



GUIDELINES ON NATIONAL CONTENT DEVELOPMENT FOR THE NESI

.....day of 2013

1. Introduction

As the Nigerian Electricity Supply Industry (NESI) prepares for the entry of greater private participation in the generation and distribution sectors, and the commencement of the Transitional Electricity Market (TEM), it is the responsibility of the sector regulator (NERC) to ensure that the various enablers are in place to support the orderly development of the NESI.

Section 32 (1) (a) of the Electric Power Sector Reform Act (EPSRA) mandates the Commission to *“create, promote, and preserve efficient industry and market structures, and to ensure the optimal utilization of resources for the provision of electricity services.”*

The section cited above gives the Commission the responsibility of ensuring that relevant policies, programmes and initiatives work together in implementing the Federal Government’s power sector reform agenda. In this vein, the Commission constantly seeks to identify lacunae in the development of the NESI, and proffer solutions to fill such gaps. One of such lacunae is the lack of optimal utilization of Nigerian human resources for the provision of electricity services.

With the entry of private sector participation (both Nigerian and foreign), the power sector will inevitably be exposed to massive growth both in size and in capital, however, not enough emphasis is being laid on how to encourage national development based on this growth. Emphasis should be on how many jobs will be created, in-country value creation, sustainability, safety, environment and above all, the need to maximize value from power activities. Development should focus more on in-country value where licensees consider long term value and promote the use of local capacity. There is therefore a need for NERC to provide an avenue for the active participation and growth of the Nigerian industry and citizenry, in the various services and activities that will attend the expansion of electricity access across the country.

In furtherance of this responsibility, NERC has developed Regulations on National Content Development for the NESI, 2013 to nurture and increase local capacity in terms of human resources, manufacturing etc (the “Regulations”).

These Guidelines seek to explain and amplify the Regulations and the two should be read together. Where however, there is any discrepancy between the Regulations and these Guidelines, the former shall prevail.

NERC will continue to monitor the process of content development and will initiate the consultation process leading up to amendments as the need arises. This is to ensure that the Regulations serve the industry by increasing local capacity utilization without affecting the overall goal of optimal development of the industry.

This document sets out NERC's guidelines on the development and inclusion of national content in the Nigerian Electricity Supply Industry, explaining the purpose and intention of the Regulations. In order to ensure adequate enforcement of the provisions of the national content Regulation, the Commission may from time to time develop guidelines that are either explanatory or supplementary to the provisions of the Regulation.

NERC sees the deliberate utilization of Nigerian human and material resources, goods, works and services in the NESI as a major step in the progress towards a reformed power sector.

2. Purpose and Scope

In the NESI, the tendency has been to buy rather than sell and as a result, a lot of job opportunities have been lost as Nigerian jobs have been exported. Opportunities exist for Nigerians in engineering, research and development, procurement, technical services, etc.

The Regulation on national content in the power sector is therefore intended 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;

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

The general focus is on breaking down service-by-service what proportion of work must be domesticated or reserved to a given degree for Nigerian companies. It also seeks to prescribe capacity limits and regulate the recruitment into key technical and executive positions. This lends Nigerian companies in an orderly manner the responsibility to employ more Nigerians to do these jobs thereby creating increased local economic activity. The regulation therefore promotes a framework that ensures local competencies are built (to internationally acceptable standards) through the active participation of Nigerians, and the deployment of natural resources and raw materials in electricity industry activities.

The nationality of the shareholders of a company operating in the industry will not be the paramount consideration, though NERC recognizes that is an important element. Emphasis will instead be on progressively increasing the “Nigerian content” of a company, which will be defined as “the quantum of composite value added to or created in the Nigerian economy, by a systematic development of capacity and capability through the deliberate utilization of Nigerian human, material resources, entrepreneurship and services in the NESI”.

