



## ANSWERS

### ANSWERS TO QUESTIONS ASKED WITH RESPECT TO THE PERMANENT PROCEDURE FOR AREA ALLOCATION

June 16, 2020

#### QUESTION No. 1.

Letter b) of article 1.10.B2 of the Terms of Reference of the PPAA (Addenda 10) states that the Right to Participate can be accredited with the following option "The accreditation of having purchased the Data Package containing information on the Basin of the Area that is the object of the Request in any of the Rounds that the ANH has carried out since the year 2012".

Similarly, article 1.10.2 states that "The Right to Participate that is acquired through any of the options described in numeral 1.10.2, empowers the Proponent to submit Requests for Incorporation of Areas, for an equivalent of the total price paid on such accounts, divided by twenty thousand US Dollars (USD 20,000) (...)" (Underlining not in the original text).

To such extent, to determine the amount of the total value paid that will indicate the number of requests for areas that can be submitted by the qualified parties, is it possible to add up the values of all the packages purchased since 2012, that is, add up the value of the package(s) purchased in the 2012 Round plus the package(s) purchased in the 2014 Round? Or, only the value of the package(s) purchased in a single Round, that is, only that of the 2012 Round or the 2014 Round should be chosen/used?

#### ANSWER:

The number of Requests for Incorporation that the Qualified Proponent can submit, pursuant to that provided for in letter b) of numeral 1.10.2 of the PPAA Terms of Reference is equivalent to the total price of the Data Packages acquired in the Rounds that the ANH has carried out since 2012, which contain information on the Basin of the Area that is the object of the Request, divided by USD 20,000.

Consequently, using the example of the question asked, if a Qualified Proponent purchased in the 2012 Colombia Round a Data Package for USD 19,000 and in the 2014 Colombia Round another one amounting to USD41,000, which contain (both) information of the areas that they want to have incorporated to the PPAA, they may submit a total of 3 Requests for Incorporation of Areas "(...provided that their Economic Financial Capacity is





sufficient to support all of them, considering that required in numeral 6.5 (...) of the Terms of Reference" (numeral 1.10.2)

**QUESTION No. 2.**

If the packages acquired in the Rounds since 2012 were those offered with the highest value each time, can the currently existing exception related to the Llanos basin package of the first cycle for PPAA 2019 be applied and, to such extent, there would be no limit as to the number of requests for incorporation to be submitted?

**ANSWER:**

The answer to this question is NO. The rule established in the third but last numeral 1.10.2 of the PPAA Terms of Reference, applies only to those Qualified Proponents that acquired in the First Cycle of the Process the Data Package for the Llanos Basis offered for a value of USD 80,000.

**QUESTION No. 3.**

I would like to confirm if the ANH Form to submit the request for incorporation of area can be signed by the legal representative of the branch of the qualified company in Colombia, acting on behalf of the qualified company.

**ANSWER:**

The administrator of a branch can only represent the PPAA Qualified Proponent and, therefore, can sign the Forms attached to the Terms of Reference, if he/she has been conferred the powers and attributions required for such purpose in the mentioned Terms (numeral 6.4 "Accreditation of Legal Capacity"), which means that if in the act of incorporation of the branch, issued pursuant to the respective company bylaws, or in the power of attorney granted to its administrator, the latter was conferred the representation of the Participating corporation.

Consequently, the answer in this particular case depends on the review performed by the ANH of the faculties of the administrator when it assesses the information submitted.

**QUESTION No. 4.**

Given that Addenda No. 12 includes significant changes in the awarding process, we would like to know what were the rationale and grounds that led the ANH to decide including these changes.





**ANSWER:**

In exercise of the powers referred to in legal concepts 3 and 4 of the PPAA Terms of Reference, and based on the lessons learned in the first two Process Cycles, the ANH issued Addenda No. 12 of 20 May 2020, which main changes consist in the amendment of Chapter Seven and the incorporation of Chapter Eight, relative to the Requests for Incorporation of Areas and Manifestations of interest respectively, to which the answer is limited, in the understanding that these are the issues of your consultation.

