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PRESIDENTIAL EXECUTIVE ORDER NO. 005 OF 2018

BY THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA
FOR PLANNING AND EXECUTION OF PROJECTS, PROMOTION OF NIGERIAN
CONTENT IN CONTRACTS, SCIENCE, ENGINEERING AND TECHNOLOGY

[2nd Day of February, 2018] Commence-
ment.

WHEREAS, the Federal Government of Nigeria (herein after referred to as "the FGN") recognizes—

(i) that entrenching Science, Technology and Innovation (STI) in everyday life is key to achieving the nation's development goals across all sectors of the economy, particularly in the Science, Technology and Innovation Strategy (STISA) 2024, STISA 2063, SDG 2030 and Vision 20 ; 2020 ;

(ii) the vital role Science, Technology and Innovation (STI) play in National Economic Development (NED), particularly in the area of promoting Made in Nigeria Goods and Services (MNGS) ;

(iii) under prevailing National Science, Technology and Innovation Policy (NSTIP), to collaborate with relevant Ministries, Departments, Agencies (hereinafter referred to as (MDAs) and Organizations, to promote the application of science, technology and innovation in all sectors of the Nigerian economy ;

(iv) the desirability to increase the quantum of value created in Nigerian economy through increased Nigerian content in public procurement ;

(v) that the Federal Ministry of Science and Technology, under the Economic Recovery and Growth Plan (2017-2020) to promote the "Made in Nigeria Goods Campaign", shall harness STI to drive national competitiveness, productivity and economic activities in all sectors ;

(vi) that the service areas of the Ministry of Science and Technology as approved by the Federal Executive Council in 2012, include: Industrial growth, Metrology, Human Capital Development, Agriculture, Health, Environment, Energy, Banking and Finance, Communications, Women and Youth Empowerment, Job creation, Tourism, Trade, Science Acculturation, Meteorology, Natural Resources, Building Construction, National Security, Nuclear Science and Technology, Sports and Recreation, Diplomacy, Transport and etc. ; and

(vii) Her commitment to the promotion of domestic and foreign investments, creation of employment and the stimulation of national economy.

NOW THEREFORE, PURSUANT TO THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AS PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA, DO HEREBY ORDER AS FOLLOWS :

1.—(1) Procuring entities shall give preference to Nigerian companies and firms in the award of contracts, in line with the Public Procurement Act 2007.

(2) Where expertise is lacking, procuring entity shall give preference to foreign companies or firms with demonstrable and verifiable plan for indigenous capacity development, prior to the award of such contracts.

(3) MDAs shall engage indigenous professionals in the planning, design and execution of national security projects and consideration shall only be given to a foreign professional, where it is certified by the appropriate authority that such expertise is not available in Nigeria.

(4) Nigerian companies or firms duly registered in accordance with the laws of Nigeria, with current practicing Licence, shall lead in any consultancy service involving Joint Venture relationships and agreements, relating to law, Engineering, ICT, Architecture, Procurement, Quantity Surveying, and etc.

(5) MDAs shall ensure that before the award of any contract, Nigerian counterpart staff are engaged from the conception stage to the end of the project.

(6) The MDAs shall adopt local technology to replace foreign ones, where they meet set standards.

(7) The Ministry of Interior shall desist from giving visa to foreign workers whose skills are readily available in Nigeria.

(8) The Federal Government shall introduce Margin of Preference in National Competitive Bidding, in the evaluation of tenders, from indigenous suppliers of goods manufactured locally over foreign goods.

(9) Pursuant to the Margin of Preference introduced by this Order, MDAs shall maintain 15% of preference for international competitive bidding for Goods, 7.5% for Works for domestic contractors and 15% Margin of Preference for Domestic contractors for National Competitive Bidding for Goods and 7.5% for works.

(10) Foreign companies or firms shall not be engaged in contracts for Works, Goods and Services in the country in violation of the standard international best practice, chapter three of the Companies and Allied Matters Act (CAMA) Cap C20, LFN, 2004, Section 11(2) of the Council for Regulation of Engineering (COREN) Act, 2004, (Engineers Registration etc., Cap E11,

2004), sections 5, 11(8) and 11(9) of the Chartered Institute of Purchasing and Supply Management Act, 2007 (CIPSMN Act, Cap. C53, 2007), the Public Procurement Act, 2007 and other relevant Laws and Regulations on acquisition of technology and conduct of public procurement in Nigeria.

