



NIGERIAN ELECTRICITY REGULATORY COMMISSION

REGULATIONS ON NATIONAL CONTENT DEVELOPMENT FOR THE POWER SECTOR 2014

Regulation No:

NIGERIAN ELECTRICITY REGULATORY COMMISSION

In exercise of the powers to make Regulations conferred by Section 32(1) and 96 of the Electric Power Sector Reform Act 2005 (Act No. 6 of 2005), the Nigerian Electricity Regulatory Commission makes the following Regulations on National Content Development for the Power Sector.

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REGULATION ON NATIONAL CONTENT DEVELOPMENT FOR THE POWER SECTOR 2014

PART I

1. Short title and commencement

- (a) This Regulation may be cited as the Regulations on National Content Development for the Power Sector 2014
- (b) This Regulation shall come into force on the date on which it is approved by a resolution of the Commission.
- (c) This Regulation shall be signed by the Chairman who shall also cause the seal of the Commission to be affixed thereon.

2. Interpretation

i. In this Regulation, unless the context otherwise requires:

“Act” means the Electric Power Sector Reform Act 2005, including any re- enactment, amendment or modification thereof;

“Company” or “companies” wherever refers to legal entities supplying essential goods and/or providing support services to “Licensee” or “Licensees” in the NESI;

“Commission” means the Nigerian Electricity Regulatory Commission established by the Act;

“Expatriate” refers to a Non-Nigerian’ citizen temporarily or permanently residing in Nigeria;

“License” means a license issued by the Commission under Part IV of the Act;

“Licensee” means any person who holds a license issued under the Act to carry on any regulated activity;

“Major Project” means projects, whose budget exceed the threshold set by the Commission upon the advice of the Forum, and is related to the Operations of a licensed power plant, transmission grid, system operations control centers or facilities, distribution network, or any other such projects in the power sector the Commission deems as a major project;

“NESI” or “the Nigerian Electricity Supply Industry” means the totality of activity in the production, transportation and delivery of electrical energy to consumers and customers within Nigeria, including the generation, transmission, system operations, distribution, retail, and trading of electricity energy, as well as the provision of support services to any of these five regulated activities.

“Nigerian Content” refers to the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the

deliberate utilization of Nigerian human and material resources and services in the Nigerian Electricity Supply Industry;

“Nigerian goods” refer to goods manufactured, produced or assembled by companies incorporated in Nigeria for such purposes;

“Nigerian operator” refers to a company incorporated in Nigeria with the object of providing goods and services for the NESI;

“Nigerian Services” refer to services offered by Nigerian Professional Companies and Nigerian Professionals;

“Person” includes an individual, company, partnership or any other association of individuals, whether incorporated or not;

“Professional Services” refer to services offered by Nigerian Professional Firms or Companies.

3. Objective and Application of the Regulation

i. The objective of the Regulation on National Content in the Power Sector is to promote the following:

a) Deliberate utilization of Nigerian human and material resources, goods, works and services in the industry;

b) Opening the NESI at all levels of its complexity to involve Nigerian people and

Expertise;

c) Building capabilities in Nigeria to support increased investment in the industry; and

d) Leveraging existing and future investment in the NESI to stimulate the growth of Nigerian and Nigeria-located enterprise.

ii. This Regulation shall apply to all licensees of the Commission.

Part II

DEVELOPMENT OF NIGERIAN CONTENT IN THE POWER SECTOR

4. Nigerian Content and the Joint Qualification System (JQS)

- a) All licensees shall have the development of Nigerian content as a key component of their philosophy in their general operations including the execution of their projects;
- b) The Commission shall establish, maintain and administer a Joint Qualification System (JQS) in consultation with the Forum in accordance with provisions of these Regulations; and
- c) The JQS shall constitute an industry databank of available capabilities and shall be the following:
 - (i) the sole system for Nigerian content registration and pre-qualification of contractors in the industry;
 - (ii) a source for the verification of contractors' capacity and capabilities;
 - (iii) a source for information in the review of applications of Nigerian Content.
 - (iv) the data bank for national skills development pool; and
 - (v) used for the ranking and categorization of all service companies on capabilities and Nigerian content.

