

# **BULK GENERATION PROCUREMENT GUIDELINES AND CODES**

**VERSION 01**

## **PART ONE - GENERATION PROCUREMENT**

### **1. Introduction**

The Nigerian Electricity Regulatory Commission (NERC) has so far issued more than 30 licenses to potential independent power projects (IPPs) for the supply of new electricity generation capacity of more than 10,000MW. All the proposals to establish new generation plants have been unsolicited. The cost to the Nigerian power system of such unsolicited request to establish new capacity in the absence of a master plan that includes generation, transmission, distribution and fuel supply could be significant if an orderly approach is not adopted.

This paper provides guidelines for the procurement of new generation capacity at least cost. A key assumption is that a Multiple Buyer Model (MBM), where one or more entities may purchase new capacity and sell on to bulk purchasers, will be adopted in Nigeria as a step towards the transition to a fully competitive market. This paper assumes that the Buyers will be the Distribution companies and/or other licenced bulk trader(s) in electricity. These assumptions are not based on any firm decisions that have been taken by the Nigerian authorities. However, if a Single Buyer Model (SBM) is selected, the modifications needed in order to apply these procurement guidelines will be minimal.

This paper does not provide guidelines for drafting a Power Purchase Agreement (PPA). However, it is important that given the lack of experience in drafting PPAs in Nigeria and the experience in terms of poorly drafted PPAs in this country with the resultant impact on the finances of the power sector, it is important that model terms for a PPA are drafted and circulated. NERC has developed a standard/model for the power purchase agreements and vesting contract. It is the desire of the NERC that future power purchase agreement and vest contract negotiations in the country will be guided by the documents.

It should be noted if the SBM were adopted as the initial trading arrangement for the Nigerian power sector, either the Nigerian Electricity Liability Management Company (NELMCO) or the System Operator (SO) or an independent bulk trader, nominated/established by distribution companies to carry out bulk power procurement on their behalf, could be the Single Buyer (SB). The SB would depend on the SO for information on new capacity requirement and the siting of the capacity.

### **2. Purpose and Scope**

The provision of a continuous, adequate supply of reasonably-priced electricity is a high value process of strategic political and economic consequence that entails three essential steps:

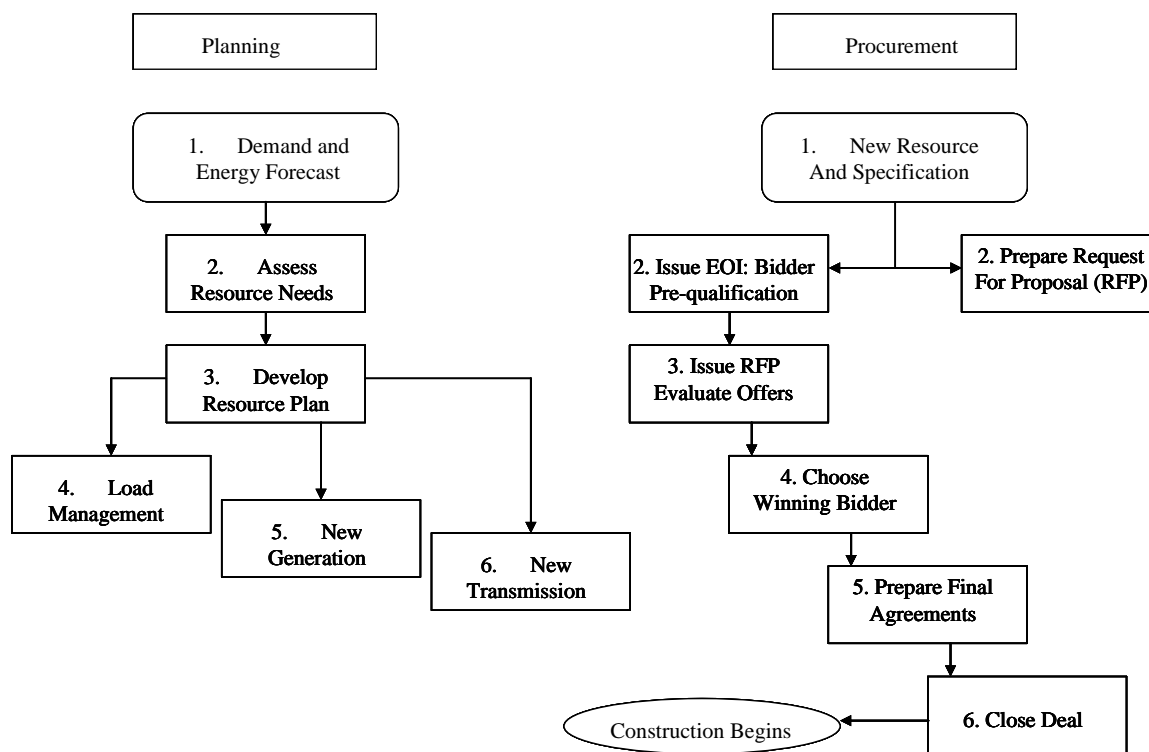
- i. The forecast of future demands for electricity;
- ii. The identification of the type, location and size of both demand and supply-side resources required to meet projected demands most economically; and
- iii. The acquisition of the desired resources through a process that enables the electric system to expand at lowest reasonable costs.

A comprehensive planning regime will consider the least-cost options available to meet growing electricity demands from all required resources, including:

- i. Load Management (and improved energy efficiency);
- ii. New generation capacity;
- iii. New transmission facilities; and
- iv. Access to fuel supply.

This paper addresses the third step in the overall system planning and resource acquisition process identified in the first paragraph above, with a focus on competitive tendering for new generating capacity. The procurement process is shown graphically in Figure 2 below. After consideration of the objectives, principles, and issues involved in the tendering process, this paper recommends a “Generation Procurement Code” for the consideration of the Nigerian Electricity Regulatory Commission (NERC) to govern this tender process in the future. Figure 1 summarises the planning and procurement processes.

**Figure 1 Planning & Procurement Process**



### 3. Context

This paper is developed for a MBM, but with the possibility of its adaptation for a SBM.

The document is not a “competitive tendering code” which ought to be developed as part of the MBM (or SBM) Rules during the transition to a fully competitive industry. However, in many respects the

Generation Procurement Code that is presented is similar to such a code but with a focus only on new generation facilities.

#### **4. Efficiency in the Procurement Process**

Providing an efficient and transparent means of contracting for the provision of additional generation capacity to meet anticipated demand is important for a number of reasons:

- i. It is vital that the Buyer(s) of bulk electricity from generators for resale to distributors be in a position to procure further economic generation capacity to meet anticipated demand in a timely fashion. Failure to procure such additional generation capacity would lead to un-met demand (to the detriment of all consumers, but also impairing growth in the economy) and the necessity of imposing service curtailments in order to match resources and loads and preserve system stability;
- ii. Conversely, the Buyer(s) will not wish to commit to over capacity as this would lead to the inefficient allocation of resources, in building generation capacity which is not required by forecast demand. The cost of over capacity would need to be borne by the Buyer(s) and in turn, if allowed by NERC to pass these costs through the wholesale power tariff, there would be upward pressure on pricing for existing end users whose actual demands are less than the capacity paid for;
- iii. An efficient means of generation procurement will minimise the transaction costs involved in seeking bids for additional capacity, evaluating those bids and moving through to financial close and commercial operation of generating plant installed as a result of a successful bid;
- iv. Transparency in the procurement process will encourage participation by qualified international investors in capacity solicitations and will assist in putting downward pressure on risk premiums required by competing bidders; and
- v. A robust procurement process provides an opportunity to attract the large investments necessary to expand the power system from private investors participating in global capital markets, rather than relying on the Government's scarce capital resources.