The Regulation seeks to incentivize companies with high “Nigerian content” among companies bidding for all contracts in the industry and give special considerations to Nigerian entrepreneurs and companies with requisite industry experience. The major focus however is to ensure that companies that benefit from the NESI contribute to the economic development of Nigeria. This is to be achieved by the following:

- a. Maximize utilization of Nigerian made goods:
 - Develop local capacity in key areas such as manufacturing, engineering, etc
 - Promote utilization of indigenous assets in the NESI

- b. Maximize utilization of Nigerian human resources:
 - Develop indigenous skills pool across the NESI value chain
 - Provide mandatory training requirements on projects

- c. Link the NESI with other sections of the economy:
 - Promote establishment of support industries that will sustain operations in the NESI
 - Enhance multiplier effect of power sector investments in the economy

- d. Focus on community participation in the supply chain:
 - Develop pool of competition supply chain rooted in areas where power plants are located
 - Create customized training and sustainable employment opportunities
 - Structured awareness and enlightenment campaigns

- e. Foster Institutional collaboration:
 - Institutionalize inter-agency collaboration on national content development

3. Context

The Regulations explained in these Guidelines shall apply to all licensees of the Commission in the Nigerian Electricity Supply Industry, who will consequently be mandated by virtue of these Regulations to ensure the development of Nigerian content as a primary element in the execution of all projects. The Regulations do not apply to the shareholding of the licensees, but the utilization of Nigerian human and material resources and services in the industry.

The main aim is the increase in indigenous participation in the Nigerian Electricity Supply Industry by prescribing inter alia, minimum thresholds in relation to the utilization of local goods and services. Entrusting Nigerian firms with such responsibility is the surest way for them to grow strongly in their own clime.

4. Nigerian Content and Project Execution/Employment

All licensees involved in any project, operation, activity or transaction in the NESI shall consider Nigerian content as an important element of their overall project development and management philosophy for project execution. Compliance with the provisions of the regulations and promotion of Nigerian content development shall form an important criterion for evaluating licensees' performance in the industry.

Prior to the commencement of any major project, a company shall submit a Nigerian content plan to the Commission demonstrating compliance with the Nigerian content requirements of the Regulations. The plan shall contain provisions intended to ensure that:

- a. First consideration shall be given to services provided from within Nigeria and to goods manufactured in Nigeria; and
- b. Nigerians shall be given first consideration for training and employment in the work program for which the plan was submitted

The plan shall also include specific examples showing how first consideration is considered and assessed by the licensee in its evaluation of bids for goods and services required by the project.

The Regulations also seek to ensure that all licensees employ a bidding process for acquiring goods and services which shall give full and fair opportunity to Nigerian indigenous contractors and companies. In a bid to ensure compliance with these provisions, a licensee shall submit to the Commission within 21 days at the end of each half year in the financial year, a listing of all contracts, subcontracts and purchase orders exceeding *{insert amount}* or such other limit as the Commission may determine awarded in the previous quarter. The listing shall provide:

- a. A list of all items and services;
- b. Value of contract or purchase order;
- c. Name of successful contractor or vendor;
- d. Primary location of work;
- e. Estimates of Nigerian content;
- f. Commencement and completion date;

- g. Any other information required by the Commission for the purposes of implementing the provisions of the Regulations

Employment

The Regulations provide for first consideration to be given to qualified Nigerians for employment and training in any of its projects. In order to ensure adequate local involvement, the Commission shall ensure that licensees maintain an agreed percentage of personnel from its area of operation.

An employment and training (E&T) plan shall be submitted by licensees at the end of every financial year detailing the following:

- a. Hiring and training needs of the licensees with a breakdown of skills needed;
- b. Anticipated skill shortages in the Nigerian labor force;
- c. Project specific training requirements; and
- d. A senior management plan and state of progress in its implementation.

The licensee will also be required to submit to the Commission, a quarterly report on its employment and training activities, which will be compared to the E&T plan and include details of the following:

- a. Number of new employees hired during the year;
- b. Their place of residence at the time of hiring;
- c. Their employment status; and
- d. Any other information required by the Commission for the purposes of implementing the provisions of the Regulations

The Commission anticipates that by involving all available manpower and keeping them engaged in the sector either by means of employment or contracts, they begin to feel like part of the system and are stakeholders. Thus when they function as stakeholders, in the system, they are more concerned about the success of projects and less likely to create problems which a third party spectator would.

