



Legal and Technical Commission

Distr.: Limited
20 December 2012

Original: English

Nineteenth session
Kingston, Jamaica
15-26 July 2013

Evaluation by the Legal and Technical Commission of applications for plans of work for exploration for cobalt- rich ferromanganese crusts

Note by the Secretariat

1. The procedure for consideration by the Legal and Technical Commission of applications for plans of work for exploration for cobalt-rich ferromanganese crusts is set out in regulation 23 of the Regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area. In accordance with the Regulations, the Commission is required to apply the Regulations and the rules, regulations and procedures of the Authority in a uniform and non-discriminatory manner (regulation 23 (12)). Moreover, as provided for in regulation 23 (10), in its consideration of a proposed plan of work for exploration, the Commission is required to have regard to the principles, policies and objectives relating to activities in the Area as provided for in part XI and annex III of the United Nations Convention on the Law of the Sea and the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.
2. Upon receipt of an application for approval of a plan of work for exploration, the Secretary-General shall notify the members of the Commission and include consideration of the application as an item in the agenda for the next meeting of the Commission. The Commission is required to consider only applications in respect of which notification and information have been circulated by the Secretary-General in accordance with regulation 22 (c) at least 30 days prior to the commencement of the meeting of the Commission at which they are to be considered (regulation 23 (1)).
3. The Commission is required to examine applications in the order in which they are received (regulation 23 (2)).
4. In accordance with regulation 23 (3), the Commission is required to make objective determinations as to whether the applicant:
 - (a) Has complied with the provisions of the Regulations;
 - (b) Has given the undertakings and assurances specified in regulation 15;



(c) Possesses the financial and technical capability to carry out the proposed plan of work for exploration and has provided details as to its ability to comply promptly with emergency orders;

(d) Has satisfactorily discharged its obligations in relation to any previous contract with the Authority.

5. In order to answer these questions, the Commission will need to consider the following:

(a) Has the applicant complied with the provisions of the Regulations?

(i) Is the applicant entitled to make the application (i.e., is it one of the entities specified in regulation 9 (a) or (b))?

(ii) Is the application in the proper form as required by regulation 10 and annex II?

(iii) Is the certificate of sponsorship in the proper form (regulation 11)?

(iv) If the applicant has elected to contribute a reserved area to carry out activities pursuant to article 9 of annex III to the Convention, does the applicant meet the requirements of regulation 17?

(v) If the applicant has elected to offer an equity interest in a joint venture arrangement, does the applicant meet the requirements of regulation 19?

(vi) Does the application contain the information set out in regulation 20?

(vii) Has the applicant paid the fee as set out in regulation 21?

(viii) Are the size, number and shape of the blocks as well as their configuration in clusters in conformity with regulation 12?

(b) Has the applicant given the written undertaking specified in regulation 15?

Regulation 15 requires a written undertaking, as part of the application, to be filed.

(c) Does the applicant possess the financial and technical capability to carry out the proposed plan of work for exploration, and has it provided details as to its ability to comply promptly with emergency orders? The relevant criteria are set out in regulation 13.

(i) In particular, regulation 13 (2) provides that an application by an entity shall include copies of its audited financial statements, including balance sheets and profit and loss statements, for the most recent three years, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants; regulation 13 (3) provides that an application for approval of a plan of work for exploration by a State or a State enterprise shall include a statement by the State or the sponsoring State certifying that the applicant has the necessary financial resources to meet the estimated costs of the proposed plan of work for exploration.

(ii) As provided in regulation 13 (9), with a view to the assessment of technical capability, the application shall include: (a) a general description of the applicant's previous experience, knowledge, skills, technical qualifications and expertise relevant to the proposed plan of work for exploration; (b) a

general description of the equipment and methods expected to be used in carrying out the proposed plan of work for exploration and other relevant non-proprietary information about the characteristics of such technology; and (c) a general description of the applicant's financial and technical capability to respond to any incident or activity which causes serious harm to the marine environment.

(d) Has the applicant satisfactorily discharged its obligations in relation to any previous contract with the Authority?

In accordance with regulation 14, where the applicant has previously been awarded any contract with the Authority, the application shall include: (a) the date of the previous contract or contracts; (b) the date, reference number and title of each report submitted to the Authority in connection with the contract or contracts; and (c) the date of termination of the contract or contracts, if applicable.

6. Pursuant to regulation 23 (4), if the answers to all these questions are in the affirmative, then the Commission shall, in accordance with the requirements set forth in the Regulations and its procedures, determine whether the proposed plan of work for exploration will:

(a) Provide for effective protection of human health and safety;

(b) Provide for effective protection and preservation of the marine environment, including, but not restricted to, the impact on biodiversity;

(c) Ensure that installations are not established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity.

7. Regulation 23 (5) provides that: "If the Commission makes the determinations specified in paragraph 3 and determines that the proposed plan of work for exploration meets the requirements of paragraph 4, the Commission shall recommend approval of the plan of work for exploration to the Council."

8. Under regulation 23 (6), the Commission shall not recommend approval of the plan of work for exploration if part or all of the area covered by the proposed plan of work for exploration is included in:

(a) A plan of work for exploration approved by the Council for cobalt crusts; or

(b) A plan of work approved by the Council for exploration for or exploitation of other resources if the proposed plan of work for exploration for cobalt crusts might cause undue interference with activities under such approved plan of work for other resources; or

(c) An area disapproved for exploitation by the Council in cases where substantial evidence indicates the risk of serious harm to the marine environment.

9. Pursuant to regulation 23 (8), except in the case of applications by the Enterprise, on its own behalf or in a joint venture, and applications under regulation 18, the Commission shall not recommend approval of the plan of work for exploration if part or all of the area covered by the proposed plan of work for exploration is included in a reserved area or an area designated by the Council to be a reserved area.

10. The previous criteria are objective. However, in accordance with regulation 23 (9), if the Commission finds that an application does not comply with the Regulations, it shall notify the applicant in writing, through the Secretary-General, indicating the reasons. The applicant may, within 45 days of such notification, amend its application. If the Commission after further consideration is of the view that it should not recommend approval of the plan of work for exploration, it shall so inform the applicant and provide the applicant with a further opportunity to make representations within 30 days of such information. The Commission shall consider any such representations made by the applicant in preparing its report and recommendation to the Council.

11. Further, in accordance with regulation 23 (7), the Commission may recommend approval of a plan of work if it determines that such approval would not permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to cobalt crusts or to preclude other States parties from activities in the Area with regard to cobalt crusts.

12. Finally, under regulation 23 (11), the Commission is required to consider all applications expeditiously and to submit its report and recommendations to the Council on the designation of the areas and on the plan of work for exploration at the first possible opportunity, taking into account the schedule of meetings of the Authority.