Given the lead time required for the design, construction, financing and commissioning of significant power plant, the process must allow for a reasonable, but disciplined timetable. There will always be the need to strike a balance between allowing sufficient time within the procurement process (in order to identify the need for further generation capacity, the calling of bids, evaluation of bids, etc.) and the anticipated time that the new generation plant will need to be fully operational in order to meet the anticipated demand.

The Buyer must contract for new capacity on terms that reflect due regard for the allocation of project and operating risks inherent in any such transaction. It would, for example, be sub-optimal for the Buyer to assume project risks which are more appropriately borne by the investor/owner of the project (e.g. financing and construction risks). Conversely, it would be sub-optimal for the Buyer to seek to pass on to the investor/owner, risks inherent in there being discrepancies between projected and actual demand (e.g. introducing uncertainty as to when the capacity is required to come on stream).

A process that is efficient, transparent, easily understood and able to withstand scrutiny is, in the end, likely to be more cost effective, timely and conducive to rational outcomes than a process which does not display these attributes.

## **5. Timing of Procurement**

### **i. Annual Report**

The need for extra generation capacity will be determined in an Annual Report by the Transmission System Operator submitted to NERC, whilst procurement of additional capacity will be by the Buyer(s). The Transmission System Operator is in the best position to analyse both historic and anticipated demand, not only in gross MW terms, but also in terms of location of demand, type of demand (base load, intermediate, peaking), system constraints, system stability and the like. It is anticipated that the SO will submit the following information with an appropriate outlook (not less than five years) on an annual basis to the Buyer(s):

- i. the projected gross MW demand requirements for the system;
- ii. the generating capacity of existing generation units;
- iii. the anticipated generating capacity of generating units for which power purchase agreements have been concluded between Buyer(s) and successful bidder(s) of plants, together with, where such information is publicly available, the stage of progress (following entry into the PPA) of such successful bidders towards achieving commercial operation of the plant;
- iv. Recommended injection points on the transmission grid for additional generation capacity, as well as the upper limit of capacity that may be injected at a given point;
- v. anticipated and planned generating plant retirements;
- vi. projected transmission network capabilities and constraints (taking into account existing and anticipated generation capacity, demand and both generation and transmission capacity anticipated retirements);
- vii. projected gas, and other fuel, supply capabilities;
- viii. such other operational and regulatory information as are required by Buyers to assist existing owners/operators of generating capacity or transmission assets and potential owners of generating capacity or transmission assets in their planning as to continued participation in the Single or Multiple Buyer Market, their new or increased participation in that market and their retirement from that market.

### **ii. The Generation Procurement Process**

A comprehensive and effective capacity expansion plan must be consistent with:

- i. anticipated aggregate consumer demands over time;
- ii. anticipated generation and transmission capacity;
- iii. anticipated fuel availability and supply capacity;
- iv. planned and anticipated retirements of generation and transmission assets;

- v. lead time requirements (both as to the procurement process itself but also as to the lead time necessary to order plant, effect construction and commissioning, arrange financing etc); and
- vi. allowing for contingencies and forecast uncertainties.

The generation procurement process must be designed to provide sufficient time to enable:

- i. the procurement process to be conducted in orderly fashion with appropriate participation, oversight and regulatory review;
- ii. a preferred bidder to be clearly identified;
- iii. the power purchase agreement to be negotiated with and executed by the successful bidder and the Buyer;
- iv. the achievement of financial close;
- v. plant construction; and
- vi. the achievement of commercial operation of the proposed plant,

The process must commence in sufficient time for the new generation plant to be made available in coordination with the timing of anticipated future demands.

In a SBM, the Single Buyer will be under a mandatory obligation to conduct an annual assessment of the need for additional system capacity and, if a deficiency is found, to execute the generation procurement process forthwith. In addition, the Single Buyer, consistently with the need to meet anticipated demand, should be allowed to conduct a generation procurement process more frequently than annually if required in order to respond to unexpected or rapid changes in system demand. Similarly, changing economic circumstances or procurement process failures might dictate immediate action out of the normal sequence. For example, an unanticipated shortfall in capacity might occur due to a failure to procure generation capacity to replace capacity which unexpectedly is not available (say through the sudden, forced retirement of an existing generation plant or the holder of a PPA renegeing on its contract to construct new generation capacity).

In the event that MBM arrangement is implemented, the SO's annual report shall contain an assessment of the need for additional capacity. If a deficiency is found, the SO shall advice the bulk Buyers accordingly so that they may execute generation procurement procedures. Similar freedoms in respect of frequencies of generation procurement processes, allowed the SB, shall apply also in a multiple buyer case.

## **6. Procurement Characteristics**

### **6.1 General**

There are three distinct issues related to the nature of the procurement process to be utilised:

- i. whether the procurement is of a particular specified generation plant (specified by the Buyer in the procurement process itself) or whether the procurement is of capacity (however generated);

- ii. whether the procurement is to be on a committed or uncommitted basis;
- iii. whether the process is one of a request for tenders or of a request for proposals.

## **6.2 Project Specific Vs Open MW Procurement**

The first issue gives rise to two solutions: (i) project specific procurement; and (ii) open MW procurement (or loose MW procurement).

With project specific procurement, it is presumed that, as a result of the annual information submission from the SO, the Buyer will have identified not only anticipated demand but also will have identified its preferred least cost solutions to meeting that anticipated demand (e.g. a 1000 MW coal fired base load power station at location X together with a 50MW gas fired peaking power station at location Y). At the other extreme an open MW process involves the Buyer identifying its need for a specified amount of capacity (measured at a particular point on the transmission system) but leaving it to bidders to propose solutions (which may encompass a range of types of plant, fuel, locations etc) to meet that demand.

Each solution has its inherent advantages, and disadvantages and underlying presumptions as follows:

- i. open MW procurement presumes that the Buyer has no preference (other than as to the number of MWs) that it can identify. That is, it has no preference as to fuel type, running characteristics of the plant, economic life of the plant, environmental issues, etc. This is not to say that a number of these issues will not be relevant to the evaluation of a bid in an open MW process. For example, it will be relevant to the evaluation of a bid whether the proposed plant will in fact meet existing environmental laws. Similarly, if the Buyer is mandated to facilitate the use of certain fuels over others, that factor will also be relevant in evaluating bids;

a project specific procurement process presumes that the Buyer has been able to identify all possible permutations and has been able to determine the best possible outcome (i.e. that which bidders are asked to bid upon). However, in practice the Buyer may not be in a position to identify all possible permutations. For example, the Buyer may be unaware of plans for a host customer to sponsor generation capacity to be built on its site, with excess capacity potentially available for sale to the Buyer;

- ii. project specific procurement stifles innovation. By being prescriptive as to the precise plant characteristics, location, fuel, running characteristics etc, the Buyer runs the risk of not giving full weight to recent innovations (either as to technology, operation and maintenance techniques, financing or otherwise) during the evaluation process or indeed not being offered these innovations at all by the bidders, to the detriment of the overall objectives of the procurement process;
- iii. in theory, project specific procurement has the advantage of making evaluation of bids more straightforward as compared to an open MW procurement process. In practice, this is less often so unless non-conforming bids in project specific procurement are disallowed (on the basis that the evaluation of a non-conforming bid will necessarily take longer/be more problematic than the evaluation of conforming bids). However, to deny the consideration of non-conforming bids, of itself, stifles innovation to the detriment of the Buyer;

- iv. project specific procurement has the advantage that successful bidders are unlikely to require the same degree of system modelling to underpin their bids as compared with an open MW procurement process. This is because, with a project specific procurement, the Buyer in effect has already mandated where the capacity is to be made available and its impact upon system capacity. Conversely, in open MW procurement, different bidders will be attempting to evaluate and then show how their proposal (involving different plant, different locations etc) is the best solution available to the Buyer;
- v. a project specific procurement process, being (in principle) simpler than an open MW process, has the advantage of being perceived to be more transparent, more easily open to audit and review and less likely to be adversely scrutinised by regulators or others.