In order to accommodate investor interests, a licensee may retain a maximum of {insert percentage} of management positions as may be approved by the Commission as expatriate positions. A licensee shall apply to the Commission for authorization to employ expatriates

outside these circumstances, giving detailed reasons why an expatriate should be employed, for each position.

5. Professional Services

The Regulations mandates licensees to retain only Nigerian registered companies, whose offices are domiciled in Nigeria for the provision of professional services (insurance and re-insurance, legal services, financial, and capital services). Professional services can only be provided by foreign firms in the manner provided in the Regulations.

Legal services

The licensee shall be required to submit to the Commission every six months, its legal services plan which shall include a complete description of the following:

- a. Legal services utilized in the past six months;
- b. A forecast of legal services required during the next six months;
- c. A list of external solicitors engaged in the past six months; and
- d. The nature of work done

For the purpose of these Guidelines and Regulations, legal services means:

- Advisory (transactional)
- Representation (litigation, and alternative dispute resolution)

The format for the legal services plan is as contained in schedule 1 to these guidelines.

Financial Services

All licensees shall submit to the Commission annually, its financial services plan which shall include a detailed report of the following:

- a. Financial services utilized during the financial year;
- b. A forecast of financial services required during the next financial year; and
- c. The nature of financial services done

Insurance and Re-insurance Business

Each licensee shall submit to the Commission annually its insurance and re-insurance programme details which should include the following:

- a. Insurance covers obtained in the past year;
- b. A forecast of insurance covers required in the next year;
- c. All insurance company brokers through which insurance covers were obtained in the past year;
- d. The class of insurance cover obtained

6. Transfer of Technology

All licensees in the NESI are required to comply with the guidelines in the design, procurement, deployment and implementation of information systems, information technology and communication services.

Licensees shall also carry out programmes aimed at encouraging technology transfer to Nigeria in relation to its power sector activities. The licensee shall submit to the Commission, a technology transfer plan setting out a programme of planned initiatives geared towards promoting the effective transfer of technologies from the licensee to Nigerian individuals and companies, in addition to details of various technologies deployed.

The licensee shall give full and effective support to technology transfer by encouraging and facilitating the development of agreements between Nigerian and

foreign contractors and service or supplier companies for all such alliances to the satisfaction of the Commission.

Every international or multi-national OEM (Original Equipment Manufacturer) ICT company having the intention of carrying on business in the NESI shall take appropriate steps to obtain incorporation as a separate entity in Nigeria for that purpose, in line with the provisions of the Companies and Allied Matters Act (CAMA) 1990.

The manufacture of components of ICT hardware in Nigeria shall be a mandatory requirement for all procurement, installation and related services in ICT hardware. Consequently all OEM ICT Companies involved in or interested in the NESI shall within 3 months of this guideline submit a satisfactory plan to the Commission for the manufacture of ICT hardware components in Nigeria.

All OEM ICT Companies shall carry out their sales engagements and execution, including products sales, services, and all such business transactions and/ or Consultancy services through the Nigerian Indigenous ICT companies, Nigerian subsidiaries and Nigerian partners of the International ICT Original Equipment Manufacturer.

Where necessary and in a bid to facilitate the practice and observance of its provisions, 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 which establish facilities, factories, production units or other

The Nigerian Subsidiary of such Multinational ICT Original Equipment manufacturers shall take full responsibility of all Nigerian engagements with the Operators. Virtual and/or remote engagement from locations outside Nigeria and usurpation by foreign nationals of jobs capable Nigerians can do on the part of Multinational ICT Companies shall not be allowed by the Commission.

