



BANWO & IGHODALO

2013 MARGINAL FIELD BID ROUND

GREY MATTER

1. INTRODUCTION

The Federal Government of Nigeria, in a bid to encourage Nigerian indigenous participation in the oil and gas industry and thereby enhance Nigeria's crude oil production capacity, established a regime for the concessioning of marginal fields. The backbone of the regime is the Petroleum (Amendment) Act No. 23 of 1996. The legislation empowers the President to declare certain fields lying and being within contract or leased areas as marginal fields. Under the Petroleum Act¹, a field shall be construed as a marginal field, if it falls within the following parameters, to wit; (i) a discovery has been made, (ii) the field remains unattended to for a period of up to ten (10) years from the date of discovery thereof, and (iii) the field is subsequently declared as a "marginal field" by the President. The holder of an oil mining lease, may, with the consent of, and on terms and conditions approved by the President, farm-out any marginal field within its lease area.

In 2001, the Federal Government awarded twenty four (24) marginal fields to 31 indigenous companies via a competitive bidding process.

On November 28, 2013, the Federal Government announced a second marginal field bid round, inviting prospective Nigerian indigenous companies to bid for thirty one (31) marginal fields (comprising 16 onshore fields and 15 offshore fields).² Through the award of designated marginal fields to indigenous companies with requisite financial and technical capacity to develop the fields, the Federal Government hopes to further increase Nigerian indigenous participation in the oil and gas industry, deepen local capacity and also boost Nigeria's crude oil production capacity/reserves.

2. THE 2013 MARGINAL FIELD BID ROUND

The Department of Petroleum Resources ("DPR") of the Ministry of Petroleum Resources recently issued Guidelines for Farm-out and Operation of Marginal Fields, 2013 (the "**Guidelines**"), which sets out general terms for the marginal bid round announced in November, as well as bidding procedures for the award of these Marginal Fields. In addition, the DPR also issued the Pre-qualification, Technical and Commercial Field-Specific Bid Submission Requirements (the "**Submission Requirements**") for prospective bidders, in connection with the bid round.

The key terms contained in the Guidelines and the Submission Requirements (together, the "**Bid Guidelines**") issued by the DPR are highlighted below:

Corporate Structure

Only companies registered in Nigeria under the Companies and Allied Matters Act,³ and with fifty one percent (51%) shares beneficially held by Nigerians shall be eligible to bid. Priority shall be given

¹ Cap P10, Laws of the Federation ("LFN"), 2004

² The specific fields are yet to be announced. It is anticipated that the Minister of Petroleum Resources will release, and make public the fields on December 10, 2013.

³ Cap C20, Laws of the Federation, 2004

to companies bidding in consortia, which are able to demonstrate requisite technical and financial capabilities to operate an awarded field.

At the flag-off roadshow, organized by the DPR to create awareness for the process, the Director of the DPR stated that the equity structure of any bidding entity can only admit of a maximum twenty five percent (25%) equity block. The effect of this is that any bidding entity must have at least four sponsors.

Pre-Qualification

The DPR will review applications from prospective bidders and shall pre-qualify such bidders it deems possess requisite technical and financial capacity, after evaluating applications using clear and objective criteria. Further, no more than five bidders shall be pre-qualified for each field. Where a bidder is pre-qualified, such bidder may only bid for a maximum of three fields.

Application Fees

A prospective bidder (or joint bidders) shall be required to pay the following non-refundable fees, per field:

- (i) Two Hundred Thousand Naira (N200,000) application fee;
- (ii) Three Hundred Thousand Naira (N300,000) processing fee;⁴

Where a bidder is pre-qualified, the following additional fees shall be payable, per field:

- (i) Three Thousand United States Dollars (US\$3,000) data prying fee;
- (ii) Fifteen Thousand United States Dollars (US\$15,000) data leasing fee;

In addition, a data service fee of Two Thousand United States Dollars (US\$2,000) shall be payable to Schlumberger (the DPR's designated technical adviser), where a bidder requires technical assistance in connection with leased data.

Bid Submission and Evaluation Criteria

Pre-qualified bidders shall be required to submit field-specific technical and commercial bids in respect of each marginal field for which the bidder is interested. In evaluating prospective bidders, the DPR shall take into consideration local content issues, financial, technical and managerial capabilities, host community integration plans, product evacuation arrangements/plans, and ability to effectively operate fields within contract areas operated by multinationals.

Specific submission requirements shall be communicated by the DPR after the pre-qualification exercise.

⁴ In relation to overseas applicants, the Bid Requirements provide for an application fee of US\$1,600 or GB1,000 and a processing fee of US\$3,200 or GB2,500

The bidder shall also be required to confirm its willingness to pay a flat signature bonus of Three Hundred Thousand United States Dollars (US\$300,000), where selected as a successful bidder. The signature bonus is required to be paid within ninety days of the award of the marginal field.

Marginal Field Farm-out Agreement

Upon selection, the successful bidders shall enter into negotiations with the lease holder(s) regarding the terms of a farm-out agreement (“**MFFA**”). Some of the key terms expected to be reflected in the MFFA include:

- Appraisal and drilling rights and obligations - New pool/reserve discoveries shall be credited to the awardee. Further, terms and conditions for deep drilling activities shall be set out.
- Field Data - Relevant field data in respect of the marginal field shall be leased to the awardee.
- Obligation to the Government - Payment of all applicable fees and bonuses by the awardee and the procurement of government approval for the MFFA shall be conditions precedent to the MMFA).
- Indemnification by the awardee of the lease holder in respect of environmental or abandonment liabilities arising from the awardees activities within the marginal field - This may include the obligation to provide guarantees and undertake and maintain insurances in respect thereof.
- Abandonment – the awardee shall be required to provide security for abandonment in respect of its activities, reflected as a percentage of the awardee’s budget to be provided in a form also agreed with the leaseholder.
- Unitisation obligations in respect of straddling fields – where the marginal field covers reservoirs which straddle lease areas, parties will be required to negotiate and agree unitisation arrangements in respect thereof. This shall be a condition precedent to the approval of the MFFA.
- Government back-in rights – the operations of the awardee shall be subject to the right of the government to back-in to the marginal field.
- Community relations - the awardee shall be responsible for all community relations obligations within the marginal field area.

