



ANALYSING THE 2020 MARGINAL FIELDS BID ROUND

ARTICLE SERIES 



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JUNE 2020

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INTRODUCTION

The Federal Government of Nigeria, through the Department of Petroleum Resources (DPR), recently announced the commencement of the marginal fields bid round for 2020. The criteria and procedure for the process have been documented in the Guidelines for the Award and Operations of Marginal Fields in Nigeria (the “Guidelines”) which was approved on May 31, 2020. If successful, it will be the second marginal fields bid round to be conducted in Nigeria, after the 2002/03 marginal field bid rounds which saw the award of 24 fields to 31 indigenous companies.

WHAT ARE MARGINAL FIELDS?

A marginal field is defined in the Guidelines as any field that has been discovered and has been left unattended for a period of at least 10 (ten) years, from the date of first discovery, or such field which the President[1] may from time to time identify as a marginal field.[2]

In simple terms, marginal fields are un-producing/un-appraised fields within an oil & gas acreage already covered by a petroleum licence. They are usually fields which the licence holders have considered as not being profitable for development.

APPLICATION FOR A MARGINAL FIELD

Application is only open to wholly or substantially Nigerian-owned companies.[3] Interested companies are to submit an application indicating the field(s) for which their application relates, and pay the registration and application fees.[4] The DPR will conduct a pre-qualification exercise where it will evaluate all received applications, and then announce the pre-qualified companies.

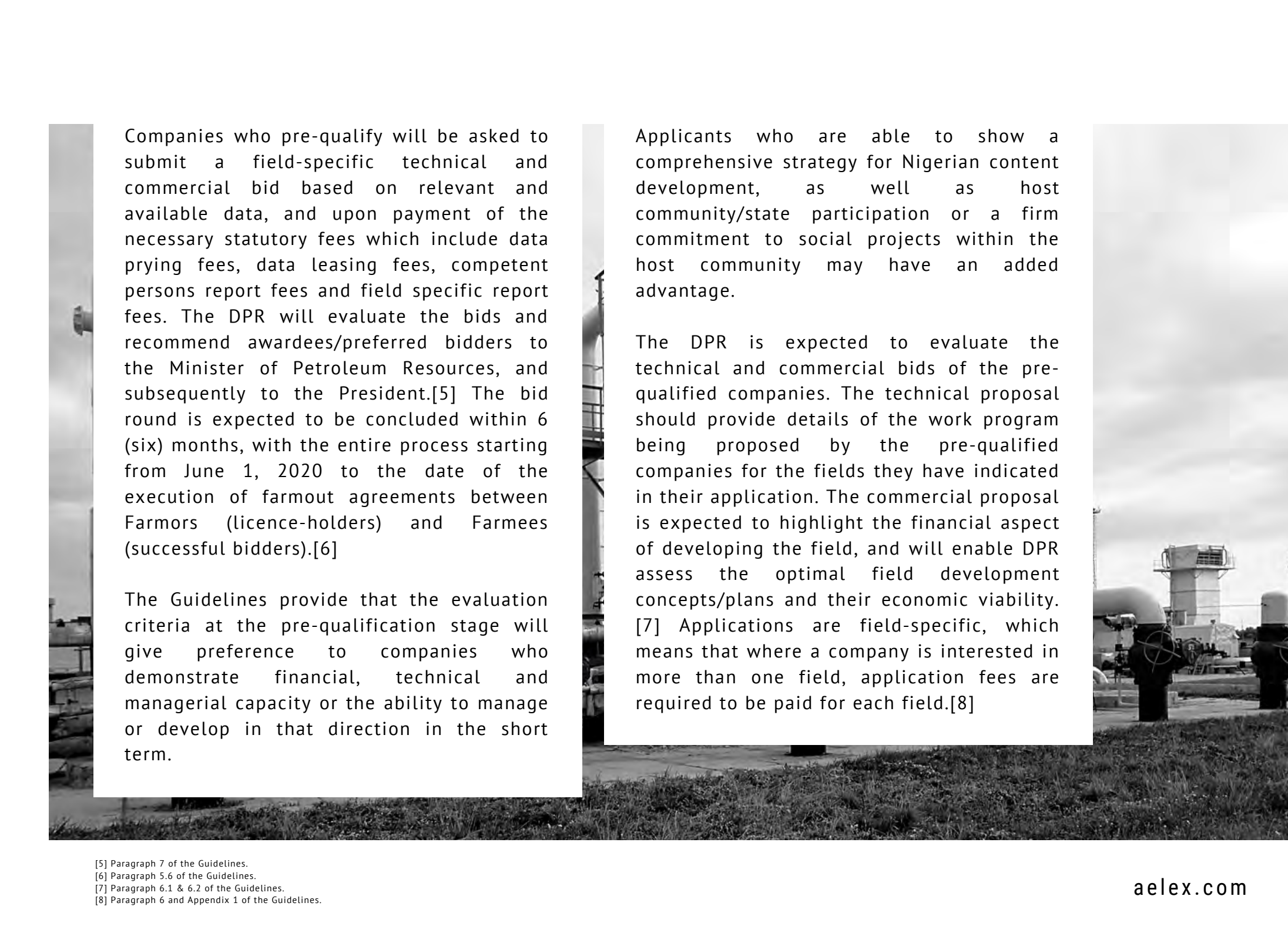


[1] The President of the Federal Republic of Nigeria.