These Guidelines shall apply to the following ICT products and solutions as may be updated from time to time:

- Software development and support services
- Computer based simulations / training progress services
- Hardware installation support services

- Operating systems installation/support services
- User support/help desk services
- Library services
- IT management consultancy services
- Data management services
- Customer Care/CRM Platforms
- Billing and Vending Platforms
- Other Information Systems (IS) and Information Technology (IT) services

7. Nigerian Content Consultative Forum

Pursuant to section 6 of the regulations, the Commission shall constitute the Nigerian Content Consultative Forum (NCCF) whose function shall be to advise the Commission on matters relating to these Guidelines and Regulations.

The functions of the Forum will include more specifically the following:

- a. Reviewing the Guidelines and Regulations and proposing amendments thereto on an ongoing basis;
- b. Advising the Commission on specific technical and other issues relating to the operation of the Regulations as may be referred to the Forum by the Commission

In exercising its functions and performance of its duties, the NCCF shall comply with all applicable provisions of these Guidelines and Regulations

Number of Members and Quorum

- a. The NCCF shall consist of 11 members with the chairman appointed by the members themselves. Members shall comprise of both operators and other industry stakeholders as may be determined by the Commission from time to time.

- b. The quorum for the transaction of business at any meeting of the NCCF shall be a majority of such persons as are members at the time of the meeting.
- c. Where there exists a vacancy or vacancies in the NCCF, the remaining members may exercise all the powers of the NCCF prior to such vacancies being filled by the Commission, so long as there remain in office a sufficient number of members to form a quorum in accordance with paragraph (b).

Qualification

Members of the NCCF shall:

- a. have a level of technical or commercial knowledge and expertise in electricity markets and Nigerian labor law or practice that is acceptable to the Commission;
- b. in the case of members representing a class of Market Participants in the NESI, be a member, officer, employee or agent of such class of participants;
- c. in the case of members representing a consumer group or a workers' unions, be a duly authorized representative of such group or union;
- d. not have served for up to two terms as a member of the NCCF provided that the period spent by any member appointed to replace a predecessor member whose term had less than two (2) years to run shall not be counted as part of such terms

Disqualification

The following persons are disqualified from being members of the NCCF:

- a. a person who is less than 18 years or more than 70 years of age;
- b. a person who is of unsound mind and has been so found by a court of competent jurisdiction in Nigeria or elsewhere;
- c. a person who is not an individual;
- d. an undischarged bankrupt;

Tenure and Filling of Vacancies

The Commission shall select each member of the NCCF to hold office for such fixed period not exceeding three (3) years, as may be determined by the Commission. In the event that a vacancy occurs in the NCCF at any time after the appointment of members, the Commission shall appoint persons to fill the vacancies in accordance with such terms and procedure as shall be determined by the Commission.

Cessation of Office

A member of the NCCF shall cease to hold office whenever he or she:

- a. dies or resigns;
- b. is removed for a conflict of interest;
- c. no longer meets the applicable qualification requirements contained in these Guidelines;
- d. becomes disqualified under the paragraph on disqualification above;
- e. attains the age of 70 years

Voting

At any meeting of the NCCF, every question shall be decided by a majority of votes cast on the question. In case of an equality of votes, the chairperson shall be entitled to a second or casting vote.

Conflict of Interest

For the purposes of these Guidelines and Regulations, a conflict of interest exists where a member:

- a. possesses an interest outside the scope of this engagement that materially encroaches on the time or attention which should otherwise be devoted to affairs of the Forum as contained in the letter of enlistment;
- b. possesses a direct or indirect relationship with an operator/contractor that is inherently unethical or that may be construed or implied to be, or make possible personal gain due to the MEMBER's ability to influence the process;

- c. entertains relationships that are unethical, rendering its attitude partial toward the operator/contractor for personal reasons or otherwise inhibit the impartiality of the member's judgment;
- d. places by act or omission, the Forum in an equivocal, embarrassing or ethically questionable position;
- e. entertains relationships compromising the reputation and/or integrity of the Forum;
- f. receives benefit by taking personal advantage of an opportunity that properly belongs to the Forum;
- g. discloses confidential information being either the property of the Forum or an operator/contractor to an unauthorized person;
- h. a Member shall not within one (1) year prior to his engagement in the Forum participate or have participated in any commercial transaction involving a proposed contractor/operator, its affiliates, subsidiary whether wholly or partly which is likely to confer any unfair advantage –pecuniary or otherwise on the member or any person directly related to the member or any other thing likely to materially influence its judgment or conduct in relation to the assignment;
- i. a Member shall not while carrying out his assignment, be involved in a relationship which is inimical to the best interest of the Forum.