The requisite of the Letter of Intent, through which the Qualified Proponent presenting the Request for Incorporation or Manifestation of Interest acquires the obligation that is subject to the condition subsequent of updating its qualification and submitting a valid Proposal for the area that is the object of the request, under penalty of paying an amount in favor of the ANH, is derived from the decision of completing the respective technical evaluation processing and carrying out the Coordination and Nation Territory Concurrence Procedure, only with respect to some areas where the Proponent who requests its incorporation acquires the commitment of filing the Proposal. The foregoing in order to make optimal, efficient use of the Agency's human, technical and economic resources.

Because of the commitment that, pursuant to the rules of Addenda No. 12, is acquired by the Proponent who duly requests the Incorporation of an Area or Manifests Interest for the areas listed in Annex C, the Terms grant it the prerogative of being the only Qualified Proponent with the possibility of submitting a Proposal for the Area whose incorporation it requested and, furthermore, acquiring the condition of Initial Proponent. This measure was adopted to encourage the submittal of the aforementioned requests, considering the obligations imposed on the Proponents who formulate them, pursuant to the current rules of the Terms of Reference.

Additionally, through Addenda No. 12 of 20 March 2020, the Terms of Reference were added with the rules applicable to the Requests for Incorporation aimed at transferring to the Contracts that are awarded eventually the remaining or unexecuted exploration investment in one or more Contracts or Issuer Agreements, in view of that provided for in article 5 of Agreement 02 of 2020.

**QUESTION No. 5.**

In accordance with section 1.11 Right of Participation of Addenda 12, "in the Third Cycle of the Permanent Process of Area Allocation, there will be no offering of Areas determined and delimited by initiative of the ANH".





Nevertheless, the definition of Manifestation of Interest stipulates that:

"Manifestation of Interest. Act whereby a Qualified Individual or Plural Proponent manifests its interest to the ANH for one or more Process Areas not allocated in two (2) consecutive cycles, in accordance with the requisites and processing set out in the Terms of Reference. The Areas that are the object of the Manifestation of Interest, with respect to which the Letter of Intent is duly presented, will be subject to the Coordination and Nation Territory Concurrence Procedure, for its eventual determination, delimitation and classification as Area of the Selection Process." (underlining not in the original text)

Taking the foregoing into account, in our interpretation of Addenda 12, there is a contradiction, as being these remaining areas available for presentation of Manifestations of Interest, that is, which were not allocated in previous cycles, it may be interpreted that these were effectively defined by the ANH at the time of presenting them in the respective cycles. Therefore, we would appreciate your confirming if our interpretation is correct and/or please clarify if it should be otherwise.

**ANSWER:**

Numeral 1.11.1 refers expressly to the manner of acquiring the Right to Participate "With respect to the offered Areas [in the Third Cycle of the Process] by initiative of the ANH". When it is stated therein that in the Third Cycle there will be no offering of Areas determined and delimited by initiative of the ANH, it refers to new Areas, that is, Areas other than those that were determined and delimited by the ANH in Cycles 1 and 2 (by initiative of the Agency or in relation with Requests for Incorporation) and on which no Proposals were received at that time.

Hence, the Manifestations of Interest referred to in Chapter Eight of the Terms of Reference, refer only to areas determined, delimited, offered and not awarded in Cycles 1 and 2 of the Process, susceptible of allocation by means of an Exploration and Production Agreement, according to their classification. The manner to acquire the Right to Participate through the presentation of a Manifestation of Interest is provided for in numeral 1.11.2 of the Terms of Reference.

**QUESTION No. 6**

We refer to numeral 1.6 of the PPAA Terms of Reference, particularly the obligation of paying US\$100,000 in the event of breach of the commitment of submitting a Proposal, which was acquired with the presentation of the Letter of Intent.

In this regard, the question is the following:





(i) Would the sum of US\$100,000 be the only penalty in case of not submitting the Proposal?

