

CONTRACTORS AND MDAs OF GOVERNMENT; REGULATORY REQUIREMENTS FOR CONTRACT AWARD

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“CONTRACTORS & THE MDAs; REGULATORY COMPLIANCE FOR AWARD OF CONTRACT IN NIGERIA”

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1. INTRODUCTION

- Contextually, “Contractor” is any registered company, partnership, individual, sole proprietor, joint venture or any other legal entity conducting business which has or intends to have a procurement agreement with a procuring entity like government, its ministries and agent.
- Contractor includes suppliers, consultants and any other person providing goods and or services as an independent contractor by whatever title or name.
- “MDAs of Government” here means Ministries, Departments and Agencies of government.
- “Government” in our context is limited to Federal government of Nigeria and expressly excludes state and local governments.
- Government through laws, regulations and policies regulate business and other engagements in Nigeria.

2. WHO CAN TRADE WITH GOVERNMENT?

- There are only two classes of persons that can trade with government. The first person is a Human Being while the second person is a Legal/Corporate Beings (registered business).
- i. **NATURAL/HUMAN BEINGS**
 - All human beings except those that are minors (below 18), insane or bankrupt are allowed to contract and transact in Nigeria. Nigerians and foreigners are at liberty to transact and deal with government providing goods and or services.
 - Hence, registered and unregistered business names, partnerships and trading names can trade with government because they are considered and treated in the names, status and shadows of their owners.

WHO CAN TRADE WITH GOVERNMENT? Cont'd.

ii. LEGAL/CORPORATE BEINGS

- Our laws recognise and deem registered companies whether private or public companies as legal beings that can sue and sued like human beings.
- Legal beings can relate and contract business, own and manage business, acquire and own lands, give and borrow money among other things. Registered companies have all the powers of a natural person of full capacity.

3. HOW TO TRADE WITH GOVERNMENT?

- Trading with government demands some regulatory compliance of laws and regulations. MDAs ensure that regulatory laws are enforced by demanding compliance from all companies, individuals and contractors desirous to do business with government.
- Regulatory compliances often demanded by government include; tax, levies, registration and compliance certificates. Presentation of proof of regulatory compliances, proficiency, skills, experience and financial ability among other things qualify contractors to bid for contract with government.

4. LAWS FOR GOVERNMENT CONTRACTS

i. Public Procurement Act (PPA)

- Single most important and supervising law for trading and doing business with Nigerian government is the Bureau of Public Procurement.
- Bureau of Public Procurement Act commenced on 4th June, 2007 establishing , The National Council on Public Procurement and the Bureau of Public Procurement as the regulatory authorities responsible for the monitoring and oversight of public procurement, harmonizing the existing government policies and practices among other things.
- Primarily the Bureau regulates procurement and procurement process in government and its agencies. Kindly note that, most states of the Federation have State Public Procurement laws.

LAWS FOR GOVERNMENT CONTRACTS, Cont'd.

A. ROLE OF THE PUBLIC PROCUREMENT ACT AND THE BUREAU OF PUBLIC PROCUREMENT IN GOVERNMENT CONTRACTS.

1. The Public Procurement Act (PPA) established the Bureau of Public Procurement (BPP).
2. The Bureau superintends over procurement of goods and services by government and its agencies in Nigeria.
3. The PPA applies to all federal government, ministries, departments, agencies and parastatal.
4. PPA also applies to any other entities outside those mentioned above that derives at least 38% of the funds appropriated for procurement by it from the federal government's share of the Consolidated Revenue Fund.

LAWS FOR GOVERNMENT CONTRACTS, Cont'd.

5. PPA does not cover special goods, works and services involving national security and national defence unless the express approval of President was obtained.
6. BPP sets a thresholds for approval of award of contract
7. PPA allows government and its agencies to apply to BPP for “Certificate of ‘No Objection’ to Contract Award” before any procedure for contract award is commenced.
8. BPP sets regulations, guidelines and the conditions precedent for the award of Certificate of “No Objection” to government agencies.
9. Any procurement purported to be awarded without a “Certificate of ‘No Objection’ to Contract Award” duly issued by the BPP is invalid, null and void.
10. BPP is to ensure that all contract procedures and biddings are open, competitive, transparent, timely, equitable, and accountable, ensuring value for money, promoting competition, economy and efficiency in conformity with the PPA and regulations.

LAWS FOR GOVERNMENT CONTRACTS, Cont'd.

11. Legal persons and natural persons or combination of same can jointly and severally seek for contracts and will also be jointly and severally held responsible for the non-performance and improper performance of such contractor.
12. Contractors willing to bid for contracts in addition to any requirement contained in any call for bids, must possess the following;
 - Proof of Professional and Technical qualifications, financial capability, equipment and other relevant infrastructure, adequate personnel and legal capacity to enter into the procurement contract.
 - Proof of payment of necessary taxes, pensions and social security contributions
 - An affidavit disclosing whether or not any officer of the relevant committees of the relevant government agency or BPP is a former or present director, shareholder or has any pecuniary interest in the contractor and confirm that all information presented in its bid are true and correct in all particulars.

