Statement of Principles

Right of First Refusal

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This document includes the Statement of Principles, a description of the issues (with examples) and contractual language.

Key Words:
• Company
• Contract
• Contractor
• Geophysical Industry
• Geophysical Services
• Tender
• Third Party(ies)

Terms that are in bold type are defined in the Glossary of Terms which forms part of this family of Statements of Principles.

Statement of Principles

Contractors acknowledge that, in certain circumstances and pending finalization of a Contract following a formal notification of intent to award or award of work for Geophysical Services, the granting of a limited Right of First Refusal (RoFR) or option over a geophysical resource may provide an equitable basis for both parties to manage an interim period during which the processes to finalize a Contract can be concluded. The following principles should apply with respect to the granting and exercising of a RoFR over Tendered geophysical resources.

1. Company's RoFR:

- Where Company has exercised its RoFR over a Contractor's geophysical resources by its intention to award the work for Geophysical Services, then subject to the mutually agreed terms upon which they are to be contracted, the Contractor should be willing to be bound by the exercising of this RoFR.

- Terms of the RoFR should include:
  
  o In consideration of Contractor's granting such RoFR, Company should agree not to award the work to any other Third Party and Contractor shall not commit its relevant geophysical resources to any Third Party without Company's waiver of its RoFR.

  o The RoFR should in all cases be subject to a strictly limited timeframe (xx days), to be determined by Contractor according to its commercial and operational schedules. Within such timeframe, upon Contractor's notification to Company of Third Party offers of work, Company's response deadline should also be limited (xx hours).

  o The RoFR should include an agreed amount of compensation that reflects the value such RoFR affords.
Commercial Context

The Tendering of Geophysical Services in different market sectors is typically concentrated within specific timeframes (i.e. following License Round Awards or in response to seasonal constraints such as the North Sea fair weather period, Arctic winter period, etc.). Consequently Contractors will often submit proposals simultaneously to different Companies, offering seismic services in the same timeframe and with the same geophysical resources.

In recognition of these conflicting demands, the market for Geophysical Services has traditionally been driven by the principle of “First Come – First Served” (i.e. the first to award has the first call on available geophysical resources). Therefore, Contractor’s bids standardly include a short timeframe (2-3 days) inside which the Contractor can confirm its availability to perform the Geophysical Services.

Contractors agree that, in certain circumstances and pending finalization of a Contract following a formal notification of an intent to award or award of work for Geophysical Services, the granting of a mutual RoFR may provide an equitable basis for both parties to manage an interim period during which the processes to finalize a Contract can be concluded. In this circumstance, it is possible that the Contractor would be obliged to notify certain Third Parties to whom the geophysical resources were offered under a Tender that a RoFR is now applicable to such geophysical resources. Therefore, the principles listed on page 1 for preparing a RoFR agreement are essential to ensure that each Contractor retains its ability to competitively bid and acquire work for Geophysical Services in the event that the RoFR parties are unable to finalize a Contract following the notification of intent to award.

There have been instances where a Company has requested that Contractor’s response to their Tender be submitted with the inclusion of a RoFR for Contractor’s geophysical resources. Such position places an unrealistic burden on the Contractor as it would require Contractor to notify all Companies to whom it intends to Tender, or previously Tendered the same geophysical resources that its Tenders are now subject to a RoFR.

As a general rule, most Companies would not be prepared to accept such a Tender. Furthermore, if taken to its extreme and all Companies demanded a RoFR as part of their Tender conditions, then it would only be possible to bid to one Company at a time for specific time periods, which basically removes the healthy competition that both Companies and Contractors agree are imperative to sustain fair market conditions within the Geophysical Industry.

Contractual Language

The next page is an example of a Letter of First Right of Refusal which would be typical of those currently being used within the Geophysical Industry.
[On letterhead of relevant Company]

[Date]

[Contractor Name/Address]

RE: Letter of Right of First Refusal relating to Tender No. XXX dated XXX ("Tender").

Dear Sirs:

This letter shall serve as confirmation that [insert Company name] ("Company") and [insert Contractor name] ("Contractor") have reached an agreement relating to a right of first refusal in respect of the Contractor's vessel, equipment, and crew identified in the referenced Tender (collectively the "Equipment").

In consideration of the payment of [insert dollar amount] by Company to Contractor, the Contractor hereby agrees that for the period of mm/dd/yyyy through mm/dd/yyyy [insert a minimal timeframe in which to finalize a Contract] Contractor will not accept any Third Party offer to engage Contractor's Equipment for the provision of services during [insert the timeframe for the work as indicated in the Tender] without first giving written notice to Company ("Contractor's Notice").

Upon Company's receipt of Contractor's Notice, Company shall have [xx] working days to either (i) formally engage the Contractor to perform the work identified in the Tender on the terms already agreed between the Company and the Contractor, or (ii) withdraw Company's conditional award for the referenced Tender. If Company opts to withdraw its award or fails to respond within [xx] working days of receipt of the Contractor's Notice, Contractor shall be free to offer Contractor's Equipment to such Third Party and the remaining provisions of this letter and any prior conditional award of the work relevant to the reference Tender shall be null and void.

The Company agrees that during the period of mm/dd/yyyy through mm/dd/yyyy [insert same timeframe as shown in paragraph 2 above] Company shall not award any portion of the work identified in the referenced Tender to any Third Party.

This Letter of Right of First Refusal is a legal and binding agreement when signed by Company and Contractor.

[INSERT COMPANY NAME] DOES HEREBY ACCEPT AND AGREE TO ALL COMMITMENTS AND TERMS PROVIDED FOR IN THIS LETTER OF RIGHT OF FIRST REFUSAL.

[INSERT SIGNATURE BLOCK]

[INSERT CONTRACTOR NAME] DOES HEREBY ACCEPT AND AGREE TO ALL COMMITMENTS AND TERMS PROVIDED FOR IN THIS LETTER OF RIGHT OF FIRST REFUSAL.

[INSERT SIGNATURE BLOCK]