Should the answer be affirmative, it is clear that there will be no other applicable penalty such as the prohibition to participate in the PPAA or other future process for allocation of areas of the ANH. We appreciate your confirmation.

**ANSWER:**

In accordance with that provided for in the PPAA Terms of Reference and Form No. 29 that is part thereof, the Proponent filing a Request for Incorporation or Manifestation of Interest for an Area must complete and submit in due form a Letter of Intent, by means of which it acquires the following obligations:

- Deliver the information required in numeral 6.15 of the Terms of Reference of the PPAA, within the deadline stipulated for such purpose in the Process Schedule, to accredit that it upholds the conditions that gave rise to its Qualification and that it has the qualification demanded for submitting a Proposal, and
- Submit a Valid Proposal for the Area of its interest, at the time and as per the conditions set out in the PPAA Terms of Reference, if it has been published as Area of the Selection Process and provided that, in case of being the object of eventual redefinition of its limits, extension and number of sides (as a result of the Coordination and Nation-Territory Concurrence Procedure or the evaluation of the Request for Incorporation, should it be the nature of the manifestation), the polygon of the Area of its interest is not reduced by more than twenty per cent (20%).

Consequently, the Proponent that submits a successful Request for Incorporation or Manifestation of Interest, failing to fulfill its obligation of updating the data that determined its qualification or failing to submit a Valid Proposal for the Area offered upon its initiative, must pay within 30 calendar days following the date for filing Proposals set out in the Process Schedule, USD 100,000 in favor of the ANH. The Terms of Reference do not stipulate any other effect for failing to comply with the obligation acquired with the signing of the Letter of Intent.

**QUESTION No. 7**

"2.4 Invitation

The *Agencia Nacional de Hidrocarburos*, ANH, invites national and foreign legal entities of the Hydrocarbons sector to participate in the Area Allocation Permanent Process, submit to the Agency a request for Qualification, accompanied by the documents accrediting its capacity to such end, as well as to Request the Incorporation of Areas that are the object





thereof and to enter into the respective E&P- Exploration and Production Contracts, Continental or Offshore, or Technical Evaluation Agreements - TEA, in accordance with the classification that is incorporated in the following Chapter, all subject to the applicable legal regime and to these Terms of Reference. Initially, the Permanent Process for Area Allocation is limited exclusively to the selection of Contractors for the eventual execution of the E&P Hydrocarbon Exploration and Production Agreements, Continental and Offshore. Consequently, and pursuant to that stipulated in the second subparagraph of numeral 2.1 of these Terms of Reference, in the Third Cycle of the Process no Areas classified as Immature or Frontier will be offered, in accordance with the parameters set out in articles 6, 8 and 9 of Agreement 02 of 2017".

Keeping the foregoing in mind, we would appreciate your confirming the scope of the expression "no Areas classified as Immature or Frontier will be offered".

(i) Does the foregoing mean that it is not possible to nominate Immature or Frontier Areas?

**ANSWER:**

As stated in numeral 2.4 of the Terms of Reference initially "(...) the Permanent Process of Area Allocation is limited exclusively to the selection of Contractors for the eventual entering into E&P Hydrocarbon Exploration and Production Agreements, Continental and Offshore" and, therefore, since in accordance with that provided for in numeral 2.1 of the Areas considered Immature or Frontier, these will be allocated only under Technical Evaluation Agreements - TEA, the request for incorporation of an Area of this nature, will not be considered in Cycle 3.

**QUESTION No. 8**

If it is not possible to nominate Immature or Frontier Areas:

(II) What would be the effect derived from nominating an Area classified as Immature or Frontier?

**ANSWER:**

The Request for Incorporation of an Area that, in accordance with the parameters established in Agreement 02 of 2017, is classified as Immature or Frontier, will be rejected on the grounds of that provided for in numeral 7.3.4 of the Terms of Reference, because not being susceptible for allocation by means of an Exploration and Production Agreement (numeral 2.1), the contractual modality currently applied to the process, it is not feasible to have the Applicant acquire the obligation of submitting a Proposal thereon.