[2] Paragraph 4, Guidelines for the Award and Operations of Marginal Field in Nigeria, DPR Guide 0041 – 2020 (the “Guidelines”).

[3] Paragraph 5.4.6 & 5.4.8 of the Guidelines.

[4] Paragraph 5.3 & 5.4.7



Companies who pre-qualify will be asked to submit a field-specific technical and commercial bid based on relevant and available data, and upon payment of the necessary statutory fees which include data prying fees, data leasing fees, competent persons report fees and field specific report fees. The DPR will evaluate the bids and recommend awardees/preferred bidders to the Minister of Petroleum Resources, and subsequently to the President.[5] The bid round is expected to be concluded within 6 (six) months, with the entire process starting from June 1, 2020 to the date of the execution of farmout agreements between Farmors (licence-holders) and Farmees (successful bidders).[6]

The Guidelines provide that the evaluation criteria at the pre-qualification stage will give preference to companies who demonstrate financial, technical and managerial capacity or the ability to manage or develop in that direction in the short term.

Applicants who are able to show a comprehensive strategy for Nigerian content development, as well as host community/state participation or a firm commitment to social projects within the host community may have an added advantage.


The DPR is expected to evaluate the technical and commercial bids of the pre-qualified companies. The technical proposal should provide details of the work program being proposed by the pre-qualified companies for the fields they have indicated in their application. The commercial proposal is expected to highlight the financial aspect of developing the field, and will enable DPR assess the optimal field development concepts/plans and their economic viability. [7] Applications are field-specific, which means that where a company is interested in more than one field, application fees are required to be paid for each field.[8]

[5] Paragraph 7 of the Guidelines.

[6] Paragraph 5.6 of the Guidelines.

[7] Paragraph 6.1 & 6.2 of the Guidelines.

[8] Paragraph 6 and Appendix 1 of the Guidelines.



Companies that are awarded fields are expected to promptly pay the signature bonus specified in the award, as this is a condition precedent to exercising the rights of an awardee with respect to the asset. The Guidelines state that failure of a preferred bidder to pay the signature bonus may result in the field being awarded to a reserved bidder, or at least a consideration of such an award.[9]

CONTRACTUAL FRAMEWORK

Farmout Agreement

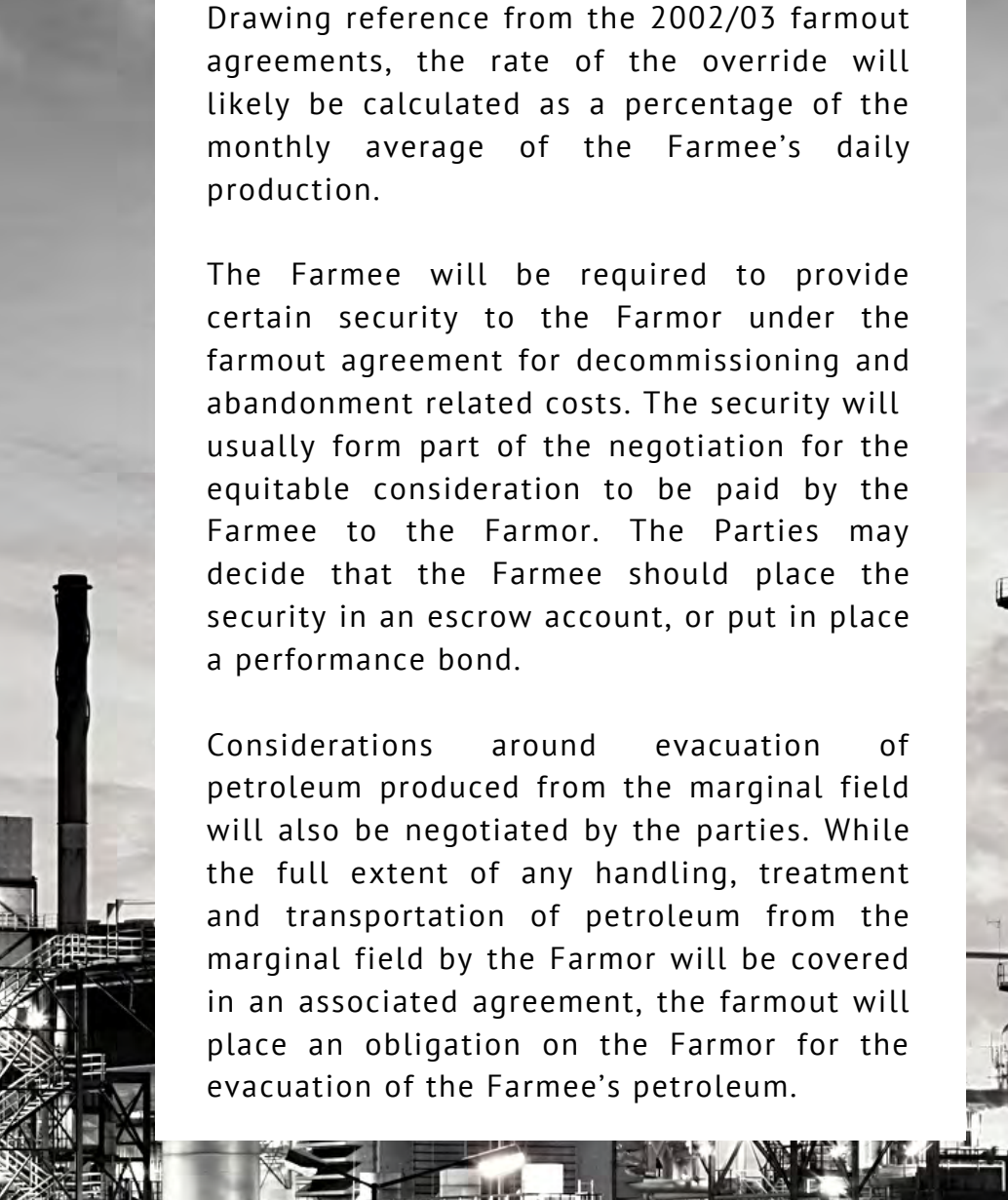
Awardees are expected to negotiate and execute a farmout agreement with the license holder. A farmout agreement for a marginal field establishes the relationship between the Farmor as licence holder and the Farmee as awardee of the marginal field. Upon the execution of the farmout agreement, the Farmee becomes wholly responsible for the farmed-out area covered under the award of the marginal field.