2.—(1) MDAs shall ensure that any professional practicing in Nigeria must be duly registered with the appropriate regulatory body in Nigeria.

(2) Agreements involving any Joint Venture and Public Private Partnership (PPP) between a foreign firm and a Nigerian firm, for technology acquisition or otherwise, shall be registered with the National Office for Technology Acquisition (NOTAP) in accordance with NOTAP Act, Cap. 62 LFN, 2004, before such contracts are signed by any MDA.

(3) The Head of the Civil Service of the Federation and MDAs shall ensure that foreign professional certificates are domesticated with the relevant statutory professional bodies before being considered for any contract award, employment, or otherwise in Nigeria.

3.—(1) Any document issued by an MDAs for the solicitation of offers, bids, or quotations for the supply or provision of goods, works and services shall expressly indicate the preference to be granted to domestic manufacturers, contractors and suppliers, and service providers in order to establish the eligibility of a bid for such preference.

(2) Solicitation documents shall obligate bidders or potential manufacturers, suppliers, contractors and consultants to provide a verifiable statement on the local content of goods or services to be provided.

(3) Manufacturers shall meet set standards of relevant regulatory bodies and agencies before presenting the goods for procurement under the national competitive bidding or any other type of Public Procurement Process.

(4) Suppliers and contractors under national competitive bidding process shall disclose local material (processed or unprocessed), where available and needed for the execution of the project.

(5) MDAs shall ensure that for all consultancy contracts awarded to foreign companies, engineering drawings, necessary calculations, design, etc, are made available to their corresponding Nigerian partners, including arrangements with Small and Medium Enterprises (SMEs) as partners towards local production of needed materials.

4. Designs for all contracts, programmes, projects and etc., shall be in English Language before signing such contracts.

5.—(1) MDAs shall—

(a) take steps to encourage indigenous professionals in Diaspora to return home and use their expertise to develop Nigeria ; and

(b) promote mutually beneficial Public Private Partnership (PPP) by encouraging direct collaboration in production and manufacturing ventures of products, such as fittings, spare parts, domestic wares and etc., between foreign manufacturers and indigenous engineering facilities and those to be brought in by investors at reasonable cost to the MDAs.

(2) The Federal Ministry of Science and Technology shall—

(a) establish Centres for Acquisition of Technology in the six Geopolitical Zones of the Country for the promotion of technology utilization, strengthening of technology management capability and information system in the next two years ; and

(b) in collaboration with relevant MDAs, promote Research and Development in all sectors of the economy, including ICT, in line with the existing NITDA Act and the approval of the Federal Executive Council on ICT.

(3) The National Information and Technology Development Agency (NITDA) shall review the status of ICT in all MDAs and standardise its effectiveness.

(4) The Federal Ministry of Education shall encourage the inclusion of Public Procurement Process in the Secondary School Curriculum to inculcate in the students transparency, value for money and accountability.

(5) The Federal Government shall provide intervention funds to improve existing training programmes in Nigerian Universities, Polytechnics, Technical Schools and Trade Centres and establish new programmes to cope with the demands of emerging technology.

(6) The MDAs shall ensure that the standards of control and regulation of infrastructural development in the country are maintained, so as to promote the realisation of the goals of the Economic Recovery and Growth Plan (2017-2020) the effective and sustainable participation of Nigerian Professionals and contractors.

(7) The MDAs shall work with the organised private sector (OPS) in consultation with other relevant government agencies both at the Federal and state levels to achieve sustainable personnel Development, Training of Nigerian professionals, contractors, and technocrats contractors.

(8) The Ministry of Defence shall make effective use of the Army Engineering Corps (AEC) and other professionals in the Security Agencies to execute projects in line with the Public Procurement Act, 2007.

(9) The Federal Ministry of Industry, Trade and Investment in collaboration with the Federal Ministry of Science and Technology shall promote the acquisition of bulk product manufacturing licenses from foreign manufacturers for the use of locally trained medium and large scale manufacturers.

6. A Nigerian company or firm shall not be disqualified from an award of contracts by MDAs on the basis of the year of incorporation; but rather, on the basis of qualification, competence and experience in the management and the execution of such contracts.

7.—(1) The National Office for Technology Acquisition and Promotion (NOTAP) shall develop, maintain and regularly update a database of Nigerians with expertise in Science, Engineering, Technology and other fields of expertise.

