



**NIGERIAN ELECTRICITY REGULATORY COMMISSION
REGULATIONS ON NATIONAL CONTENT DEVELOPMENT FOR THE NIGERIAN ELECTRICITY
SUPPLY INDUSTRY 2013**

Regulation No:
NIGERIAN ELECTRICITY REGULATORY COMMISSION

In exercise of the powers to make Regulations conferred by Section 32(1) and 96 of the Electric Power Sector Reform Act 2005 (Act No. 6 of 2005), the Nigerian Electricity Regulatory Commission makes the following regulation on local content development for the Nigerian Electricity Supply Industry.

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REGULATION ON LOCAL CONTENT DEVELOPMENT FOR THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY 2013

PART I

1. Short title and commencement

- (a) This Regulation may be cited as the Regulations on National Content Development for the Nigerian Electricity Supply Industry 2013
- (b) This Regulation shall come into force on the date on which it is approved by a resolution of the Commission.
- (c) This Regulation shall be signed by the Chairman who shall also cause the seal of the Commission to be affixed thereon.

2. Interpretation

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

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

“Applicant” means a person who has submitted an application for a licence pursuant to Section 70 of the Act;

“Company” of “companies” whenever refers to “licencee” or “licensees” of the Commission.

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

“Electric lines” mean conductors or wire transporting electricity from one point to another.

“Expatriate” refers to a person temporarily or permanently residing in Nigeria.

“Licence” means a licence or other authorization or permit however called issued by the Commission under the Act to carry on any activity regulated under the Act in the NESI;

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

“NESI” or “the Nigerian Electricity Supply Industry” means the totality of activity in the production, transport and delivery of electrical energy to consumers and customers within the Federal Republic of Nigeria which activity including the generation, transmission, distribution, retail, trading of electricity energy and supporting services to any of these five segments.

“Nigerian Content” refers to the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human and material resources and services in the Nigerian Electricity Supply Industry;

“Nigerian goods” refer to goods produced or assembled in Nigeria.

“Nigerian operator” refers to Nigerian providers of goods and services for the NESI.

“Nigerian services” refer to services offered by Nigerian professionals.

“Person” is as defined in the Act;

ii. Unless otherwise specified, in this Regulation:

- (a) words importing any one gender includes the other gender and the singular includes the plural and vice versa;
- (b) words or expressions used in these regulations but not defined shall have the same meanings respectively assigned to them in the Act or relevant subsidiary legislations and regulations issued by the Commission;
- (c) any reference to a statute or statutory provision includes a reference to that provision as amended, re-enacted, or replaced and any regulations or orders made under such provisions from time to time; and
- (d) if the date on which an event is scheduled to occur by these regulations is a day which is not a business day, then the event must occur on the next business day.

3. Application of the Regulation

This Regulation shall apply to all licensees of the Commission.

Part II
NIGERIAN CONTENT AND PROJECT EXECUTION

4. Nigerian content as management philosophy for project execution

- (a) The management of all licensees in the NESI shall have the development of Nigerian content as a key component of their philosophy for project execution.
- (b) The Commission shall establish, maintain and operate a Joint Qualification System (JQS) in consultation with industry stakeholders which shall be administered in accordance with provisions set out in these Regulations.
- (c) The Joint Qualification System shall constitute an industry databank of available capabilities and shall be-
 - (i) the sole system for Nigerian content registration and pre-qualification of contractors in the NESI;
 - (ii) used for the verification of contractors' capacity and capabilities;
 - (iii) used for the evaluation of application of Nigerian content in the operations of companies and contractors in the NESI.
 - (iv) the data bank for national skills development pool; and
 - (v) Used for the ranking and categorization of all service companies on capabilities and Nigerian content.

5. First consideration to be given to Nigerian operators

The management of licensees shall ensure that first consideration is given to qualified Nigerian operators for all works and services.

6. Promotion of measurable growth of Nigerian content

- (a) All licensees shall develop a framework for the development of Nigerian content in line with these and other guidelines issued by the Commission.
- (b) Within sixty days of the end of each financial year, each licensee shall submit to the Commission its annual Nigerian Content Performance Report covering all its projects and activities in the financial year under review.
- (c) The Commission shall undertake assessment and verification of the Nigerian Content Report and issue relevant directives regarding such report as required in the circumstances.

- (d) The Commission shall conduct reviews at such intervals as it may determine but not later than every two years with a view to ensuring a measurable and continuous growth in Nigerian content in all projects, operations, activities and transactions in the NESI.

7. Compliance with Nigerian Content Policies

- (a) All Companies operating in the NESI shall ensure compliance with relevant industry agreements, provided such agreements are not in conflict with this regulation.
- (b) It shall be the responsibility of all companies to communicate their Nigerian content policies and procedures to their contractors and subcontractors and to monitor and enforce their compliance therewith.

