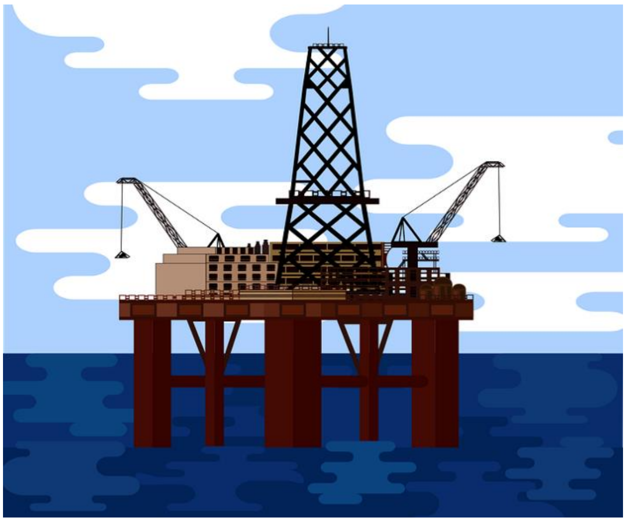
# GUIDANCE NOTE ON THE MARGINAL FIELD BID ROUNDS 2020



The Department of Petroleum Resources (DPR) on the 31st of May 2020 issued **Guidelines for the Award and Operations of Marginal Fields in Nigeria, 2020** ("the Guidelines"). The aim of the Guidelines is for the development of several unattended oil and gas discoveries in Nigeria as well as set out the procedure for the farm out of unproduced, unappraised, abandoned or producing fields existing on Oil Mining Leases ("OMLs") to independent and indigenous Nigerian Companies.

This Guidance Note sets out in succinct detail the provisions of the Guidelines and what prospective bidders must avert their minds to prior to commencing the process.

## What is a Marginal Field?

For some context, the Guidelines define a Marginal Field as "any field that has been discovered and left unattended for a period of not less than ten (10) years from the date of the first discovery or such field as the President may from time to time identify as a Marginal Field." Specifically, Marginal Fields have some or all of the following characteristics-

- Fields not considered by license holders for development because of assumed marginal economics under prevailing fiscal and market terms.

- Fields with at least one exploration well drilled and have been reported as oil and/or gas discovery for more than 10 years with no follow up or appraisal or development effort.

- Fields with crude oil characteristics different from current streams (such as crude with very his viscosity and low API gravity), which cannot be produced through conventional methods or current technology.

- Fields with high gas and low oil reserves.

- Fields that have been abandoned by the leaseholders for upwards of three years for economic or operational reasons.

- Fields that leaseholders may consider for farm out as part of port-folio rationalization programmes.

Flowing from the above, there is a wide array of options for fields that can be classified as a Marginal Field. The Guidelines provide that operating companies shall carry out field studies, update their portfolio of undeveloped fields and report back to the DPR on a periodic basis. All fields that could be classified as "marginal" pursuant to Section 4 of Petroleum Act, shall be presented and agreed to by the DPR.

## Process for the award of a Marginal Field

The process for the award of a Marginal Field in accordance with the Guidelines are as follows:

- Formal announcement for the commencement of the exercise
- Launch of Marginal Fields Bid Portal
- Expression of Interest and Registration
- Prequalification of Interested Companies
- Data Prying, Leasing and Purchase of Reports
- Submission of Technical and Commercial Bids by Pre-qualified companies
- Evaluation of Technical and Commercial bids
- Announcement of Winning Bids

Though not specifically provided for in the Guidelines, it is our opinion that the award process will also include a recommendation to the Minister before the final announcements are made followed by a negotiation and execution of the Farm Out Agreement.

## Criteria for evaluating submissions

The criteria for evaluating submissions for pre-qualification are generally based on these broad strokes-

- Evidence of Company's existence with clear track of activities in the oil and gas industry.
- Evidence of technical and managerial capability.
- Evidence of ability and willingness to pay the signature bonus.
- Evidence of a comprehensive and workable strategy for the training and growth of indigenous capability and manpower.
- Evidence of consideration for host community/state participation.
- Evidence of the sponsors having the requisite background and experience with exploration and production and a federal character representation.
- Indication of desired field(s) of interest.