The awardee and the leaseholder shall negotiate and agree the consideration for the farm-out of the marginal field. Where parties are unable to agree, the Minister shall resolve the matter on behalf of the parties. The awardee shall also negotiate and agree overriding royalties to be paid to the leaseholder, as well as relevant crude handling and transportation arrangements with the lease holder.

The Guidelines provide that the activities of an awardee in respect of a marginal field will be assessed two (2) years from the date of consent to the farm-out was granted by the Federal Government. Where an awardee is unable to show evidence, satisfactory to the DPR, of the development of the farm-out area, the Minister may withdraw the award of the field. However, where an awardee is able to show satisfactory evidence of development of the farm-out area, the farm-out shall be renewed in accordance with the law⁵. While the Petroleum Act does not specifically deal with the renewal of marginal fields⁶, marginal fields are typically renewed for the life of the relevant field, where the awardee satisfies the condition set out above. In this regard, the Guidelines provide that a marginal field shall revert to the Government twenty four months from the end of production operations of the field.

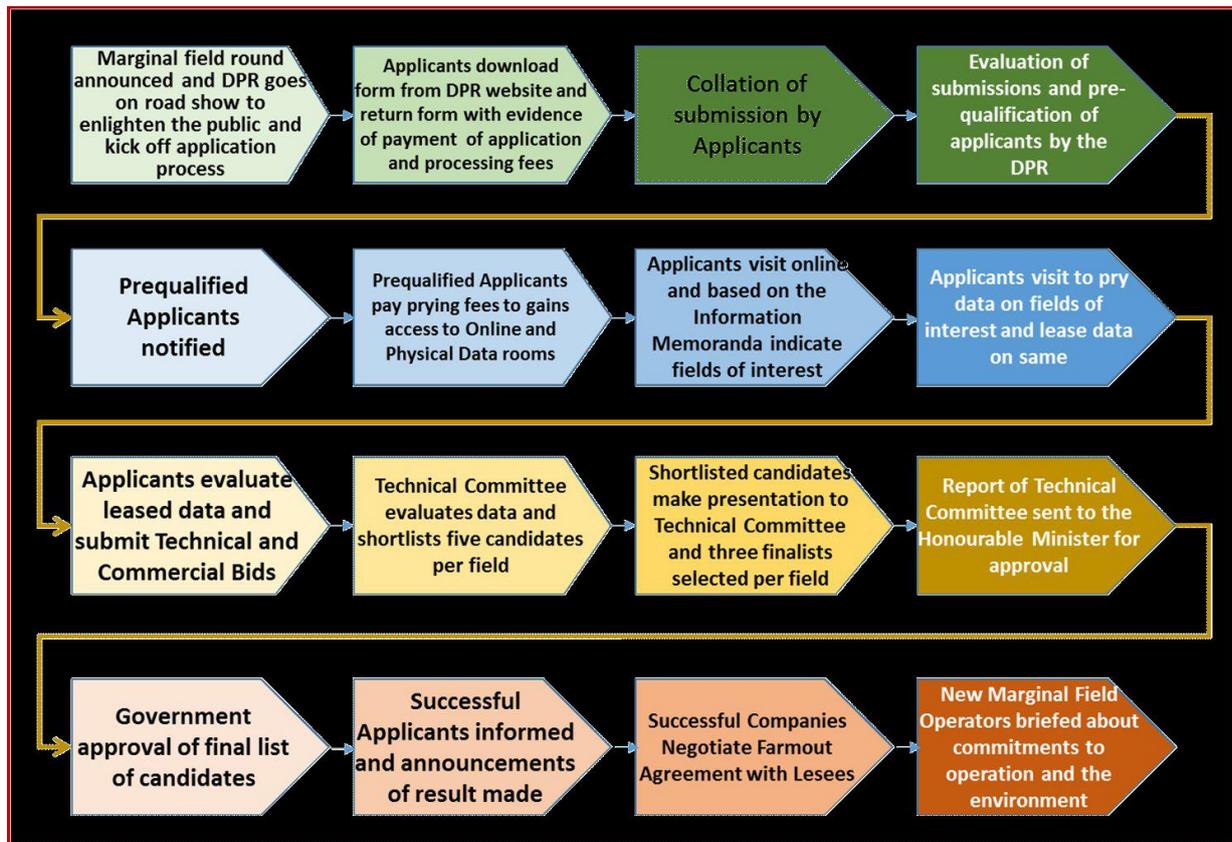
In relation to financing of the marginal fields, the Guidelines provide that an awardee may enter into any arrangements necessary to enable it perform its obligations in relation thereto. However, awardees are prevented from encumbering the field in any way. The implication of the foregoing is that an awardee may enter into relevant technical and financial service agreements in relation to the financing and operation of the marginal field, but may not enter into any financing arrangements which involve the use of the marginal field as security (this will include an assignment by way of security). Further, In relation to the transfer of interests in marginal fields, the Guidelines provide that any transfer of interest in a marginal field shall require the prior consent of the Minister.

It is expected that the bid process will be concluded within six months of commencement thereof.

The Marginal Field Bid Process Chart

⁵ This suggests that the initial farm-out period shall not exceed 2 years

⁶ An oil mining lease is typically renewed for 20 years



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