5. Consideration of Nigerian Suppliers and Service Providers

All licensees shall ensure that first consideration is given to qualified Nigerian Companies for the supply of goods and works, and for the provision of services.

6. Development and Promotion of Nigerian Content by Licensees

- a) All licensees shall develop a framework for the development and promotion of Nigerian Content;
- b) All Licensees shall maintain an Annual Nigerian Content Performance Report covering all their projects and activities in the previous financial year;
- c) The Commission shall review the Reports, and issue relevant directives as required, where necessary; and

- d) The Commission shall promote continuous growth in Nigerian Content in recruitments, procurements, implementation of projects, operations, consultancies, etc. in the NESI by ensuring strict compliance with this Regulation.

7. Compliance with Nigerian Content Policies by Non-Licensees

- a) All Licensees shall ensure compliance with relevant industry agreements, provided such agreements are not in conflict with this Regulation regarding the issue of Nigerian content; and
- b) It shall be the responsibility of all licensees to communicate their Nigerian content policies and procedures to their contractors and subcontractors and to monitor and enforce their compliance therewith.

8. Submission of Nigerian Content Plan for Major Projects

- a) All licensees shall take cognizance of these regulations in all their projects;
- b) All licensees shall prepare and submit a Nigerian content plan for projects whose total budget exceed the threshold set by the Commission for Nigerian content based on the advice of the Forum (major projects);
- c) Upon a satisfactory consideration of the content plan submitted, the Commission shall issue a certificate of authorization to the licensee;
- d) The Commission will communicate its decision on the content plan within 10days of submission; and
- e) The Commission will furnish reasons for any refusal of grant of certificate of authorization.

9. Contracts/Procurement

- a) All licensees shall give first consideration for goods made in Nigeria and services provided by Nigerian firms in award of contracts;
- b) All licensees shall maintain record of a list of contracts, subcontracts and purchase orders exceeding the threshold set by the Commission for Nigerian content based on the advice of the Forum;
- c) All contracts or projects whose total budget exceed the threshold set by the Commission for Nigerian content shall contain a “Labour Clause” mandating the use of a minimum percentage of Nigerian labour in specific cadres as may be stipulated by the Commission;

- d) The listing in (b) above shall provide:
- i. a list of all items and services;
 - ii. value of contract or purchase order;
 - iii. name of successful contractor or vendor;
 - iv. a primary location of work;
 - v. estimates of Nigerian content;
 - vi. commencement and completion date; and
 - vii. any other information required by the Commission for the purposes of implementing the provisions of this Regulation.
- e) The list shall indicate the Nigerian Content in the bid evaluation exercise for the contracts awarded by the Company;
- f) All operators and project promoters shall consider Nigerian content when evaluating any bid at commercial stage and the bid containing the highest level of Nigerian content shall be selected.
- g) Waiver

Notwithstanding the provisions of this section, where there is inadequate local capacity for any of the contracts to be undertaken, the Commission may grant an approval for a waiver provided such an approval shall not continue for longer than 3 years from the date of the Commission's approval.

h) Criteria for Waiver

The waiver in (g) above shall be granted on a criterion including the following:

- (i) Where the items or capacity cannot be sourced locally;
- (ii) Where the total budget for the project exceeds the threshold set by the Commission for Nigerian content based on the advice of the Forum;
- (iii) Where the losses to be incurred by the licensee if the items are sourced locally will not be prudent; and
- (iv) Where sourcing the items locally will lead to an increased cost of doing business for the licensee