8. Submission of Nigerian content plan for major projects

- (a) Prior to the commencement of any project whose total budget exceeds ₦15,000,000 (major project), a licensee shall prepare and submit a Nigerian content plan for that project to the Commission.
- (b) Upon a satisfactory consideration of the content plan submitted, the Commission shall issue a certificate of authorization to the licensee.
- (c) The Commission will communicate its decision on the content plan within 30days of submission.
- (d) The Commission will furnish reasons for any refusal of grant of certificate of authorization.

9. Contracts/Procurement

- (a) All licensees shall give first consideration for Nigerian goods and services in award of contracts.
- (b) Within 30 days of the end of each half year in the financial year, all companies shall submit a list of contracts, subcontracts and purchase orders exceeding N15,000,000 or such other limit as the Commission may determine awarded during the year.
- (c) All contracts or projects whose total budget exceeds ₦15,000,000 (USD) or its equivalent shall contain a “Labour Clause” mandating the use of a minimum percentage of Nigerian labour in specific cadres as may be stipulated by the Commission.

- (d) The listing in (b) above shall provide:-
 - (i) a list of all items and services
 - (ii) value of contract or purchase order;
 - (iii) name of successful contractor or vendor;
 - (iv) a primary location of work
 - (v) estimates of Nigerian content
 - (vi) commencement and completion date;
 - (viii) any other information required by the Commission for the purposes of implementing the provisions of this Regulation.

- (e) The list shall indicate the Nigerian Content in the bid evaluation exercise for the contracts awarded by the Company.

- (f) All operators and project promoters shall consider Nigerian content when evaluating any bid where the bids are within 1% of each other at commercial stage and the bid containing the highest level of Nigerian content shall be selected provided the Nigerian content in the selected bid is higher than its closest competitor.

- (g) Notwithstanding the provisions of this section, where there is inadequate local capacity for any of the contracts to be undertaken, the Commission may authorize the importation of the relevant items provided such an approval shall not continue for longer than 3 years from the date of the Commission's approval.

Part III
NIGERIAN CONTENT AND EMPLOYMENT

10. **First consideration for employment and training**
- (a) All Companies shall give first consideration for suitably qualified Nigerians for employment and training.
 - (b) For each of its operations, an operator or project promoter may retain a maximum of 5% management positions as may be approved by the Commission as expatriate positions.
 - (c) Where there is need for employment of an expatriate, a company shall apply to the Commission for approval to do so.
 - (d) The application for employment of an expatriate shall be in the form prescribed by the Commission with appropriate justification showing that no suitably qualified Nigerian has been found for the position following diligent search.
 - (e) All operators and companies operating in the NESI shall employ only Nigerians in their junior and intermediate cadre or any other corresponding grades designated by the operator or company.
 - (f) Where Nigerians are not employed because of their lack of training, the operator shall ensure to the satisfaction of the Commission, that every reasonable effort has been made to supply such training and such effort and the procedure for execution shall be contained in the operators employment and training plan.
11. **Submission of employment and training plan**
- (a) At the end of each financial year, all licensees shall submit their employment and training plan for the next financial year to the Commission.
 - (b) The employment and training plan shall make provision for succession planning to enable Nigerians assume positions that may be occupied by expatriates.
 - (c) The training plan shall take into cognizance the full involvement of Nigerians in any research and development activity undertaken by the company.
 - (d) Nigerians shall be given first consideration for training and employment in the work programme for which the plan was submitted.

- (e) Any collective agreement entered into by the licensee submitting the plan with any association of employees respecting terms and conditions of employment in the project shall contain provisions consistent with this section.

Part IV
TRANSFER OF TECHNOLOGY

12. **Programme for technology transfer plan**
 - (a) Each licensee shall prepare and submit to the Commission an annual technology transfer report.
 - (b) The plan shall contain details of various technologies deployed by the operator and the proposed modalities for transfer to Nigerians.
13. Licensees working through their Nigerian subsidiaries shall demonstrate that a minimum of 51% of the equipment deployed for execution of work are owned by the Nigerian subsidiaries.
14. All licensees shall give full and effective support to technology transfer by encouraging and facilitating the formation of joint ventures, partnering and the development of licensing agreements between Nigerian and foreign contractors and service or supplier company's agreement for all such joint ventures or alliances shall meet the requirements of Nigerian content development to the satisfaction of the Commission.
15. Where necessary, the Commission shall consult and make recommendation to the relevant arms of government on appropriate fiscal framework and tax incentives for foreign and indigenous companies which establish facilities, factories, production units or other operations in Nigeria for the purpose of carrying out production, manufacturing or for providing services and goods otherwise imported into Nigeria.
16. Failure to prepare and submit an acceptable technology transfer report when due shall render a licensee liable to fines and other sanctions as may be determined by the Commission.