(2) The Ministry of Interior shall take into consideration the manpower data base of NOTAP, Federal Ministry of Science and Technology, Federal Ministry of Power, Works, and Housing, the Nigerian Academy of Science, the Nigerian Academy of Engineering, Nigerian Content Development and Monitoring Board, Federal Ministry of Petroleum Resources, etc., in determining the availability of local skilled manpower in Science, Technology and Innovation for the grant of expatriate quota.

8.—(1) The Ministry of Interior shall ensure that Expatriate Quota for projects, contracts and programmes are granted in line with the provisions of the Immigration Act and other relevant laws, where qualifications and competency of Nigerian Nationals are not available or cannot be ascertained, which shall be contingent on training such number of persons as may be required for the execution of the contract or project.

(2) The Ministry of Interior may, where necessary, create a special immigration classification to encourage foreign expatriates, particularly from African countries, with skills that are not available in Nigeria, to reside and work in Nigeria for the purpose of sharing knowledge with Nigerians.

9.—(1) MDAs shall—

(a) ensure that companies or firms executing projects using local materials comply with approved standard and quality set by the appropriate regulatory agency in Nigeria ;

(b) engage the services of small and medium scale industries in accordance with the Public Procurement Act, 2007 for the local production

of construction materials, such as burnt clay bricks, roofing sheets, timber products and sanitary wares, for the construction and infrastructural development of projects in Nigeria ; and

(c) ensure that indigenous small and medium scale producers of building and infrastructural development materials are encouraged with incentives, including single digit interest on loans.

(2) MDAs shall ensure that for multiyear contracts under the national and international competitive bidding, restricted bidding, or any other type of procurement process involving high volumes of consumables, equipment, such as printers, photocopiers, air conditioners, fridges, ink cartridges, etc., within a maximum period of 5 years of such contracts, establish a local manufacturing facility in the country to continue the supply.

(3) The Standard Organisation of Nigeria (SON) in collaboration with relevant MDA's to standardise and certify SME's raw materials, products, processes and personnel, in accordance with international best practices, and any certificate for such certification issued shall be included in the solicitation documents.

(4) Research work and value addition for indigenous agricultural products shall take place in Nigeria, and such agricultural products shall not be exported unless they are processed and approved by the relevant authority.

10.—(1) The Federal Inland Revenue Service and the Federal Ministry of Finance shall ensure that existing machine tools companies, including foundry, machine shop, forge shop and indigenous artisans are granted tax incentives to boost production of their products.

(2) The Federal Ministry of Finance and Federal Inland Revenue Services may give tax incentives to SME's and foreign firms for the utilisation of local raw materials, after same have been authenticated by the Raw Materials Research and Development Council (RMRDC) to enable the implementation of tax rebate.

11. The punishment for violation of this Executive Order shall be as stipulated by the Public Service Rules and relevant laws governing Public Procurement and Professional Practice in Nigeria, etc.

12.—(1) A Presidential Monitoring and Evaluation Council (in this Order referred to as "the Council") shall—

(a) be constituted and headed by the President ;

(b) have the Secretariat of the Council domiciled in Federal Ministry of Science and Technology ;

- (c) monitor the implementations of this Executive Order ; and
- (d) meet not less than twice in a year, or on such other times as may be directed by the President.

(2) The quorum of the Council shall be one third of the members.

(3) The decisions of the Council shall be by consensus.

(4) Where the Council requires expert advice on any matter, the expert may be co-opted by the Council, as an interim member for such period as the Council may deem fit.

(5) The Council may setup any committee to carry out such functions on its behalf, as it may determine from time to time.

(6) Any decision of the committee shall have no effect, unless confirmed by the Council.

13. The Council shall consist of—

- (a) The President *Chairman*
- (b) The Vice President *as Alternate Chairman*
- (c) The Secretary to the Government of the Federation .. *Member*
- (d) Minister of Science and Technology *Member*
- (e) Minister of Finance *Member*
- (f) Minister of Budget and National Planning *Member*
- (g) Minister of Industry, Trade and Investment *Member*
- (h) Minister of Education *Member*
- (i) Minister of Defence *Member*
- (j) Minister of Interior *Member*
- (k) Minister of Transport *Member*
- (l) Minister of Petroleum Resources *Member*
- (m) Minister of Mines and Steel *Member*
- (n) Minister of Water Resources *Member*
- (o) Minister of Women Affairs *Member*
- (p) Minister of Health *Member*
- (q) Minister of Agriculture and Rural Development .. *Member*
- (r) Minister of Communications *Member*
- (s) Minister of Justice and Attorney General *Member*
- (t) Minister of Information and Culture *Member*
- (u) Minister of Power, Works and Housing *Member*
- (v) Head of Civil Service of the Federation *Member*
- (w) National Security Adviser *Member*
- (x) The Chairman, Governors Forum *Member*
- (y) The National President of the Association of Local Government of Nigeria (ALGON) *Member*