### **QUESTION No. 9**

Would such Immature Area be classified subsequently as an Available Area in the Land Map?

#### **ANSWER:**

For an Area to be the object of a Request for Incorporation, it must be classified in the current Land Map as Available. In the event of a Qualified Proponent submitting a Request for Incorporation of an Immature or Frontier Area pursuant to the current Process rules, its rejection is applicable and the area maintains its classification as Available, without prejudice of the eventual exercising of the power that the ANH has to reserve it when it updates the Land Map.

### **QUESTION No. 10**

We would appreciate your confirmation of the possibility of nominating Reserved Areas for this cycle.

#### **ANSWER:**

In the understanding that the question refers to the possibility of Requesting the Incorporation of an Area classified as Reserved in the Land Map, in fact and as expressly stated in numeral 1.26 of the Terms of Reference, the Requests for Incorporation can only apply for Areas classified as Available. Consequently, it is not possible to Request the Incorporation to the Process of a Reserved Area.

### **QUESTION No. 11**

Is it possible to qualify the foreign company without having a branch incorporated in Colombia, with the commitment to incorporate it once the qualification has been obtained?

#### **ANSWER:**

It is not a qualification requisite for foreign legal persons that are interested in participating in the PPAA to have a branch office in Colombia. The establishment of a branch in the country is required only in the event that the Proponent is awarded one or more hydrocarbon exploration and production contracts (numerals 6.3.8 and 6.3.10 of the Terms of Reference).





### **QUESTION No. 12**

Since we cannot participate individually in the Round of the second semester of 2020, could we do it as plural proponents, not being the operators?

#### **ANSWER:**

The legal persons interested in participating in the Permanent Process for Area Allocation can do it as Individual Proponents or as members of Plural Proponents (Consortia, Temporary Unions or under the modality of Future Corporation Promise).

In conformity with that provided for in Agreement 02 of 2017, the Terms of Reference of the PPAA state that the member of the Plural Proponent with the capacity as Operator must accredit fulfilment of Legal, Economic Financial, Technical and Operational, Environmental and Corporate Social Responsibility Capacities; other members of the association (not Operators) are only required to meet the Legal and Economic Financial Capacities.

### **QUESTION No. 13**

In accordance with that regulated in numeral 1.6 of the Terms of Reference ("ToR"), please clarify if the areas not allocated in Cycles 1 and 2 of the PPAA and which, as of the publishing of Addenda 12 can be the object of Manifestations of Interest, must be subject again to the Coordination and Nation and Territory Concurrence Procedure, inasmuch as the areas that were NOT allocated in Cycles 1 and 2 followed the respective Coordination and Concurrence Procedure prior to their being published as areas to be offered by the ANH. If so, we would appreciate your clarifying if with the New Coordination and Concurrence Procedure these areas can be the subject of redefinition, reclassification or if they could even be excluded from Cycle 3 of the PPAA as a result of said Procedure.

#### **ANSWER:**

Numeral 8.2 of the Terms of Reference of the PPAA, in conformity with that provided for in 1.6 and in Form No. 29, expressly states with regard to the Areas that are the object of a Manifestation of Interest, that these" (...) will be subject to the Coordination and Nation and Territory Concurrence Procedure, for their eventual determination, delimitation and classification as Area(s) of the Permanent Process of Area Allocation". (Underlining not in the text).

Consequently, the answer to your first question is YES. In strict compliance with that stipulated by the Constitutional Court through sentence SU- 095/18, with prior definition of the Areas of the Third Cycle of the PPAA, the ANH will update the Coordination and





Nation and Territory Concurrence Procedure with respect to those areas that were offered and not allocated during the first two Cycles, which are the object of the Manifestation of Interest presented in due form by 30 June 2020 at the latest (according to the Schedule of Addenda No. 13 of 12 June 2020).