LAWS FOR GOVERNMENT CONTRACTS, Cont'd.

13. Contractors willing to bid for contracts in addition to any requirement contained in any call for bids or shown above, must ensure that;
- None of its directors has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter.
 - Its company is not in receivership, the subject of any form of insolvency or bankruptcy proceedings
14. BPP and any government agency seeking to award contracts may unilaterally exclude a contractor from any bidding and contracting procedures of a contract if it finds evidence that such contractor lacks any of the above listed information or is corrupt, giving or promising to give gift to BPP staff or that of relevant government agency in order to influence any action, or decision making of such institution.

LAWS FOR GOVERNMENT CONTRACTS, Cont'd.

B. REGISTRATION OF CONTRACTORS WITH THE BUREAU OF PUBLIC PROCUREMENT

- The Bureau of Public Procurement (BPP) maintains national database of contractors working or willing to work with government and its agencies.
- Upon registration with BPP, the bureau issues an Interim Registration Report (IRR). After issuance of IRR, BPP may issue a certificate of registration to such contractor after verification of information provided by contractor. Proof of registration with the Database of BPP is part of requirements for bidding of government contracts. IRR is still a valid as evidence of registration in the BPP's Database. Hence, where a Certificate of Registration is not ready, a contractor can submit its IRR in bidding for contract.

LAWS FOR GOVERNMENT CONTRACTS, Cont'd.

Requirements for registration in the National Database of contractors include;

- Company Registration Details
- Proof of payment of relevant tax/ Company Tax Compliance certificate
- Employee Pension Compliance Information (this does not apply where a contract has less than 3 staff)
- Industrial Training Fund Certificate (this does not apply where a contract has not more than 5 staff or annual turnover of 50 Million Naira)
- Business Category Information
- Professional Body Regulatory Information (For Services Companies only)
- Manufacturer Representation Information (For Goods category only)
- Business Classification Information
- Company Key personnel Information

LAWS FOR GOVERNMENT CONTRACTS, Cont'd.

C. CURRENT AFFAIRS ON PUBLIC PROCUREMENT ACT

- There are calls for amendment of the Public Procurement Act. Some bills at different lawmaking stages seeking to amend part of the PPA, are;
- Public Procurement Act 2007 (Amend.) Bill, 2016 sponsored by Hon Oluwole Oke (HB 475);
- Public Procurement Act (Amend) Bill, 2016 sponsored by Sen. Sam Egwu (SB 232); and
- Public Procurement Act 2004 (Amend.) Bill sponsored by Hon. Abbas Tajudeen (HB 541).

LAWS FOR GOVERNMENT CONTRACTS, Cont'd.

- Apart from the Public Procurement Act, there are other laws setting standards expected of persons (contractors) doing or willing to trade with government of Nigeria.
- Some other specific laws with regulatory compliances needed to trade with government includes;

LAWS FOR GOVERNMENT CONTRACTS, Cont'd.

S/N	REGULATORY AUTHORITY	LICENSE AND PURPOSE	ENABLING LAW
1.	Corporate Affairs Commission	Business Registration Certificates for business names and companies registered in Nigeria.	Company and Allied Matters Act, 1990.
2.	National Office for Technology Acquisition and Promotion (NOTAP)	Certificates of Registration, Extension and Renewal Of Technical, Management and Know-How Contracts and Agreements among others for lawful remittance of approved technology and management fees to a foreign account.	National Office for Technology Acquisition and Promotion Act, 1979
3.	National Pension Commission	Certificate of Compliance is a proof adherence to national pension law and prequalification in relating with numerous government agencies like Bureau of Public Procurement.	Pension Reform Act, 2014

4.	Bureau of Public Procurement (BPP)	Certificate of Registration in to the database of government approved contactors and service providers allowed to bid for government contracts.	Bureau of Public Procurement 2007
5.	State Land Registries and land Departments of Federal Government Ministries, Departments and Agencies	Certificate of Occupancy and Right of Occupancy for a termed occupancy of land in states or owned by Federal Government	Land Use Act, 1978
6.	Industrial Training Fund	Compliance Certificate is a proof of adherence to Industrial Training Fund Act. It is a prequalification for registration with Bureau of Public Procurement and necessary for Companies in Free Trade Zone requiring approval for expatriate quota and/or utilizing custom services in matters of export and import.	Industrial Training Fund Act
7.	National Lottery Commission	Lottery Permit and Lottery License. Lottery Permit to carry out lottery Promo for 12 months and a Lottery License for 10 years to carrying on a lottery business.	National Lottery Commission 2005
8.	Trademarks, Patents And Designs Registry, Commercial Law Department, Federal Ministry of Trade And Investment.	Certificates of registration of trademarks, patents and designs. They accord exclusive ownership and afford protection of trademarks, patents and designs in Nigeria	Trademark Act Patent and Designs Act