The Commission may also from time to time issue regulations prescribing:

- a. the terms of any confidentiality agreement to be entered into by members of the NCCF;
- b. the terms and conditions upon which the NCCF may employ external consulting assistance or expert advisory services;
- c. the time and place of, and the procedures to be followed at meetings of the NCCF;
- d. the manner in which the activities of the NCCF may be audited

8. WAIVER

The Regulation provides for the grant of a waiver in cases where the local content standards cannot be met. In order to ensure the granting of waiver doesn't become a routine exercise in certain areas of capacity limitation, the Commission will put in place a framework for filling identified gaps.

Responsibilities for waivers

- Licensees shall make applications for waiver through the NCCF. Applications for waiver shall contain the licensee's content plan to build and establish the capacity needed to discontinue further importation of the item or personnel
- The NCCF shall make recommendations to the Commission for granting waivers
- The Commission shall be responsible for authorization of waivers and for liaising with the relevant agencies (Ministries of Finance, Commerce and Industry with their relevant agencies) to prescribe the appropriate fiscal framework and incentives to attract investment.
- The Commission shall also promote capacity development through collaborations with industry stakeholders.

Waiver Justification

The NCCF shall receive information as part of the waiver request on the following amongst others in areas where there are capacity gaps in-country for the supply of goods and services. This is to justify the need for the waiver and to assure the Forum that no similar waiver request shall be applied for again:

- a. Identify goods and services that are not locally available and would not be available within the timeframe of the project development and submit the estimates of these to the Forum
- b. Evidence of publicity and advertisement through the media nationwide notifying the public of the requirement of such capacity and the intention to seek for import waiver
- c. Conduct market survey of the industry capabilities and submit report showing non-existence of such in-country capacity and capability
- d. Prepare five-year project forecast and identify the industry needs, available gaps and demand profile relevant to the goods and services for which waiver is being requested
- e. Identify strategies for capacity gap closure and how to attract investors
- f. Define clear business and development plan which include but are not limited to; programs, specify timeline, financial resources, etc for actualization of identified strategy
- g. Plan for workshops to sensitize stakeholders and investors on available opportunities in the Nigerian Electricity Supply Industry

Capacity Gap Closure Plan

The Licensee shall provide evidence to demonstrate commitment to execute the plan proposed to close out existing capacity gap in-country. The capacity gap closure plan must accompany every waiver request and shall provide details on the following among others as may be determined by the Commission from time to time:

- a. Manpower Development:
 - Develop a succession plan
 - Identify training needs
 - Draft and approve training program

- Select training partner locally or overseas
- Draft and approve training program and monitor performance

b. Facility Upgrade/Establishment of New Power Plant

- Licensee shall enter into strategic alliance where applicable for capacity gap closure related to the waiver request
- Licensee shall submit plan for actualization of facility upgrade/new power plant establishment. The plan shall contain amongst others, evidence of a prospective investor, method of financing the development, completion schedule with timelines and milestone deliverables clearly specified
- The plan shall clearly specify the role to be played by the licensee and other stakeholder(s) where applicable in terms of ownership/investor, funding, equity/partnership, investor support, etc
- Provide in the plan strategy on how the licensee intends to put to work the new upgraded facility or power plant
- Provide Memorandum of Understanding or Agreement to demonstrate commitment to execute the gap closure plan
- Provide copies of Registration with the Corporate Affairs Commission (CAC)
- Identify in-country location and land acquisition
- Develop scope of work and work packages
- Prepare cost estimates
- Develop work execution/implementation plan

