best Proposal. If the first Bidder does not do so, the ANH will award the Area and the corresponding Contract to the bidder that made the best Proposal.

The TOR and other documents of the process are available on the ANH website.

Please do not hesitate to contact us in case you have questions or comments. We will be pleased to discuss and review the topics that you consider appropriate.

For more information, contact one of the following lawyers:

Leopoldo Olavarría	Bogotá	+571 746.6763	Leopoldo.olavarria@nortonrosefulbright.com
Inés Elvira Vesga	Bogotá	+571 746.4657	Ines.vesga@nortonrosefulbright.com
Lucia Escobar	Bogotá	+571 746.4605	Lucia.escobar@nortonrosefulbright.com

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