The Guidelines state that pre-qualification exercise shall be done on an objective criterion, guided by the rules above, however the DPR is not obliged to pre-qualify any of the applications received.

Furthermore, the pre-qualification process is open to all indigenous companies that are duly registered to carry out exploration and production operations in Nigeria, however the following category of people will be excluded from pre-qualification- (a) companies, including their promoters that are indebted to the government (b) companies or their promoters that currently have assets that are not being operated in a businesslike manner will not be prequalified.

## Technical & Commercial Data to be submitted

Following a successful pre-qualification, bidders will enter the evaluation and selection stage, and pre-qualified bidders will be invited to submit a field specific technical and commercial bid based on the available field data.

***Technical Proposal***. Applicants are required to submit details of the proposed technical work programme for field(s) in which they are interested. The technical proposal is expected to provide plans for development and operations of the field.

***Commercial Proposal***. This shall be submitted alongside the technical bid which will be evaluated to assess optimal field development plans and economic viability.

The Guidelines provide that upon submission of all the required documents, the bid round will be based on a competitive participation by interested companies/entities. The overall screening, evaluation and selection process of the bids will be handled by the DPR based on the criteria provided in the Guidelines and any information it considers necessary, before making its recommendations to the Minister and the President for award of the fields. Successful applicants shall be notified by the DPR for payment of Signature Bonus prior to award of the Marginal Field to the successful applicant. Where payment of the Signature Bonus is not made as specified, the Reserve Bidder will be considered for award of the Marginal Field.

## The Farm-Out Agreement

The final stage of the process is the negotiation of a Farmout Agreement and parties shall endeavour to reach an agreement within 90 days of the award.

The Guidelines also provide some information as to the elements to be considered in negotiating the Farm Out Agreement. Key points to note are indemnity given by the awardee/leaseholder for the management of environmental and community issues and abandonment within the lease, etc.

Secondly, in the case of straddled fields and reservoirs, the awardee shall enter a unitization agreement as precondition for the approval of a Farm out. A third point for consideration in the Farm Out Agreement is the commercial indices of the Agreement, specifically the overriding royalty to be earned by the Farmor (i.e the government) and transportation and processing tariff. Finally, the basis of the operations shall be on a sole risk basis by the awardee and the government reserves the right to a participating interest at any time. In other words, though the awardee is the "sole holder" of the field, the Government's right to back into any field or acquire a participatory interest in the field is sacrosanct, and should be something prospective bidder should avert their minds to.

## Fees

The Guidelines also contain a schedule of the fees payable for the various stages of the Bid Round and the respective accounts into which the different classes of fees are to be paid.

| Description | Amount |
|---|---|
| **Registration Fee** | ₦500,000 |
| **Application Fee** | ₦2,000,000.00 per field |
| **Bid Processing Fee** | ₦3,000,000.00 per field |
| **Data Prying Fee** | US$15,000.00 per field |
| **Data Leasing Fee** | US$25,000.00 per field |
| **Competent Persons Report** | US$50,000.00 per field |
| **Field Specific Report** | US$25,000.00 per field |

The timeline for the overall process is expected to be concluded within six (6) months from the date of announcement and commencement to signing the Farmout Agreement with theAwardees/Leaseholders.

## Conclusion

The Marginal Field Bid Round is a welcome development for the oil and gas industry as it would bring new investments into the sector as well as raise much needed revenue for the Government. It remains to see if the Government's plan of conducting the entire process online within six (6) months will be achieved. The prevailing situation nothwithstanding, it is expected that more indigenous companies will take advantage of this opportunity.

## Disclaimer

SSKÖHN NOTES is a resource of the law firm STREAMSOWERS & KÖHN deployed for general information and does not constitute legal advice neither is it a substitute for obtaining legal advice from a legal practitioner.

Contact person for this article

Onyinye Dimkpagu
Senior Associate
onyinye@sskohn.com



**Contact us at:**
16D Akin Olugbade Street
(Off Adeola Odeku Street)
Victoria Island, Lagos
**Tel:** +234 1 271 2276; **Fax:** +234 1 271 2277
**Email:** info@sskohn.com