Part III

NIGERIAN CONTENT AND EMPLOYMENT

10. Consideration for Employment and Training

- a) All Licensees shall give first consideration to suitably qualified Nigerians for employment and training;
- b) For each of its operations in respect of management positions, a Licensee must ensure that not more than 5% or such percentage as may be approved by the Commission from time to time is retained by expatriates;
- c) The application for employment of an expatriate shall be in the form prescribed by the Commission with appropriate justification showing that no suitably qualified Nigerian has been found for the position following diligent search. The approval of the Commission in this instance does not preclude compliance with the requisite immigration procedures;
- d) All operators and companies operating in the NES! shall employ only Nigerians in their junior and intermediate cadre or any other corresponding grades designated by the operator or company. All unskilled labour shall be locally sourced; and
- e) Where a Nigerian is not allowed to progress within the organizational structure of a Licensee because of their lack of capacity in a particular area, the Licensee shall prove to the satisfaction of the Commission, that the Employment and Training Plan of the Licensee provides for such trainings and efforts have been made to train the employee.

11. Maintenance of Employment and Training Plan

- a) All Licensees shall maintain an employment and training plan for each financial year. The said plan shall be submitted to the Commission upon request;
- b) The employment and training plan shall make provision for succession planning to enable Nigerians assume positions that may be occupied by expatriates;
- c) The training plan shall take into cognizance the full involvement of Nigerians in any research and development activity undertaken by the company;
- d) Nigerians shall be given first consideration for training and employment in the work programme for which the plan was submitted; and
- e) Any collective agreement entered into by the licensee with any association of employees regarding their terms and conditions of employment shall contain provisions consistent with this section.

Part IV

ACQUISITION OF TECHNOLOGY

12. Programme for Technology Acquisition Plan

- a) Each licensee shall maintain a Technology Transfer Plan;
- b) The plan shall contain details of various technologies deployed by the operator and the proposed modalities for transfer to Nigerians where applicable;
- c) All licensees shall give full and effective support to technology acquisition by encouraging and facilitating the formation of joint ventures, partnering and the development of licensing agreements between Nigerian and foreign contractors and service or supplier company's agreement for all such joint ventures or alliances shall meet the requirements of Nigerian content development to the satisfaction of the Commission;
- d) Where necessary, the Commission shall consult and make recommendation to the relevant arms of Government on appropriate fiscal framework and tax incentives for foreign and indigenous companies who establish facilities, factories, production units or other operations in Nigeria for the purpose of carrying out production, manufacturing or for providing services and goods otherwise imported into Nigeria; and
- e) Failure to submit an acceptable technology acquisition report when requested by the Commission shall render a licensee liable to fines and other sanctions as may be determined by the Commission under the applicable laws and regulations.

Part V

PROFESSIONAL SERVICES

13. Engineering Services

- a) Engineering Services shall be rendered by Nigerian Engineering Companies registered with relevant regulatory authorities; and
- b) Foreign engineering consultants/firms may only be engaged when the required services are rendered in collaboration with firm licensed to provide such engineering services in Nigeria.

14. Insurance and Reinsurance Business

- a) Licensees shall obtain insurance and reinsurance services from companies licensed by National Insurance Commission (NAICOM) for such purposes;
- b) Where there is a reasonable need for a company to engage an off-shore insurance firm, prior consent of the Commission shall be sought;
- c) Application for consent to engage an off-shore insurance firm shall be in the format specified by the Commission, and include clearance by National Insurance Commission to engage such foreign firms; and
- d) At the end of each financial year, each company shall maintain a Register of all companies through which insurance coverage were obtained in the past financial year, the classes of cover obtained and the premiums paid for such coverage.

15. Legal Services

- a) Legal services in the sector shall be carried out by legal practitioners qualified to practice in Nigeria; and
- b) Foreign legal consultants may only be engaged in the NESI when the required services are rendered in collaboration with a firm of Nigerian legal practitioners registered by the Corporate Affairs Commission (CAC).

16. Financial and Capital Market Services

- a) Financial and capital market services in the sector shall be rendered by Nigerian registered companies licensed by and in good standing with the relevant regulatory authorities; and
- b) Foreign Financial and capital market services may only be engaged when the required services are rendered in collaboration with firm licensed to provide such financial and capital market services in Nigeria.