Progress Review Meetings

The licensee shall:

- Furnish to the NCCF on a quarterly basis progress reports on the execution of the gap closure plan

Waiver Approval

A request for waiver shall only be recommended to the Commission subject to the fulfilment of the following conditions:

- The clear demonstration of the existence of in-country capacity gap in the supply of goods and services;
- Evidence of nationwide publicity and advertisement through the media notifying the public of the requirement of such capacity and the report of all enquiries in response to such publicity;
- Evidence of the public hearing/sensitization workshop with the supplier industry on the opportunities available for attracting the capacity in-country and the resolutions at the forum;
- The request shall contain a plan for capacity gap closure which must be workable and achievable within a period of not more than 3 years from the commencement of these Guidelines and Regulations;
- The Commission shall be the **ONLY** approving authority for granting the waiver

9. ROLE OF NERC

NERC is committed to repositioning the NESI in order to promote the utilization of local goods and services.

The Commission's role shall include (but shall not be limited to) the following:

- a. Defining procedure for the monitoring, co-ordination, and implementation of these Guidelines and Regulations;
- b. Implementation of the provisions of these Guidelines and Regulations with a view to ensuring measurable and continuous growth of Nigerian content in the NESI;
- c. Establishing a mechanism for monitoring compliance which may include unscheduled visits to offices or plants of the licensees as it deems necessary
- d. Reviewing recommendations of the NCCF and granting waivers where necessary;
- e. Regulatory review of the implementation of the local content Guidelines and regulations in the NESI
- f. Develop a data base for skills verification and verification of available in-country capacity

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Schedule 1

**LEGAL SERVICES PLAN
SUBMITTED PURSUANT TO SECTION 5 OF THE REGULATIONS FOR THE NESI LOCAL CONTENT DEVELOPMENT 2013
PART A: ANNUAL LEGAL SERVICES FOR THE PAST ONE (1) YEAR**

NAME OF COMPANY:

REGISTERED ADDRESS:

YEAR COVERED:

DATE OF SUBMISSION:

S/N	NATURE OF WORK DONE	NIG EXTERNAL SOLICITORS UTILIZED FOR LEGAL SERVICES IN THE PAST ONE YEAR	EXPENDITURE MADE BY LICENSEE IN THE PAST ONE YEAR	FOREIGN LAW FIRMS UTILIZED FOR LEGAL SERVICES IN THE PAST ONE YEAR	EXPENDITURE MADE BY LICENSEE IN THE PAST ONE YEAR	TOTAL EXPENDITURE MADE IN THE PAST ONE YEAR (NAIRA) (US\$)

FOR AND ON BEHALF OF LICENSEE- SIGNATURE AND DATE: NAME: DESIGNATION:



LEGAL SERVICES PLAN
SUBMITTED PURSUANT TO SECTION 5 OF THE REGULATIONS FOR THE NESI LOCAL CONTENT DEVELOPMENT 2013
PART B: FORECAST OF LEGAL SERVICES REQUIRED DURING THE NEXT ONE (1) YEAR

NAME OF COMPANY:

REGISTERED ADDRESS:

YEAR COVERED:

DATE OF SUBMISSION:

S/N	NATURE OF WORK DONE	PROPOSED NIG EXTERNAL SOLICITORS TO BE UTILIZED FOR LEGAL SERVICES IN THE NEXT ONE YEAR	ESTIMATED EXPENDITURE FOR THE NEXT ONE YEAR	PROPOSED FOREIGN LAW FIRMS TO BE UTILIZED FOR LEGAL SERVICES IN THE NEXT ONE YEAR	ESTIMATED EXPENDITURE TO BE MADE BY LICENSEE IN THE NEXT ONE YEAR	ESTIMATED TOTAL EXPENDITURE FOR THE NEXT ONE YEAR (NAIRA) (US\$)

FOR AND ON BEHALF OF LICENSEE- SIGNATURE AND DATE: NAME: DESIGNATION: