A Brief Guide to Nigeria's 2013 Marginal Fields Round

ODUJINRIN & ADEFULU
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Background

- The FGN has recently announced that new marginal field bid rounds are to commence in 2013.
- This Guide highlights the key points of the 2013 Guidelines for Farm-out & Operation on Marginal Fields (the "Guidelines") and other related material.

What is a Marginal Field?

- Under current legislation, a marginal field is one with booked reserves and which has remained unproduced for a period of over 10 years
- The Guidelines also list certain characteristics of marginal fields including:
  - Fields not being developed by holders because of assumed volatile economics;
  - Fields with high gas low oil content;
  - Producing fields which have been abandoned for three years;
  - Fields considered for Farm-out by current holders for portfolio rationalisation; and
  - Fields with discoveries but not appraised or developed for more than 10 years.

Who can Participate?: The Bidding Entity

- A company incorporated in Nigeria
  - Objects of the company to be limited to exploration and production;
  - Following local content legislation, company should be an "indigenous company" with at least 51% Nigerian beneficial interest in the shareholding;
  - No single promoter to own more than 25% in the company; and
  - No minimum share capital qualification as required in the 2003 marginal field round.

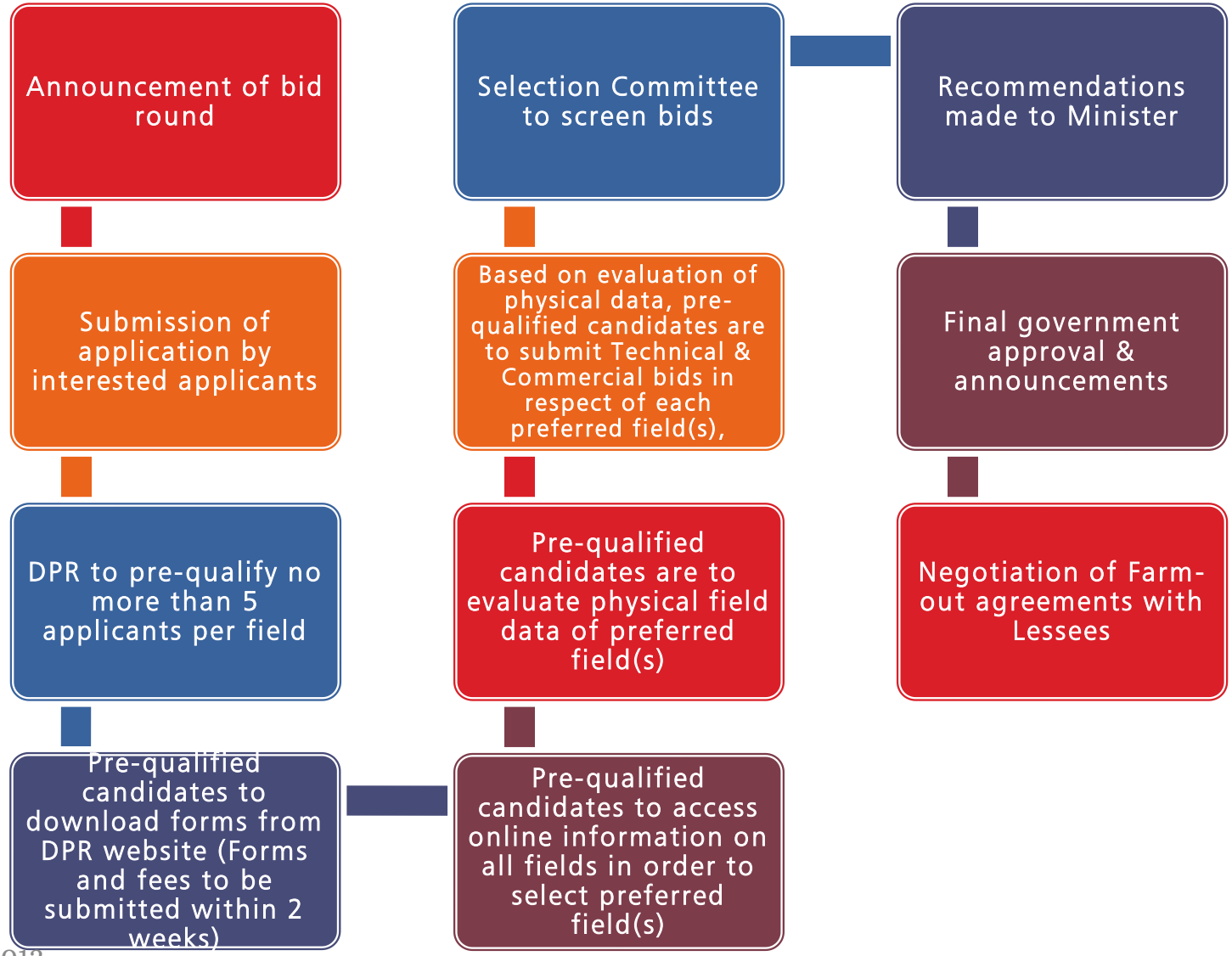
Who can Participate?: The Bidding Entity

- The Guidelines also encourage bidding consortia.
- Bidding companies/consortia must have professionals with experience in the upstream oil and gas industry.

Who can participate: technical partner

- The Guidelines also recognise Technical Partners, to provide technical support for companies with no in-house technical expertise.
- Technical Partners may also provide financial assistance.

Process


Announcement of bid round
Submission of application by interested applicants
DPR to pre-qualify no more than 5 applicants per field
Pre-qualified candidates to download forms from DPR website (Forms and fees to be submitted within 2 weeks)
Pre-qualified candidates to access online information on all fields in order to select preferred field(s)
Pre-qualified candidates are to evaluate physical field data of preferred field(s)
Based on evaluation of physical data, pre-qualified candidates are to submit Technical & Commercial bids in respect of each preferred field(s),
Selection Committee to screen bids
Recommendations made to Minister
Final government approval & announcements
Negotiation of Farm-out agreements with Lessees

Prequalification stage

- Initial applications are to be made to the DPR in a prescribed form and the following fees would be paid:

	Local Submission	Foreign Submission
Application Fee	N 200,000	£1,000 or US$1,600
Bid Processing Fee	N 300,000	£1,500 or US$3,200

Prequalification stage

- Applicant companies are required to provide the following information:
  - Corporate structure, composition and activities in the oil and gas industry;
  - Evidence of technical and managerial capability;
  - Confirmation of willingness to pay the signature bonus;
  - Local content commitment; and
  - Local community involvement.

Prequalification stage

- Prequalification is to be carried out by DPR.
- Not more than five companies will be pre-qualified per field.
- Successful pre-qualified companies may not bid for more than 3 fields.

Final Selection

- Specific submission requirements for field specific bids would be made available at this stage.
- A Selection Committee, which includes representatives from DPR & the leaseholder would be constituted.

Final Selection

- Pre-qualified applicants would be required to submit:
  - A technical proposal
    - Details of the necessary content of the technical proposal will be provided in a prescribed form on the DPR's website;
  - A commercial proposal
    - The commercial proposal will be evaluated to examine the candidate company's understanding of field development economics

Evaluation criteria

- The Guidelines indicate that the selection of candidates will be based on competitive participation and only companies with the highest scores will be selected.
- The Guidelines do not however lay out the scoring mechanism to be utilised.

Signature Bonus

- Signature bonus upon selection is US$300,000.

Farm out Agreement

- Upon the announcement of the selected Farmee by DPR, the leaseholder and the selected parties shall commence negotiations on the terms and conditions of the Farm-out Agreement.
- Whilst the Guidelines state that the Farm-out agreements are required to be concluded within 90 days, it should be noted that the conclusion of farm-out agreements took longer than that in the 2003 bid round.

Farm out agreement

- Commercial considerations to Farmor include:
  - Payment of overriding royalty; and
  - Payment of Transportation/processing tariff.
- The Farmee is also required:
  - to provide indemnity to Farmor for its activities; and
  - to be responsible for abandonment and to set aside an agreed percentage of its budget to meet abandonment costs.
- It should be noted that government reserves the right to participate in the asset.

Fiscal terms

- Fiscal terms will be based on the Marginal Fields Operation (Fiscal Regime) Regulations 2005 & the Petroleum Profits Tax Act 1959.
- The applicable royalty regime is as follows:

Production Levels	Royalty Rates
Below 5,000 bopd	2.5%
Between 5,000 and 10,000 bopd	7.5%
Between 10,000 and 15,000 bopd	12.5%
Between 15,000 and 25,000 bopd	18.5%

Fiscal terms

- It is not clear what applies where production is in excess of 25,000 bopd
- For onshore production, a concessionary rate of 65.75% will apply in the first 5 years of production and thereafter, the applicable tax rate shall be 85%.
- A flat tax rate of 50% will apply for all off-shore and deep water production.

About Odujinrin & Adefulu

Odujinrin & Adefulu ("O & A") is a multi-specialist law firm providing service to the business sector of the economy. The strength of the firm is in a profound understanding of the investment environment and business laws of Nigeria. In the **forty (40) years of existence of the firm**, it has provided guidance to a myriad of investors, local and foreign, in various areas of economic endeavour in Nigeria, particularly in matters pertaining to: oil and gas, corporate finance, structured finance, project finance, corporate restructuring, capital market, energy, company secretarial services, mergers & acquisitions, real estate, tax advisory services et cetera. The firm is led by four (4) dedicated partners with a combined experience of over 110 years in legal practice.

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"very efficient and very effective"

"...went outside of their scope in terms of the services they were rendering"

"always available"

IFLR 2013

"...the team earns good feedback for its knowledge of the energy sector and its proactive approach to keeping clients updated."

"Adefulu ...knows his way around Nigeria and has been helpful in solving problems rather than just stating the law."

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Odujinrin & Adefulu: Recent Experience

Advised a Nigerian oil and gas company in its acquisition of an equity stake in a company holding a direct interest in a producing asset in the Niger Delta
Advised a Nigerian oil and gas company in its acquisition of a direct interest in a producing oil mining lease
Advising the operator of OPL 310 in the farm-in to the asset by Lekoil
Advised Exile Resources in the Reverse Takeover by Oando
Advised a small international oil company in the sale of some of its interest in a marginal field to an indigenous oil company
Advised an indigenous company in the unsuccessful acquisition of an equity interest in a company holding assets in Nigeria and other African countries
Advised an International Financial Institution in the US$500m refinancing of a major indigenous oil and gas company
Advised an international financial institution in the US$ 200m financing of an indigenous oil and gas company

Contacts

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