In practice it is unlikely that either a "pure" project specific procurement or a "pure" open MW procurement process would be optimal. At the one extreme, the significant amount of work that would need to be undertaken by the Buyer to develop the specific parameters for a project specific procurement (type of plant, fuel, location, running characteristics etc) would likely be unwarranted, given the opportunities lost to the Buyer by disallowing innovation and the consideration of alternatives proposed by bidders. Conversely, a "pure" open MW procurement process puts potential bidders to greater trouble and expense in investigating a wide range of theoretically possible solutions, many of which are unlikely, in the end to, represent a viable option.

For these reasons it is recommended that the Buyer should undertake a procurement process on a "modified" open MW basis -- namely that the procurement be conducted on an open MW basis, but with the Buyer identifying and specifying in the procurement documentation those factors which the Buyer has already determined (either absolutely or to a higher degree of probability) as being consistent with its forecast results and, therefore, critical for the successful bid (e.g., maximum MW proposed).

### **6.3 Committed Vs Uncommitted**

The second issue is whether the procurement is to be (from the perspective of the bidder) on a committed or uncommitted basis, that is, whether the obligations of the successful bidder under the PPA are conditional upon the Buyer issuing a notice to proceed with construction of the new generation capacity or whether, from the beginning, the successful bidder is obliged to procure the construction of the generation capacity, with the Buyer being obliged to purchase the output from the successful bidder.

An uncommitted form of procurement introduces a high level of uncertainty, given the lead time required for the design, construction, financing and commissioning of new power plant and the role of the Buyer in identifying anticipated demand. The risk premium that successful bidders will undoubtedly want to receive from the Buyer if the Buyer proceeds on an uncommitted basis is likely to be very high. It is highly unlikely that an uncommitted tender would attract acceptable bids, as bidders price this uncertainty into their offers. It is therefore recommended that a Generation Procurement Code should provide for procurement on a committed basis. In other words, the successful bidder should be obliged to procure the construction of the generation capacity with the Buyer being obliged to purchase the output from the successful bidder.

### **6.4 RFP Vs RFT**

Procurement processes can encompass requests for tenders ("RFTs") or requests for proposals ("RFPs"). Given the recommendations under section 6.2 in relation to adopting a modified open MW



process, a RFT is not practicable. However, for completeness, we provide a brief commentary on the differences between these two types of tender vehicles.

A RFT is more commonly used where greater precision is able to be provided by the procuring agent as to the precise outcome that is desired. The objective in a RFT is to provide as much precision as possible so that the distinguishing features between bids are reduced largely to questions of price and certainty of outcome (the latter being essentially a function of the differences in the financial standings of the bidders).

In contrast, a RFP allows for greater differences between bids, focussing more on the desired outcomes rather than the means by which those outcomes might be achieved. Necessarily, therefore, evaluation of bids in response to a RFP involves not only questions of price and financial standing but also technical evaluation as to whether the proposed bid will, in fact, achieve the desired outcome.

Given the flexibility inherent in a modified open MW procurement process previously recommended, we conclude RFPs, rather than RFTs, are the preferred form of procurement for the Buyer.

## **7 Eligible Respondents to Procurement Initiatives**

### **7.1 General**

It is in the best interests of the Buyer that it receives bids only from genuine, experienced, and financially capable bidders. The Buyer does not want to waste time or resources having to evaluate bids received from, and otherwise interact with, bidders who do not meet these standards. The issue, therefore, is how to limit the procurement process to genuine, experienced, financially capable potential bidders, whilst at the same time not excluding participation by new or “fringe” players whose entry into the market may introduce innovative and desirable outcomes.

### **7.2 Managing eligibility**

The options available to manage eligibility include:

- i. maintaining a register of approved bidders;
- ii. proceeding by way of invitations to bid only;
- iii. conducting an expressions of interest (“EOI”) process, which precedes the bidding process.

Register of approved bidders. A permanent register of approved bidders would be of limited value unless the register is rigorously and frequently updated, so that its accuracy (and hence its relevance) does not become out of date. In any event, the frequent and rigorous vetting of the register, in effect, means that the Buyer is running de facto expressions of interest process. The register quickly comes out of date because it is not unusual for bidders to form consortia in order to bid, with the membership of the consortia changing from project to project.

In addition, not all parties have the same appetite for all types of projects (some parties may be interested only in plant which is gas fired, others coal fired, whereas others yet again may be less concerned about the type of fuel and more concerned with the level of investment required). Unless the register contains up to date, accurate information as to the preferences of registered bidders, the register is of little value to the Buyer.

Invitations to bid. Restricting bidders to invitation has two principle disadvantages:

- i. it presumes that the Buyer is fully aware of all likely, genuine, experienced and financially capable bidders, when such is not necessarily the case;
- ii. it is not uncommon for invitations to be issued to two separate parties, only to have those parties wanting to bid together as a consortium. This can give the impression of collusion between those parties (which arises simply from the fact that they received separate invitations), adversely and improperly affecting perceptions of the character of their bid.

Expressions of interest. An expression of interest process involves the Buyer publicly inviting all interested parties to submit an expression of their interest in participating in a tender for a specific project. Interested parties are required to present their credentials (evidencing their experience and financial capability and their genuineness in wishing to pursue the opportunity inherent in the bidding process). The Buyer, who exercises responsibility to vet such expressions of interest, is in a position to exclude those submitting expressions of interest who do not meet the minimum technical, financial or experiential requirements.

Exclusion at this stage does not preclude an interested party from the process in all respects, as such a person may join with another person who is successful in the EOI process (for example a local developer who has an ideal site but who lacks sufficient experience or financial capacity to participate in its own right, may join with another local or international developer with the requisite experience and financial capabilities). For these reasons we recommend that the Buyer should employ an Expressions of Interest process to identify eligible bidders.

### **7.3 Expressions of Interest**

The Expressions of Interest process involves the Buyer publicly inviting all interested parties to submit their credentials to be considered for their eligibility to receive a request for proposals.

The form of public invitation would include:

- i. sufficient information about the procurement opportunity to enable interested parties to determine whether they wish to seek to participate or not;
- ii. details of relevant bidder qualification criteria;
- iii. the applicable time schedule for submission of the EOIs.