- (z) The National President of Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA) *Member*
- (aa) The National President of Manufacturers Association of Nigeria (MAN) *Member*
- (bb) The Chief Executive of the National Agency for Science and Engineering Infrastructure (NASENI) .. *Member*
- (cc) Permanent Secretary, Federal Ministry of Science and Technology *Secretary*

14. The Federal Executive Council may review this Executive Order every 5 years.

15.—(1) MDAs may use Nigerian codes and standards to domesticate relevant international standards as may be applicable, for construction and infrastructural development.

(2) The MDAs shall implement projects, programmes and contracts with science, engineering and technology components in line with Nigerian Codes and Standards and where other codes and standards exist, they shall be mutually agreed upon by both parties.

(3) The Bureau of Public Procurement (BPP), using the threshold given in this Order, may periodically develop a new public procurement threshold that shall guarantee acquisition of technology in contracts, programmes and projects relating to works, goods and services “within and outside the oil sector” with inputs from the Federal Ministry of Science and Technology, Office of the Secretary to the Government of the Federation, Federal Ministry of Industries, Trade and Investment, Office of the Head of Civil Service of the Federation, the Ministry of Petroleum Resources, the Ministry of Power, Works and Housing and the Federal Ministry of Justice for approval of the National Council on Public Procurement :

(a) *Works* : To consider national competitive bidding with respect to projects valued at ₦1.0Billion and below, where the competence and expertise are available locally ;

(b) *Supply of Goods* : To consider national competitive bidding for supply of goods valued at ₦1.0Billion and below, where the competence and expertise are available locally ;

(c) *Non-Consultancy Services* : To consider National competitive bidding for Non-Consultancy Services valued at ₦1.0Billion and below, where the competence and expertise are available locally ; and

(d) *Consultancy Services* : To promote projects designs for contracts, whether by a foreign consultancy firm domiciled in Nigeria or a Nigerian

firm, valued at ₦1.0 Billion and below shall be reserved for national Competitive Request for Proposals, where the competence and expertise are available locally.

(4) The use of foreign language software for mapping of Nigerian solid minerals and other projects requiring mapping is prohibited.

16. This Executive Order shall be read in conjunction with extant Laws, Regulations and Guidelines governing Public Procurement, process implementation and Professional Practice in Nigeria, as well as those that may be issued pursuant to this Order.

17. Definitions of term—

“*Foreign firm*” means a company incorporated outside Nigeria ;

“*Nigerian Company*” means a company formed and registered in Nigeria in accordance with the provisions of Companies and Allied Matters Act, Cap., C20 LFN 2004, with not less than 51% equity shares by Nigerians. (Local Content Act. 2010) ;

“*Domestic firm*” means a business or professional organisation :

- (a) incorporated or otherwise organised in Nigeria ;
- (b) having its principal place of business located in Nigeria ;
- (c) having at least 51% of its equity held by nationals of Nigeria ;
- (d) not having its assets controlled by foreign national or organisation incorporated or organised outside Nigeria ; and
- (e) with more than 50% of persons who will perform services under the contract whether employed directly or by a subcontractor being nationals of Nigeria.

“*Joint Venture*” means an association where firms or persons are jointly and severally liable for the entire contract and shall designate one party to act as a leader with authority to bind the joint venture and to sign contract with the procurement entity ;

“*Margin of Preference*” means extra mark up on price allowed a domestic contractor or supplier under the international competitive bidding, which is not disadvantageous to the bid in terms of price ;

“*Subcontractor*” means natural person, a legal person or combination of the two to whom any part of the goods or works to be executed is contracted out to by the supplier or contractor ;

“*National Competitive Bidding*” means solicitation of bids from domestic contractors and suppliers duly registered or incorporated under CAMA ; and

“*International Competitive Bidding*” means the solicitation of bids from both domestic and foreign contractors and suppliers ;

18. This Executive Order shall take effect from the date this Order is signed by the President.

DATED this 2nd day of February, 2018.

MUHAMMADU BUHARI, GCFR
President, Federal Republic of Nigeria