The Farmee will bear all the rights and obligations including decommissioning and abandonment cost, host community development and relations, and environmental issues amongst others concerning the farmed-out area.

While the farmout agreement will be executed between the Farmor and Farmee, the Minister may intervene where the parties are unable to reach an agreement on the equitable consideration for the field. As most oil acreages in Nigeria are operated under a joint venture arrangement, it is not uncommon for more than one party to be represented as Farmor in the farmout agreement.

The farmout agreement is expected to reflect the autonomy the Farmee has with respect to operations within the farmed-out area, and reflects the fact that operations within the farmed-out area are on a sole risk basis. However, the relationship of the Farmee under the farmout agreement can be likened to that of a sub-lessee, as the Farmee is expected to pay an overriding royalty to the Farmor.

[9] Paragraph 9 (ii), (iii) & 12.7 of the Guidelines



Drawing reference from the 2002/03 farmout agreements, the rate of the override will likely be calculated as a percentage of the monthly average of the Farmee's daily production.

The Farmee will be required to provide certain security to the Farmor under the farmout agreement for decommissioning and abandonment related costs. The security will usually form part of the negotiation for the equitable consideration to be paid by the Farmee to the Farmor. The Parties may decide that the Farmee should place the security in an escrow account, or put in place a performance bond.

Considerations around evacuation of petroleum produced from the marginal field will also be negotiated by the parties. While the full extent of any handling, treatment and transportation of petroleum from the marginal field by the Farmor will be covered in an associated agreement, the farmout will place an obligation on the Farmor for the evacuation of the Farmee's petroleum.

In summary, the farmout agreement sets out the terms and conditions of the farm out, and the extent of the relationship between the Farmor and the Farmee. The agreement is expected to last for an initial term of 60 (sixty) months, subject to renewal, unless terminated.

Joint Operating Agreement

Where more than one company bids for, and is awarded a marginal field, it is expected that the parties will negotiate and execute a Joint Operating Agreement ("JOA") to regulate their combined operations in the field. The negotiation and execution of the JOA is a condition precedent to the execution of the farmout agreement.

Under the JOA, parties will appoint the Operator who will be responsible for the day to day operations of the field. Issues around funding of operations will also be considered in the JOA, and the voting mechanism and pass-mark required for carrying out activities related to the operation of the field will be considered.

CONCLUSION

The marginal fields bid round comes at a period of uncertainty within the oil and gas industry resulting from the fluctuation in oil prices and the reduction in global consumption. This is in addition to the fact that the Federal Government had previously planned a bid round in 2013 which did not hold, despite having released the guidelines to oversee the process.

Industry participants are no doubt unsure of what to expect with this bid round, considering that the uncertainty surrounding the Petroleum Industry Bill has caused some investors to defer projects.

Nevertheless, where the bid round is successful, it may ensure much needed revenue for the Federal Government, and an increase in proven national reserves.



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