



EQUATORIAL GUINEA

Time to Prepare for a New Licensing Round

Last September, the Minister of Mines and Hydrocarbons of Equatorial Guinea, Gabriel Mbaga Obiang Lima, announced that the country will be launching a new bidding round in 2019 for oil and gas exploration in both onshore and ultra-deepwater areas. The last licensing round was opened in June 2016 and closed in mid-2017. Out of a total of 23 companies expressing interest, 12 submitted official bids and six were announced as winners along with ExxonMobil, who had recently signed a contract through direct negotiations. Other direct negotiations followed as different oil companies, including majors, have been showing interest in the country's hydrocarbons potential.

The key legislation that governs exploration, development and production of hydrocarbons in Equatorial Guinea is the Hydrocarbons Law which came into force in November 2006 and was complemented in 2013 by Regulations on Petroleum Operations and in 2014 by Regulations on National Content. No major regulatory change is expected before this new licensing round.

Although the Hydrocarbons Law would allow other contract options, petroleum contracts have always taken the form of production sharing contracts (PSCs) and are negotiated on the basis of a model contract developed by the Ministry responsible for petroleum operations since 2006.

The Minister has full authority to negotiate, modify and sign PSCs, but contracts only become effective after they are ratified by the Head of State. Usually, the ratification process takes at least one month and contracts become effective on the date the Contractor is notified by

the Ministry of the ratification. Yet, the Ministry usually sets up teams including representatives of other governmental departments, in particular the Ministry of Finance, to negotiate contracts so that all relevant aspects can be reviewed and considered, which facilitates the ratification process.

Under the Hydrocarbons Law, petroleum operations are divided into two different phases: the exploration period, which includes an exploration phase and appraisal; and the production period, which encompasses both the development and the production phases. In turn, the exploration period is split into two sub-periods each with associated minimum work and area relinquishment obligations. The standard duration of the initial exploration period shall be between four and five years and a maximum of two extension periods of one year each are allowed. However, the Hydrocarbons Law enables the Ministry responsible for petroleum operations to change the duration of such periods for each contract. Also, the typical duration of the production phase has been of 25 years for each field after the date of approval of the field's development and production plan, plus an extension, but the Ministry has the ability to agree on a different duration.

The minimum work to be performed during each exploration sub-period, which typically includes the acquisition of seismic data and well drilling, and the size of areas to be relinquished are also agreed in each PSC. A key factor for block award decisions is the minimum work investment commitments that bidders offer.

In addition to taxes payable under the General Tax Law, including

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Corporate Income Tax on the annual net profits at the rate of 35%, with a minimum of 800,000 XAF (approximately \$1,409 USD) per year, regardless of whether or not there are any taxable profits, contractors have to pay annual surface rentals and bonuses which are set forth in PSCs and agreed with the Ministry. The 2006 Hydrocarbons Law also makes reference to a windfall profit tax. This tax, however, is not set forth in the tax legislation currently in force in Equatorial Guinea and there is no indication that it will be introduced in the near future.

The State is also entitled to royalties in the amount set forth in each PSC and royalty rates proposed by bidders are also very important. Contractors are to propose increasing levels of royalty based on daily production rates with a minimum of 13%. Unless the Ministry decides otherwise, royalties are to be paid at least on a monthly basis, in cash and at market prices to be computed in accordance with the terms of each PSC to be proposed by bidders.

In addition, under the Hydrocarbons Law the State may elect to have, either directly or through a National Company, a minimum carried interest of 20% in each PSC. The proposal of any additional interest to GEPetrol – the National Oil Company – and the percentage of GEPetrol’s cost recovery oil to be allocated each year to the Contractor

parties that have carried GEPetrol during exploration are factors that may render a bid more attractive for the State.

Finally, PSCs set forth minimum amounts to be spent every year by Contractors during both the exploration and production periods for national content purposes, including on training and welfare projects designed to benefit local communities, such as the construction of schools and hospitals. This type of investments and the annual amounts offered can also be used to make bids more attractive.

The Ministry of Mines and Hydrocarbons is currently in negotiations for the extension of some PSCs and apparently plans to have these negotiations concluded by the end of the year. Therefore, the official launch of the licensing round is expected for January 2019. This gives newcomers some months to prepare and consider how to address each of the above issues in their bids. **P**

About the Author

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