9.	National Copyright Commission	Copyright Certificate for Literary works (books, manuals, users guide and other written/printed works, and computer programmes), Musical works (musical scores/compositions duly recorded), Artistic works (visual arts, pictures, drawings, 3 dimensional works etc), Cinematographic films and Sound Recordings (audio recordings)	Copyrights Act
10.	The Nigeria Immigration Services (NIS)	Expatriate Quota, Business, Residential and Work Permits For foreigners willing to do business or be employed in Nigeria.	Immigration Act
13.	National Agency for Food and Drug Administration and Control (NAFDAC)	Certificates and Permits for drug and food importation, trading, production, packaging, labelling and product description.	National Agency for Food and Drug Administration and Control Act
14.	National Broadcasting Commission	Radio Broadcasting License TV Broadcasting License Satellite Broadcasting License for operations in Nigeria.	National Broadcasting Commission Act
15.	Nigerian Electricity Regulatory Commission	Operator's Licenses for electricity generation (including Permits for captive generation), transmission, system operation, distribution and trading. For generations from 1 MW and above and a distribution network of above 100KW.	Electric Power Sector Reform Act

16.	Market Operations Department, Transmission Company of Nigeria	Market Operator License for an operator (Generator or Distributor) in the Nigerian Electricity Supply Industry (NESI)	Electric Power Sector Reform Act
17.	Central Bank of Nigeria	Licenses for Commercial Bank, Microfinance Bank, Bureau De Change, Discount Houses, Non-Interest Bank, Merchant Banks and Primary Mortgage Banks.	Central Bank Act
18.	Nigeria Social Insurance Trust Fund (NSITF)	Compliance Certificate. It is a prequalification in relating with numerous government agencies like Petroleum Trust Development Fund (PTDF)	Nigeria Social Insurance Trust Fund (NSITF) Employees Compensation Act
19.	Federal Reporting Council of Nigeria (FRCN)	Registration Certificate and Annual Dues Receipts for public interest entities as well as professionals engaged in professional reporting process.	Federal Reporting Council Act
20.	Nigerian Electricity Management Services Agency (NEMSA)	Certificate for Electrical Installation Contractors and electricity Installations	Nigerian Electricity Management Services Agency Act.

21.	Standard Organisation of Nigeria (SON)	Certificates for products in commerce and industry throughout Nigeria.	Standard Organisation of Nigeria Act
22.	Nigerian Communication Commission	Communication Licenses for telecommunication operators.	Nigerian Communication Act
23.	Special Control Unit Against Money Laundry (SCUML)	Certificate of registration for Non-Financial Institutions.	Money laundry (Prevention) Act, Terrorism Prevention Act
24.	National Environmental Standards and Regulations Enforcement Agency (NESREA)	Environmental Impact Assessment Certificate for major development project that may affect environment.	National Environmental Standards and Regulations Enforcement Agency Act
25	Advertising Practitioners Council of Nigeria	Approval for an advertisement for an advert to be advertised printed and aired.	Advertising Practitioner's (Registration etc) Act

26.	Federal Inland Revenue Services	<p>Tax Clearance Certificates, Withholding Tax Credit Note and Receipts for Company Tax, Stamp Duties, Value Added Tax, Capital Gain Tax for companies and residents of Abuja, Petroleum Profit Tax, Withholding tax on companies and residents of the Federal Capital Territory, Abuja It s a prequalification in relating with numerous government agencies like Bureau of Public Procurement.</p>	Taxes and Levies (Approved List for Collection) Act, Associated Gas Re-Injection Act, Capital Gains Tax Act,, Taxes and Levies (Approved List for Collection) Act, Casino Act and others.
27.	States Inland Revenue Services	<p>Tax Clearance Certificates, Withholding Tax Credit Note and Receipts for Personal Income Tax of all workers, partnerships and business names resident in a given state, road tax, Withholding tax for individuals, Pools betting and lotteries, gaming and casino taxes, Capital Gain Tax for individuals, Stamp Duties for individuals.</p>	Federal Inland Revenue Service (Establishment) Act States' Revenue Laws Taxes and Levies (Approved List for Collection) Stamp Duties Act
28.	Local Government Authorities (LGAs)	<p>Tax Clearance Certificates and Receipts For Shops and kiosks rates, Slaughter slab fees, Right of Occupancy fees on lands in rural areas, excluding those collectable by the Federal and State Governments, Domestic animal licence fees, Merriment and road closure levy, Wrong parking charges, Religious places establishment permit fees, Signboard and Advertisement permit fees, Public convenience, sewage and refuse disposal fees, Bicycle, truck, etc.</p>	Local Government Authorities Levies Bye-Laws Taxes and Levies (Approved List for Collection)
29.	Consumer Protection Council (CPC)	<p>Certificate of Registration of product/service for all products and services in Nigeria.</p>	Consumer Protection Council Act

5. CONCLUSION.

- Individual Nigerians and foreigners can trade with government. Business names, companies and partnerships registered in Nigeria or outside Nigeria can also trade with government.
- Government like any other natural or legal person can trade with any person with competence in line with the Public Procurement Act.
- Anyone willing to contract with government must comply with other necessary laws, regulations, policies and guidelines provided by government and come under the directions set by the Bureau of Public Procurement.

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