Part V
PROFESSIONAL SERVICES

17. Insurance and reinsurance business

- (a) Insurance and reinsurance business in the sector shall be carried out by Nigerian registered companies.
- (b) Where there is a reasonable need for a company to engage an off-shore reinsurance firm, prior consent of the Commission must be sought to enable the Commission confirm from the National Insurance Commission that this is necessary.
- (c) Application for consent to engage an off-shore insurance firm shall be in the format specified by the Commission.
- (d) At the end of each financial year, each company shall submit to the Commission a list of all insurance companies and insurance brokers through which insurance covers were obtained in the past financial year, the classes of cover obtained and the expenditure made by the operator for that purpose.

18. Legal Services

- (a) Legal services in the sector shall be carried out by legal practitioners qualified to practice in Nigeria.
- (b) Foreign legal consultants may only be engaged in the sector where this is recommended in writing by a firm of Nigerian legal practitioners and the required services are rendered in partnership with the same or another firm of Nigerian legal practitioners.

19. Financial and Capital Market Services

- (a) Financial and capital market services in the sector shall be rendered by Nigerian registered companies licensed by and in good standing with the relevant regulatory authorities.
- (b) Foreign Financial and capital market services may only be engaged in the sector where this is recommended in writing by a firm of Nigerian Financial and capital market services providers and the required services are rendered in partnership with the same or another firm of Nigerian Financial and capital market services.

Part VI

NIGERIAN CONTENT CONSULTATIVE FORUM

20. Establishment of Nigerian Content Consultative Forum

- (a) There shall be established for the sector the Nigerian Content Consultative Forum.
- (b) The Forum shall serve as an advisory body to the Commission on matters relating to availability of local capabilities, upcoming projects in the NESI and other policy proposals that may be relevant to Nigerian content development in the NESI.
- (c) The forum shall comprise of both licensees and other industry stakeholders and representatives from the following:
 - i. fabrication
 - ii. engineering
 - iii. finance services, legal and insurance
 - iv. information and communication technology
 - v. education and training; and
 - vi. any other professional services as may be determined by the Commission from time to time.
- (d) Meetings of the Forum shall be held quarterly and whenever necessary for the expeditious conduct of its business at such times, at the Commission or such other venue as may be determined by the Commission.
- (e) The Commission shall designate a Forum Chairperson and the Secretary. The Chairperson shall be selected from amongst the Forum members while the Secretary shall be a staff of the Commission.
- (f) Members of the Forum shall have tenure of 3 years with an option for renewal for one term and no more.
- (g) The Forum Chairperson or in his/her absence, the acting chairperson elected by members present, shall preside at all meetings of the Forum.
- (i) The Forum Secretary shall keep written minutes of all meetings and copies of the minutes shall, upon approval by the Forum Chairperson, be circulated to all members.
- (j) The quorum for meetings of the Forum shall be three (3).

- (k) Decisions of the Forum shall be on the basis of simple majority of members present and voting; provided however that in the event of an equality of votes, the Forum Chairperson shall have the second or casting vote.

Part VII

REPORTING, COMPLIANCE AND ENFORCEMENT

21. Powers of the Commission to monitor implementation of the Regulation

- (a) In monitoring and enforcing these Regulations the Commission shall be guided by the provisions of Sections 94 and 95 of the Act and any other regulations that may be in force by the Commission.
- (b) Without prejudice to the specific provisions of the Act, Regulations or any License Condition, the Commission may, in the exercise of its enforcement powers pursuant to these Regulations and the Act, institute civil proceedings in Court against any person for remedies that may include injunctive relief, recovery of administrative fines, specific performance or pecuniary awards or damages.

22. Requirements for submission of Nigerian Content Performance Report

- (a) Each operator in the sector shall prepare and submit to the Commission an annual Nigerian content performance report.
- (b) The report shall contain details in the format specified by the Commission.

23. Responsibility to communicate Nigerian content policies to contractors

- (a) It is the responsibility of the licensees to communicate the Nigerian content policy to their contractors.
- (b) Failure to communicate this policy shall render an operator liable to a fine or such disciplinary measures as the Commission may reasonably decide.

26. Responsibility of the Commission for enlightenment on Nigerian content

- (a) The Commission shall publish on a quarterly basis on its website the details of its monitoring and enforcement activities pursuant to this Regulation

- (b) Such publication shall include sufficient details on the actions taken by the Commission in regard to enforcement issues discovered or reports made by persons.

27. Penalties

- (a) The Commission may establish such penalties as it deems fit to ensure the effective discharge of duties and compliance under the Act and this Regulation.

28. Inherent Powers of the Commission

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

29. Schedules

- a. Projects requiring Nigerian Content
- b. Minimum and specification of Nigerian content
- c. Requirement for labour

SIGNED BY THE ORDER OF THE COMMISSION

On this _____ day of _____, 2013

Dr. Sam Amadi
Chairman/CEO