It is not unusual for an EOI invitation to provide that expressions of interest need to be submitted within a particular timeframe, after which, further expressions of interest are not to be considered. Upon receipt of the Expressions of Interest, the Buyer evaluates the credentials of interested parties against the evaluation criteria stated in the EOI and identifies those who are eligible to receive RFPs. It is usually at this stage that eligible parties are invited to enter into any relevant confidentiality undertaking pertaining to the RFP process, before receiving the RFP documentation itself.

It is not unusual, given changes in the financial and other fortunes of parties over time, for separate Expressions of Interest to be conducted for each procurement process, notwithstanding that they may be conducted only 12 months apart. It is better that the most up to date information is reviewed by the Buyer, rather than relying upon what might be outdated information.

## 8 Content of Request for Proposals

The precise content of RFP issued by the Buyer will, of course, be dependent upon the nature of the specific procurement being undertaken by the Buyer. However, any RFP will need to:

- i. provide sufficient information to potential bidders to enable them to undertake proper analysis of the opportunity presented to them and to devise a coherent, soundly based and commercially viable proposal for consideration by the Buyer; and
- ii. clearly identify to potential bidders the information that the Buyer will require from bidders as part of their submissions in order that the Buyer can efficiently, and in a timely fashion, evaluate bids received, verify the information provided by bidders and make its ranking decisions as to bids received.

It is expected that any RFP document issued by the Buyer would address the following issues:

*i. Introduction*

This would describe, in general terms, the context in which the RFP is being conducted by the Buyer;

*ii. Timetable*

This would describe the anticipated timetable for the provision of information by the Buyer to potential bidders, the lodgement of bids (both final, and where used, indicative bids), their evaluation and the timeframe for negotiation and execution of project documents (principally the PPA).

*iii. A statement as to the opportunity*

This may be in the form of a report describing the technical features of the project such as the MWs required by the Buyer together with details of any mandatory or preferred requirements (eg minimum/maximum plant/unit size; fuel; location; operating characteristics etc). Other assessments covering the economical, financial, legal and regulatory, as well as the social impact assessments will be included.

*iv. Information required with indicative bid*

Where indicative bids are utilised, the following information is likely to be required:

- details of the bidder (legal identity and structure); ultimate beneficial ownership of the bidder; where more than one party comprises the bidder (e.g., a consortium) a description of the proposed roles of each of the parties in relation to the bidder; copies of recent audited annual accounts of the bidder; details of any formal direct or indirect connection between the bidder and existing participation in the Nigerian electricity industry;
- indicative consideration (price) proposed by the bidder;
- indications as to funding mechanisms, including evidence of existing external financial support or indications of support from third parties;
- any material issues they have as to the terms of the project agreements as released by the Buyer to that time;

- details of relevant experience of the bidder and of its associates in relation to the design, construction, commissioning and ownership and operation of generation plant, both in Nigeria and elsewhere;
  - details of all internal and external authorisations which the bidder may require, such as board approvals and regulatory or foreign investment approvals, and the steps which have been taken to ensure those authorisations are obtained and at what stage those authorisations will be obtained.
- v. *Information required with final bid*
- vi. *Description of interaction between bidders and the Buyer, both before and after Indicative and Final Bids*
- vi. *A description of evaluation of indicative bids*
- vii. *A description of evaluation of final bids*
- viii. *Mechanics*

## **9 Evaluation of Proposals**

Proposals for the design, construction, commissioning and financing of power plant can be resource intensive and expensive (both in terms of time and money). Bidders will not be prepared to allocate scarce resources in preparing proposals if:

- i. they are unclear as to the basis upon which their proposals will be evaluated;
- ii. they believe that their proposals will be evaluated on the basis of extraneous issues, irrelevant to the technical or commercial merits of their proposal.

Conversely, the more one moves away from a project specific process towards an open MW process, the more difficult it is for the Buyer to articulate with absolute precision all of the relevant criteria that are to be taken into account or to articulate the relative importance of different aspects of proposals being evaluated in the final analysis of their merit. In balancing these issues, we recommend that the RFP documentation:

- i. include the evaluation criteria to be used by the Buyer in evaluating bids (separately identifying the evaluation criteria to be used for indicative as compared to final bids);
- ii. indicating the methodology by which the evaluation criteria are to be applied by the Buyer to bids;
- iii. require the Buyer to apply such evaluation criteria and methodology uniformly to all bids received.

We do not recommend use of an evaluation methodology which adopts a select number of criteria with mathematical weightings applied to each. A number of these criteria do not lend themselves to mathematical certainty. In addition, there is uncertainty as to the appropriateness of the weight given to one criteria as against another. Our preference is for the evaluation methodology to focus upon:

- i. first, whether the proposal is technically coherent and feasible (such that the Buyer has confidence that, if built, the generating plant will be able to produce the capacity desired);
- ii. second, the likelihood of the bidder being able to achieve financial close and its commitment to reaching commercial operation (there is little point in a bidder having the best technical proposal and the lowest pricing if it shows every sign of being ready to abandon this project if a more favourable project is identified elsewhere);
- iii. third, focus on the pricing proposed by the bidder, given that the price per unit of output, including payment for capacity, must fall within the threshold set under the Multi-year Tariff Order (MYTO).

This hierarchy of evaluation presupposes that it is the certainty of obtaining the requisite capacity which is of paramount importance to the Buyer (hence priority being given to technical compliance, commitment to achieving commercial operation and, only subsequently, pricing). A different evaluation hierarchy would be appropriate if price, not certainty of availability of generating capacity, was the predominant factor.

## **10 Role of NERC**

### **10.1 Potential Roles**

NERC has a number of potential roles in relation to the Generation Procurement Code. These include:

- i. reviewing/approving each stage of the procurement process, namely:
  - formulation of the Statement of Opportunities;
  - EOI evaluation;
  - RFP preparation;
  - short listing of bidders;
  - the evaluation of final bids;
  - conduct of negotiation leading to execution of project agreements;
- ii. review of the procurement process once finished;
- iii. advance approval of departures by Buyer from the Generation Procurement Code or RFP;
- iv. proposing or approving amendments to the Generation Procurement Code itself.

### **10.2 Regulator Review of Process**

It is recommended that, having approved the Generation Procurement Code, that NERC should not be involved in reviewing or approving, on a sequential basis, each stage of the procurement process. Rather, the role of NERC should be restricted to reviewing one or more of the RFP processes, for the purposes of confirming adherence by the Buyer to the requirements of the Generation Procurement Code.

We say this because involving NERC in reviewing/approving each stage of the procurement process merely adds another layer of review to the procurement process, potentially leading to delay in the process (for no particular advantage). Further, we do not believe that NERC should have a role in substituting its commercial decision for that of the Buyer. Finally, if NERC was to have that role, it would need to have resources and experience at least equivalent to that of the Buyer in order to

undertake that analysis/evaluation. If the NERC's review is directed towards whether the Buyer has conducted the procurement process in accordance with the Generation Procurement Code, NERC's role is more properly seen as a process review rather than a commercial/technical review of any particular outcome.

Allowing NERC to have the role of reviewing the procurement process from a commercial/technical perspective also gives rise to the potential for NERC to come to a different commercial or technical conclusion to that of the Buyer, which can only lead to uncertainty in the minds of bidders (unsuccessful bidders may assert, as against the Buyer, that they have been improperly rejected by the Buyer notwithstanding the Buyer has treated all bidders fairly, equitably and transparently but (as can happen) has reached a different commercial or technical conclusion from that of NERC with respect to particular bids).

NERC may decide not to conduct such a review after each procurement process. Rather, since NERC is entitled under law to conduct a review of any or all procurement processes as it thinks fit, it may choose to conduct this review only as needed. Further, NERC should be able to rely upon the tender audit process described in the Generation Procurement Code to provide sufficient oversight of this procurement process.

### **10.3 NERC Review of Amendments**

As to NERC approving departures from the requirements of the Code or from the requirements in particular of RFP:

- i. departures from the Code (as distinct from administrative interpretations) shall not be permitted by NERC, but rather shall necessitate an amendment to the Code itself;
- ii. departures from an RFP are matters which involve NERC (for the same reasons indicated above with respect to NERC not engaging in reviewing or approving each stage of a specific tender, except to assure adherence to the procurement process itself as provided in the Code.).

In practical terms, each RFP should be designed so as to minimise the need for the Buyer to depart from the RFP, whilst at the same time providing a transparent mechanism whereby the Buyer, during the conduct of the RFP process itself and in warranted circumstances, can modify the requirements of the RFP (e.g., allowing all bidders extra time within which to submit bids, etc). The Buyer's performance in complying with the RFP and in exercising any discretion it has under the RFP in that regard would be a subject of review in the preparation of the Tender Audit Report required after each procurement is complete and as included in the draft Generation Procurement Code.

In common with the development of other codes, amendments to the Generation Procurement Code shall be subject to the approval of NERC (to the extent that such responsibility is not given to NERC by law). NERC shall also make recommendations to the Buyer as to amendments to the Code (whether such amendments result from NERC's review of any particular procurement process or for other reasons).

## **11 Related Issues**

### **11.1 Design of the Procurement Code**

It is expected that the Generation Procurement Code will not be static but rather will be a living document. One can expect that it will be refined and improved over time in light of actual experience.

Having said that, it is not optimal that the Generation Procurement Code be subject to constant change, as this leads to uncertainty and added cost (both time and money) for the Buyer(s), NERC and potential and actual bidders for generation capacity.

Change to the Code can be minimised by ensuring that the Generation Procurement Code:

- i. does not deal with irrelevant matters; and
- ii. provides the Buyer(s) with sufficient flexibility in order to be able to design Requests for Proposals for additional generation capacity in a manner which reflects then current requirements, market expectations and experience.

This means that the Generation Procurement Code should be a relatively high level document, concerned more with articulating the process by which procurement of generation capacity is to be conducted and less concerned with hard wiring the actual mechanics of the procurement process itself.

## **11.2 Non-Solicited Bids**

Given that: (a) in the case of a SBM, the Single Buyer is to be the sole purchaser of generation capacity and electricity generated (b) for both the SMB and MBM all bidders are to have a fair and equitable opportunity to become the next provider of generation capacity to the Buyer(s), it is difficult to see why the Buyer(s) should be free to accept an unsolicited bid or proposal for the provision of additional generation capacity.

The process contemplated in this paper and the recommended Generation Procurement Code provides for:

- i. the publication of an Annual Report ;
- ii. a transparent Generation Procurement Code;
- iii. the opportunity for a Buyer to instigate a procurement process for additional generation capacity, with that procurement process to be conducted in accordance with the Generation Procurement Code,

To accept an unsolicited bid or proposal would:

- i. deny the Buyer of the opportunity to test the commercial and technical features of the unsolicited bid against competing bids;
- ii. deny other potential bidders the opportunity to have their proposals considered by the Buyer.

Acceptance of an unsolicited bid for additional general capacity may also have adverse effects on other existing participants or potential participants connected to the grid system, given the potential for increasing transmission constraints and the like. For these reasons the Buyer(s) are precluded by the Generation Procurement Code from accepting unsolicited bids for additional generation capacity.

However, in making this preclusion, the Generation Procurement Code will not be drafted in a way which precludes the Buyer from:

- i. instigating a new procurement process or amending the terms of existing RFP in response to an unsolicited bid for additional generation capacity (which is desirable if after having considered the unsolicited bid, the Buyer decides that the extra capacity would be desirable or is otherwise warranted);
- ii. awarding preferred bidder status or indeed entering into a PPA with a bidder solely by reason that that bidder had earlier lodged an unsolicited bid (even if the unsolicited bid is on identical terms to those of the subject of the final evaluation) provided that a full RFP process has been conducted;
- iii. considering and awarding preferred bidder status or indeed entering into a PPA following reconfiguration of bids as part of the RFP process (i.e., ensuring that reconfigured bids are not construed as unsolicited bids).

This degree of flexibility is justified if the final outcomes are for the benefit of consumers and the correct processes are observed by the Buyer (with Regulatory oversight).

### **11.3 Particular Power Purchase Situations**

- i. To the extent that a separate process exists for the promotion of small power producers, such processes shall be excluded from the Generation Procurement Code.
- ii. Where a Buyer purchases electricity from facilities such as a self-scheduling generator who intermittently is able to sell power to the Buyer (most likely where excess power is available from a self-generator), such purchases will be made under separate contract on an energy basis only, with no capacity payments made to the supplier. The basis of such purchases and sales is one of mutual benefit: the Buyer obtains energy at a lower cost than it anticipates (or by tariff formula) in normal market operations and the price enables the supplier to sell its excess generation at some margin in excess of its variable generation costs. No formal procurement process would be attached to such purchase agreements, but approval by NERC would be required.
- iii. In some situations an entity, such as a large industrial firm, providing its own generating plant to meet its requirements may have the ability to install capacity in addition to its own needs (or perhaps expects its installed capacity to exceed its direct needs for several years). The entity may choose to dedicate this additional capacity for supply to the grid. The procurement of this additional capacity shall be in accordance with these procurement guidelines.

The principles guiding the provisions in 11.3(i)-(ii) above are that while NERC can be expected to welcome low cost or small capacity power supplies for the benefit of consumers, it must be particularly cautious that such propositions are not designed to subvert the objectives of the normal, transparent procurement process (becoming in essence, a “non-solicited bid”). The Buyer should be required to make a convincing demonstration of significant benefits from the proposed purchase and address the impact, if any, that the proposed purchase might have on future capacity procurements. Whenever possible, such “excess capacity” procurements should simply be incorporated into the normal procurement process, minimizing the opportunity for, or the appearance of, any potential impropriety in the procurement process.



Additional generation capacity procured, or anticipated to be procured, in the alternative manners specified in 11.3(i) and 11.3(ii) needs to be taken into account by the SO in the preparation of the Annual Report.

#### **11.4 Transmission Procurement**

This report, including the attached Generation Procurement Code, addresses generation but not transmission procurement. For obvious reasons, both existing and additional generation and transmission capacity interact with each other. It is not possible for a planning or procurement process for one not to take into account the other. We anticipate that in its final form, the procurement processes for generation and transmission are likely to be similar (even if the specific contractual arrangements for the providers of generation and transmission assets are different).

#### **11.5 PPA Terms**

The terms of the Power Purchase Agreement are critical to the basis upon which the successful procurement of generation capacity can be achieved. It is critical for a number of reasons (transparency, efficient evaluation and negotiation with generation successful bidders) that fully developed, coherent, equitable draft power purchase agreements are made available to potential bidders for additional generation capacity at an early stage of the RFP process.

The draft PPA must not inappropriately favour one party or the other (either Buyer or bidder) and, in order to attract bidders, must be on terms which display an appropriate risk allocation and otherwise be "bankable". The distribution of draft PPA terms which are too heavily balanced in favour of one party rather than the other only has the effect of introducing uncertainty in the minds of parties (as to what the "real" terms are likely to be), and add to expense (time and money) in negotiating bankable documents.

Whilst it is not mandated in the Generation Procurement Code itself, the RFP process should be conducted such that the draft PPA terms are made available to potential bidders early in the RFP process. This would provide sufficient opportunity for potential bidders (both at the time of their indicative bids but also in interactive sessions with the Buyer and its negotiating team) to negotiate and obtain feedback from the Buyer as to amendments to the draft PPA which are, or are not, likely to receive favourable consideration from the Buyer in its evaluation of final bids. The purpose of this early exposure of PPA issues is to give each bidder the opportunity to design its final bid based on documents which it believes are in a form acceptable to the Buyer (and presumably to the bidder itself).

This has two advantages:

- i. the Buyer, having the advantage of interacting with the bidders prior to submission of the final bids, will be familiar with the amendments to the draft PPAs likely to be proposed by the bidder (to the extent that such interaction has not resulted in PPA amendments initiated by the Buyer) and will be able to rapidly assess the acceptability or otherwise of the proposed amendments;
- ii. the negotiation period with the preferred bidder will be shorter. This is important because the longer those negotiations take, the greater propensity there is for last minute issues to arise between the parties and the greater the potential for the Buyer to have to break negotiations with the preferred bidder and seek to resurrect discussions with the next most qualified bidder, which always has its difficulties.

## **12 Transition to Fully Competitive Market**

In some respects the transition to the fully competitive market will have little impact on the generation procurement process, unless a SMB exists up till then. This is because in the fully competitive market, it is not the role of a single Buyer to procure additional generation capacity. Rather, it is left to market forces to influence and encourage both existing and new participants to build new generation capacity at the times, in the quantities and in the manner that they determine is most likely to provide them with an adequate financial return.

If the market starts in the Single Buyer mode, then the Single Buyer will play a transitional role between the Single Buyer market and the Multi-Buyer fully competitive market in that it is highly likely that PPAs signed by the Single Buyer in the Single Buyer market will come on-stream progressively over time and, indeed, even during the time after the fully competitive market has been fully introduced.

As has been noted elsewhere, the transitioning of PPAs utilised in the Single Buyer market to the fully competitive market will be an important step in assuring the success of the fully competitive market, presenting its own significant and interesting challenges.

## PART TWO - GENERATION PROCUREMENT CODE

### 1. Introduction

This Generation Procurement Code (“Code”) provides for the processes to be used by a Buyer in procuring additional electric generation capacity.

### 2. Definitions

The following definitions apply unless the context requires otherwise:

**Annual Report:** means the report prepared by the Transmission System Operator of its assessment of the adequacy of generation facilities and of transmission facilities on, or contractually committed to, the integrated power system to satisfy the provision of safe, reliable and economic electric service to electricity consumers in Nigeria.

**Applicant:** means a legal entity that submits an EOI seeking to obtain the status of Qualified Person for purposes of qualifying as a bidder in response to a RFP, including members of consortia, subcontractors or other principals that propose to bid as a group.

**Buyer:** Person licensed, in accordance with the Act and authorised to purchase bulk power from existing and/or new generating companies.

**EOI Process:** means the procedures set forth in the Generation Procurement Code for issuing and administering EOIs.

**Expression of Interest or EOI:** means the formal declaration by a potential bidder for the construction of new generating plant of its interest in participating in the tender process described in the Generation Procurement Code.

**Final Bids:** means a final round of detailed proposals from among only those Qualified Persons chosen as members of a Short List.

**Final Date for EOIs:** means the date specified in a RFP as the last date upon which EOIs may be submitted to the Buyer in response to the RFP.

**Indicative Bids:** means a first round of bids to rank Qualified Bidders according to the best initial proposals submitted as preliminary indications of their Final Bids.

**Late EOI:** means an EOI that is submitted to the Buyer after the Final Date for EOIs.

**Multiple Buyer Market or MBM:** Stage of the Nigerian electricity market in which more than one buyer is permitted to procure bulk power for the transmission grid system

**NERC:** means Nigerian Electricity Regulatory Commission

**Nigerian Electricity Regulatory Commission or the Regulator:** means electricity regulatory authority established under the Electric Power Reform Act 2005, or The Act..

**Qualified Person:** means, with respect to a RFP and an EOI, a person which the Buyer determines (following evaluation of Expressions of Interest) is eligible to receive a Request for Proposals.

**RFP:** means request for proposals for the construction of new generating capacity.

**RFP Document:** means a document issued by the Buyer to Qualified Persons detailing information pertaining to any particular RFP.

**Short List:** A limited number of Qualified Persons who are selected to submit Final Bids as the basis of their ranking in Indicative Bid submissions.

**Shortlisted Bidder:** means, with respect to a RFP, a Qualified Person who is selected as a member of the Short List.

**Single Buyer:** means the authority permitted to purchase and sell bulk power during the early transition phase of the Nigerian electricity market from a Single Buyer Market to a competitive market.

**Single Buyer Market:** means the stage of the Nigerian electricity market during which a single buyer only is permitted to procure bulk power for the transmission grid system.

**Successful Bidder:** means the Qualified Person that is determined by the Buyer to have submitted the best offer in response to a RFP.

**The Act:** means the Electric Power Sector Reform Act, 2005.

**TCN:** means the Transmission Company of Nigeria.

**Tender Auditor:** An accounting firm of international repute appointed by the Regulator to audit the conduct and results of a bulk procurement process

**Tender Audit Report:** means a report prepared by the Tender Auditor on the conduct and results of a bulk power procurement process.

**Transmission Company of Nigeria:** means the owner, operator and manager of the Transmission Grid System in Nigeria.

**Transmission Grid System:** means the high voltage electric grid system above 33KV in Nigeria which is owned, managed and operated by the Transmission Company of Nigeria (TCN).

**TSO or System Operator or SO:** means the Transmission System Operator operating under the Market Rules established under the Act.

### 3. Objectives

The objectives of this Code are:

- i. to establish a systematic, transparent and competitive process that provides reasonable assurance that the Buyer procures additional electric generation capacity at least cost to consumers, consistent with resource expansion plans reviewed and approved by the NERC;

- ii. to ensure that firms participating in the procurement process have the necessary technical expertise, financial resources and industry experience to carry the defined generation project to a successful completion;
- iii. to minimise opportunities for financial manipulation, fraud or corruption of any kind during the resource acquisition process; and
- iv. to facilitate the involvement of the private sector in the provision of generation capacity to the Buyer.

#### **4. Scope**

##### **4.1 Transmission Grid System**

The provisions of this Code apply to the contracting by the Buyer of any generation capacity which is, or is intended to be, connected to the Transmission Grid System.

##### **4.2 Prohibition on Procurement outside this Code**

After the effective date of this Code, unless otherwise approved by the Regulator for good cause, the Buyer must not, except under the provisions of this Code:

- i. solicit bids or proposals for the provision of generation capacity to which this Code applies; nor
- ii. enter into any contract whereby the Buyer agrees to purchase the electrical output of any generation facility to which this Code applies.

##### **4.3 Exempt Transactions**

The terms of Section 4.2 shall not apply to:

- a) small scale power generating plant generating less than 10 (?)MW;
- b) purchase of occasional electricity supply from a self-scheduling generator;
- c) any other law of the Federal Republic of Nigeria that conflicts with the provisions of this Code, but only to the extent of the conflict.
- d) any procurement by the Buyer under any agreement entered into prior to the effective date of this Code, subject to the approval of NERC;
- e) any procurement by the Buyer under any option or other right to acquire generating capacity or electricity, subject to the approval of the Regulator, where such option or other right had been granted prior to the effective date of this Code, notwithstanding the date of exercise of the option or other right.

#### **5. Solicitation of New Generating Capacity**

##### **5.1. Solicitations Required**

If an Annual Report published by the TSO indicates a requirement for contracting additional generation capacity within the next twelve months, the Single Buyer in a SBM shall, or any buyer in a MBM may, commence forthwith the procurement process set forth in this Code, subject to the approval of NERC.

## **5.2. Notice of Solicitation**

If an Annual Report published by the TSO indicates a requirement for additional generation capacity within the next twelve months, the Buyer to whom an approval has been given by NERC to procure additional generation capacity shall:

- i. announce that it intends to request proposals for the provision of such capacity in accordance with the provisions of this Code;
- ii. invite potential bidders to qualify for consideration in the solicitation process by submitting an Expression of Interest, and
- iii. announce the date or dates on which it anticipates it will make available a Request for Proposals relating to such additional capacity.

## **6. Qualified Bidders**

### **6.1 Qualifications**

With respect to any particular solicitation for generating capacity, the Buyer shall determine, subject to approval of the NERC, the information that must be provided by interested potential bidders (“Applicants”) to be listed as qualified for consideration as participants (“Qualified Persons”) in the solicitation process. Applicants must submit an Expression of Interest (“EOI”) in accordance with the published EOI requirements, including the following minimum general criteria:

- i. Technical expertise:

The Applicant must demonstrate that it employs qualified professionals who possess relevant operating experience with the size and type of generating plant proposed;

- ii. Financial capability:

The Applicant must be able to show a strong balance sheet and demonstrate a good financial track record over time with respect to its core businesses and, particularly, other generating projects of a similar nature;

- iii. Operating experience:

Applicant must have relevant experience operating electric generation facilities of a similar size and type as that proposed.

### **6.2 Form of EOI Invitation**

The Buyer’s invitation for the submittal of EOI’s by potential bidders must:

- i. identify (in general terms at least) the nature of the generation capacity sought to be procured;

- ii. identify the information that Applicants must submit if their EOI is to be considered for Qualified Person status by the Buyer;
- iii. identify the selection criteria and process that will determine (and minimum criteria, if any, that must be satisfied in order to determine) whether a person is to be granted Qualified Person status; and
- iv. state the date by which expressions of interest are to be submitted, if they are to be guaranteed consideration by the Buyer.

### **6.3 Publication of Invitations for EOIs**

The Buyer shall invite expressions of interest by publishing its invitation to submit an EOI:

- i. in a newspaper circulating generally throughout Nigeria, published in English;
- ii. in such international publications as may be appropriate or useful to assure that the planned solicitation will be brought to the attention of all likely candidates that participate in global electric generation markets; and
- iii. in other media such as the Buyer's website or by any other means that promotes awareness and participation by the greatest number of potential bidders.

### **6.4 Evaluation of EOIs Received**

The Buyer:

- i. must consider all EOIs received on or before the date by which EOIs are to be submitted if they are to be guaranteed consideration ("Final Date for EOIs");
- ii. may consider any EOI received subsequent to the Final Date for EOIs ("Late EOIs"), but in doing so, nothing precludes the Buyer from proceeding to the next stage (including release of the RFP Documents) before Late EOIs are considered by the Buyer;
- iii. must, in considering any EOI, apply the evaluation criteria specified in the invitation for EOIs equally to all EOIs submitted.

The Buyer will notify NERC of its conclusions regarding the qualification of potential bidders who have submitted EOIs and notify all Applicants of its determinations, including Applicants that fail to satisfy the established criteria for becoming Qualified Persons. All applicants shall be informed of the entire results of the EOI assessment. Unsuccessful Applicants shall be informed in writing by the Buyer of the reasons for its rejection of their applications.

### **6.5 Limiting Participation by Qualified Persons**

The Buyer may, but only if the right to do so is reserved in the invitation for EOIs, limit the number of Qualified Persons who are to receive Request for Proposals Documents. The number of Qualified Persons chosen may be limited to such number, having regard to the generation capacity being sought, as in the opinion of the Buyer are desirable to encourage vigorous participation in the solicitation process and to obtain commercially realistic proposals.

## **6.6 Publishing the Identities of Qualified Persons**

The Buyer must publish the names of each qualifying bidder, or in the case of a limited participation, the names of each participating Qualified Person, with respect to any RFP.

## **6.7 Confidentiality**

The Buyer may require of any Qualified Person that it (and its employees and persons claiming through it, e.g. its advisers and financiers) enter into such confidentiality and other undertakings as the Buyer requires before releasing any documentation relating to the RFPs. All EOIs and other documents submitted by potential bidders or Qualified Persons, including final transaction documents, shall remain confidential unless otherwise ordered by NERC.

## **7. Request for Proposals**

### **7.1 Preparation**

The Buyer must prepare a Request for Proposals Document (“RFP Document”) in accordance with the requirements of this Code for the purposes of inviting proposals from Qualified Persons for the procuring of additional generation capacity.

### **7.2 Issuance of the RFP**

The Buyer must issue an RFP Document to each Qualified Person who enters into such confidentiality and other undertakings as required by the Buyer under section 6.7.

### **7.3 RFP Contents**

Each RFP Document must include or be accompanied by:

- i. the information (or so much of it as is, in the opinion of the Buyer, relevant to the particular generation procurement process concerned) identified in Schedule 1; and
- ii. such other information as the Buyer considers appropriate.

## **8. Indicative Bids**

### **8.1 Use of Indicative Bids**

In order to improve the outcome of the tender process, the Buyer may choose to engage in a two step solicitation process:

- i. a first round of bids to rank Qualified Bidders according to the best initial proposals submitted as preliminary indications of their Final Bids (“Indicative Bids”); and
- ii. a final round of detailed proposals (“Final Bids”) from among only those Qualified Persons chosen as members of a limited list of Qualified Persons with the best Indicative Bids in response to the RFP (the “Short List” or “short-listed” bidders).



Before issuing any RFP Document for any particular generation capacity procurement process, the Buyer must declare whether, for that particular procurement process, it will employ the Indicative Bid option or engage in a single stage bid process open to all Qualified Persons.

## **8.2 Content of Indicative Bids**

Qualified Persons, when lodging an indicative bid in response to an RFP, must provide:

- i. the information identified in Schedule 2; and
- ii. such other information as the RFP Document stipulates must be provided.

## **8.3 Indicative Bid Evaluation**

The Buyer must evaluate Indicative Bids received from Qualified Persons and in doing so must apply the evaluation criteria specified in the RFP Documents equally to all Indicative Bids.

## **8.4 Notification and Publication**

The Buyer must notify all Qualified Persons participating in the Indicative Bid process of the outcome of its evaluation of their Indicative Bids, indicating their success or failure to qualify for the Final Bid competition. The Buyer must also publish the names of each Qualifying Person who the Buyer determines will be invited to submit a Final Bid (“Shortlisted Bidder”).

# **9. Final Bids**

## **9.1 Invitation to Submit Final Bid**

The Buyer must invite each Qualified Person or, in the case of a procurement using the Indicative Bid process, each Shortlisted Bidder to lodge a Final Bid with respect to the RFP.

## **9.2 Bid Security**

The Buyer shall require bid security from all Qualified Persons who are invited to submit Final Bids in the form of a bid bond or security as determined by the Buyer as appropriate to safeguard the integrity of the solicitation process.

## **9.3 Content of Final Bids**

Shortlisted Bidders, when lodging a Final Bid, must provide:

- i. the information identified in Schedule 3; and
- ii. such other information as may be stipulated in the RFP Document and in the invitation to submit a final Bid.

## **9.4 Final Bid Evaluation**

The Buyer shall evaluate Final Bids received from Shortlisted or Qualified Bidders (as the case may be) who meet the minimum technical specifications and financial criteria and in doing so must apply the evaluation criteria specified in the RFP Document equally to all Final Bids.

## **9.5 Contract Award**

The Buyer shall enter a contract only with the Qualified Person that has submitted the bid achieving the highest ranking during bid evaluation (“Successful Bidder”) and only subsequent to the submittal of the Tender Audit Report provided for in section 12 confirming the selection of the Successful Bidder and the approval of the Regulator.

## **10. Communications protocols and procedure**

The Buyer must provide in the RFP Document details of the rules that are to govern:

- i. the extent of and means of communications between the Buyer, its representatives and advisers and Qualified Persons, their representatives and advisers;
- ii. confidentiality of information, relevant to the RFP, whether sourced from the Buyer, Qualified Persons or otherwise;
- iii. the use of and dissemination of information by the Buyer;
- iv. the extent to which Qualified Persons, their representatives and advisers may rely upon information provided by the Buyer, its representatives and advisers; and
- v. the extent to which the Buyer excludes liability for losses, expenses or liabilities incurred by Qualified Persons or others in relation to participation in the RFP process.

## **11. Unsolicited Offers**

Unsolicited offers of additional generation capacity from persons who are not Qualified Persons may not be considered by the Buyer in connection with any RFP process.

## **12. Tender Audit**

Following completion of each RFP process but before the execution of an agreement between the Buyer and the successful bidder (or upon the decision of the Buyer not to contract with any person), a Tender Audit report shall be prepared by the Tender Auditor appointed by NERC, which shall be an audit report of the conduct and results of the procurement process.

The Tender Audit Report must be in such form and substance as NERC may from time to time determine after consultation with the Buyer and the Tender Auditor. The Buyer shall be required to co-operate with the Tender Auditor and be obliged to make available all information in its custody, which are relevant to the procurement process, to the Tender Auditor for the carrying out of the Tender Audit. NERC may, both before and after receipt of the Tender Audit Report:

- i. request that the Buyer provide information and documents relevant to the tender process; and
- ii. interview representatives of the Buyer, in either case to determine whether this Code has been complied with by the Buyer and to identify any potential revisions to the Code that might improve the generation procurement process.

## **13. Miscellaneous**

### **13.1 Consents or approvals**

If the doing of any act, matter or thing under this Code is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

### **13.2 Petitions**

Petitions in respect of the bidding process may be made by bidders to NERC within 21 days after the results of the bidding process have been published by the Buyer. Any such petition should be in respect of a contravention, by the Buyer, of the rule, procedure and guidelines specified by the Buyer in the request for EOI or in the RFP, or a contravention of the provisions of this Procurement Guidelines. Petitions should, however, not be in respect of the content of the decision or judgment of the Buyer.

**GENERATION PROCUREMENT CODE**  
**Schedule 1**

**Content of RFP**

An RFP for the procurement of generation capacity must include or be accompanied (at the same time or subsequently) by:

- a) copies of the most recent Annual Report prepared by the TSO;
- b) an explanation of the basis on which bids (both final, and where used, indicative) will be evaluated;
- c) an explanation of the process by which any shortlist of bidders will be established;
- d) details of the length of time to be allowed for each stage of the RFP process from the issue of the RFP through to contract execution;
- e) drafts of the principal contracts which the Buyer proposes should be entered into by the Successful Bidder in connection with the provision of generation capacity;
- f) details of any bid bond or other bid security which the Buyer may require to be posted by bidders, the circumstances in which they may be called by the Buyer and the proceeds forfeited by bidders;
- g) details of any minimum acceptable technical, operational and financial requirements;
- h) a statement of the language or languages in which bids must or may be submitted;
- i) a statement of the manner and form in which bids are to be submitted;
- j) a summary of the type(s) of project(s) for which proposals are requested, including information with respect to:
  - (i) fuel type and availability;
  - (ii) set and plant size;
  - (iii) location (if specified);
  - (iv) anticipated operational characteristics;
  - (v) requirements for system interconnection; and
- k) Such additional information as may be applicable to each specific solicitation.

**GENERATION PROCUREMENT CODE**  
**Schedule 2**

**Content of Indicative Bids**

Where indicative bids are utilised, the following information shall be provided by bidders:

- a) corporate details of the bidder:
  - i. legal identity and structure;
  - ii. ultimate beneficial ownership of the bidder;
  - iii. where more than one party comprises the bidder (eg a consortium) a description of the proposed roles of each of the parties in relation to the bidder;
  - iv. copies of recent audited annual accounts of the bidder, including consortia members;
  - v. details of any formal direct or indirect connection between the bidder and existing participants in the Nigerian electricity industry;
- b) bidder's response to the technical specifications of the RFP and its indicative technical proposal;
- c) indicative consideration (price) proposed by the bidder;
- d) indications as to funding mechanisms available to the bidder that would be used to support the financing for this project, including evidence of existing external financial support or indications of support from third parties;
- e) any material issues of concern to the bidder as to the terms of the project agreements as released by the Buyer to that time;
- f) details of relevant experience of the bidder and of its associates in relation to the design, construction, commissioning and ownership and operation of generation plant, both in Nigeria and elsewhere;
- g) details of all internal and external authorisations which the bidder may require, such as board approvals and regulatory or foreign investment approvals, and the steps which have been taken to ensure those authorisations are obtained and at what stage those authorisations will be obtained; and
- h) Any other information the bidder chooses to present as indicative of its qualifications to execute the RFP.

**GENERATION PROCUREMENT CODE**  
**Schedule 3**

**Content of Final Bids**

Final Bids shall contain the following minimum information:

All information required as of indicative bid stage (highlighting any changes to the information provided as at indicative bid stage) together with:

- a) bidder's final and detailed technical proposal;
- b) bidder's price proposal with supporting statements in the form required by the RFP;
- c) bidder's firm arrangements to fund the project, including evidence of commitments of requisite financial support from third parties, as applicable, in the form specified in the RFP;
- d) any further material issues of concern to the bidder as to the terms of the project agreements that have not been addressed previously during the bid process;
- e) completed internal and external authorisations which the bidder may have obtained together with a listing of those that remain to be obtained and a schedule for obtaining such authorizations (such as board approvals and regulatory or foreign investment approvals); and
- f) Any other information bidder chooses to present in support of its bid.