Part VI

NESI NIGERIAN CONTENT CONSULTATIVE FORUM

17. Establishment of NESI Nigerian Content Consultative Forum (NNCCF)

- a) There shall be established for the sector the NESI Nigerian Content Consultative Forum;
- b) The Forum shall carry out a survey periodically to determine the National content participation in the power sector;
- c) Based on the survey and other considerations, the Forum shall advise the Commission on the benchmark to set as threshold for National content in the power sector and the Commission acting on this advice shall issue directives to licensees from time to time on the threshold for local content;
- d) The Forum shall also serve as an advisory body to the Commission on matters relating to availability of local capabilities, and other policy proposals that may be relevant to Nigerian content development in the NESI;
- e) The forum shall comprise both operators and other industry stakeholders and representatives from the following:
 - i. Fabrication;
 - ii. Engineering;
 - iii. Finance services, legal and insurance;
 - iv. Information and communication technology
 - v. Education and training; and
 - vi. Any other professional services as may be determined by the Commission from time to time.

18. Proceedings of the Forum

- a) Meetings of the Forum shall be held quarterly and whenever necessary for the expeditious conduct of its business at such times, at the Commission or such other venue as may be determined by the Commission.
- b) The Commission shall designate a Forum Chairperson and the Secretary. The Chairperson shall be selected from amongst the Forum members while the Secretary shall be a staff of the Commission;
- c) Members of the Forum shall have tenure of 3 years with an option for renewal for one term and no more;

- d) The Forum Chairperson or in his/her absence, the acting chairperson elected by members present, shall preside at all meetings of the Forum;
- e) The Forum Secretary shall keep written minutes of all meetings and copies of the minutes shall, upon approval by the Forum Chairperson, be circulated to all members;
- f) The quorum for meetings of the Forum shall be three (3); and
- g) Decisions of the Forum shall be on the basis of simple majority of members present and voting; provided however that in the event of an equality of votes, the Forum Chairperson shall have the second or casting vote.

Part VII

REPORTING, COMPLIANCE AND ENFORCEMENT

19. Powers of the Commission to Monitor Implementation of the Regulation

- a) In monitoring and enforcing these Regulations the Commission shall strictly adhere to the provisions of the EPSR Act, the Commission's Regulations, Orders and the License Terms and Conditions of the Licensee; and
- b) Without prejudice to the specific provisions of the Act, Regulations or any License Condition, the Commission may, in the exercise of its enforcement powers pursuant to this Regulations and the Act, institute civil proceedings in Court against any person to enforce compliance.

20. Submission of Nigerian Content Performance Report

- a) Each operator in the sector shall prepare and submit to the Commission a Nigerian Content Performance Report as may be required by the Commission; and
- b) The Report shall contain details in the format specified by the Commission.

21. Annual Report on Nigerian Content

- a) The Commission shall publish Annual Reports with information on compliance with this Regulation, including sufficient details on any enforcement action taken by the Commission, and reports or complaints made by persons.

22. Penalties

- a) The Commission may establish such penalties in line with the provisions of the Act or any of the Commission's regulations, to ensure the effective discharge of its duties, and to promote compliance with this Regulation.

23. Inherent Powers of the Commission

- a) Nothing in this Regulation shall be deemed to limit or otherwise affect the inherent powers of the Commission to make Orders as may be necessary in furtherance of the objectives of this Regulation.

24. Proceedings Before the Commission

- a) All proceedings before the Commission under these regulations shall be governed by the Business Rules of the Commission as may be amended from time to time.

25. Amendment or Repeal

- a) The Commission may amend or repeal, in whole or in part, the provisions of these Regulations.


26. Schedules

The Schedules to the Regulations shall be developed by the Forum not later than 3 weeks after inauguration of the Forum. The Schedules shall include the following:

- i. Minimum specification of Nigerian content
- ii. Requirement for labour

SIGNED BY THE ORDER OF THE COMMISSION

On this 24th day of December, 2014



Dr. Sam Amadi
Chairman/CEO