Therefore, as specified in the second subsection of numeral 8.2 of the Terms, it is possible that "(...) *as a result of the Coordination and Nation and Territory Concurrence Procedure, the Area [subject of the Manifestation of Interest] is not included as part of those of the Selection Process or there is a possibility to reformulate the boundaries, extension and number of sites of the respective polygon (...)*".(Underlining not in text).

#### **QUESTION No. 14**

In line with the previous question, is it likely that the content of Annexes B and C published along with Addenda 12, will be amended with respect to the development of new Coordination and Concurrence Procedures related to the areas that have already been determined and classified by the ANH in accordance with Annex C?

#### **ANSWER:**

To answer this question, it is necessary to highlight the differences between Annexes A and C of the Terms of Reference of the PPAA. While Annex C contains the delimitation and classification of Areas that are susceptible of Manifestation of Interest until 30 June 2020 (Mature and Emerging Areas offered and not allocated in Cycles 1 and 2 of the PPAA), Annex A, called "Delimitation and Classification of the Selection Process Areas", identifies the Areas that, after completing the Coordination and Nation and Territory Concurrence Procedure, will be the subject of the respective process cycle, independently of the mechanism that gave rise to its incorporation thereto (Manifestation of Interest, Requests for Incorporation or ANH initiative).

Consequently, Annex C published on 20 May 2020, which lists the areas that were not allocated in the first two cycles of the process that are susceptible of Manifestation of Interest, will not be amended. The foregoing without prejudice that, as previously explained, in relation with the Coordination and Nation and Territory Concurrence Procedure, the polygons of the Areas of Annex C with Respect to which Manifestations of Interest are received, are modified in their boundaries, extension and number of sides (numeral 8.2 of the ToR), reflecting that pertaining to Annex A, which is to be published on 18 August 2020, which will identify the Areas that are the object of the Third Cycle of the Process.

As regards Annex B, which sets out the Exploration Program of the Areas that are the Object of the Process, based on the basins to which they belong and their corresponding





classification as Mature or Emerging according to the parameters of Agreement 02 of 2017, will not be amended in relation with the Coordination and Nation and Territory Concurrence Procedure.

#### **QUESTION No. 15**

In relation with numeral 8.2 of the ToR, we would appreciate a clarification regarding how a situation will be resolved in the event that two (2) or more companies present Manifestations of Interest for the same one (1) area included in Annex C. Even though numeral 8.21 refers to letter b) of numeral 7.2.1 of the ToR, we consider that such situation differs with respect to the procedure of Request for Incorporation of Areas and, therefore, we would appreciate your feedback and clarification on this matter.

#### **ANSWER:**

As you properly point out, if 2 or more Manifestations of Interest are presented for one of the Areas listed in Annex C of the Terms of Reference, the provisions in letter b) of numeral 7.2.1 will be applied, whereby the ANH will require the Proponents that expressed their Manifestation of Interest for the same Area, to report the exploration activities expressed in points to be executed in each of the Phases of the respective Exploration Program (Minimum and Additional), in order to select the Manifestation of Interest of the Proponent offering more points in Phase 1. It should be kept in mind that, as expressly stated in the aforementioned letter, "Said manifestation will be considered the minimum of the offer submitted by the Requester, under penalty of its rejection".

#### **QUESTION No. 16**

Lastly, and with respect to the Schedule published in Addenda 12, we are somewhat concerned about the deadline established for the presentation of Manifestations of Interest, which is next 17 June 2020. In our opinion, a deadline of less than one (1) month to complete the economic analysis and technical maturity of opportunities is too short. The formulation of a Letter of Intent implying the acquisition of exploration commitments requires levels of approval given its implications from a budgetary standpoint. In the same vein and, considering the current market situation, we kindly request your considering the possibility of extending the deadline to formalize the Manifestations of Interest.

#### **ANSWER:**

In view of the foregoing request, the term for presentation of Manifestations of Interest and the second cut-off for filing Requests for Incorporation was extended by means of Addenda No. 13 of 12 June 2020 until 30 June 2020.

