



**AN OVERVIEW OF THE TENDER PROCESS  
UNDER THE NIGERIAN GAS FLARE  
COMMERCIALISATION PROGRAMME**

## || INTRODUCTION:

Further to the release of the Flare Gas (Prevention of Waste and Pollution) Regulations, 2018 and the subsequent re-launch of the Nigerian Gas Flare Commercialisation Programme ("NGFCP") by the Federal Government of Nigeria ("FGN"), the FGN recently released the Request for Qualification ("RFQ") Document which is the third stage in the NGFCP process out of a total of 6 stages. It is expected that following the RFQ, applicants for gas flare sites will submit their various proposals under the Request for Proposal ("RFP") stage thereafter evaluation and selection would be conducted in preparation for project execution.

The RFQ details the tender process for the grant of a permit to access flare gas. This briefing note highlights salient aspects of the RFQ.

## || 1. APPLICATION

### a. How to become a Qualified Applicant

Under the RFQ, to become a Qualified Applicant, certain minimum requirement must be satisfied. These requirements include (i) Minimum Technical Qualifications, (ii) Minimum Financial Qualifications and (iii) Legal Qualifications for Consortium (where applicable).

With respect to Minimum Technical Qualifications, each Applicant must provide information about its technical experience in the design, construction, operation and maintenance of projects of a nature and size similar or larger than US\$5million.

Furthermore, each applicant is required to show:

- Demonstrable project development experience, and;
- Demonstrable previous experience in either owning or operating gas to power, gas to liquids, gas processing and/or transportation, or similar projects, and;
- Proven technology in commercial application.

Where the applicant is a consortium, the credentials of the members will be considered together to determine whether the consortium satisfied the minimum technical qualifications listed above.

As regards, minimum financial qualification, each applicant must have a networth (i.e. total assets minus total liabilities) of at least US\$5 million.

In addition to the foregoing technical and financial qualification requirements, qualification criteria for a consortium includes:

<sup>1</sup> A Bidder whose Proposal for one or more flare site(s) has been selected through the NGFCP auction process.

- the execution of a Commitment Letter by the Lead Member of the Consortium (the Lead Member must list all members of the consortium and provide a copy of the joint venture agreement or any other document demonstrating their arrangements);
- execution of a Consortium Letter by all members of the Consortium;
- power of attorney executed by each member of the consortium;
- confidentiality agreement;
- applicant information form;
- technical qualifications form;

Please note that a company may participate in more than one consortium however, the number of members in a consortium must not exceed five.

In order to attract a wide range of investors, the RFQ is open to interested applicants from around the world who need not incorporate a Nigerian entity at the application stage. However, upon a successful bid, a Preferred Bidder is required to incorporate a Nigerian entity which will enter into the necessary commercial agreements with the FGN for the supply of flare gas.

Through the RFP, Qualified Applicants will be invited to submit proposals through a two-envelope approach viz (i) "Technical and Commercial Proposal" and (ii) "Financial Proposal". Also, Qualified Applicants are able to submit proposals for single or multiple flare sites. Evaluation of the Technical and Commercial Proposal will be on a pass/fail basis. Only Bidders whose Technical and Commercial Proposals have passed will have their Financial Proposal opened and evaluated.

### **b. Corruption & Fraud as Deal Breakers**

In a bid to observe the highest standard of ethics during the bid process and during execution of any project pursuant to the NGFCP, applicants cannot be on the Economic and Financial Crimes Commission debarred list, Independent Corrupt Practices and Other Related Offences Commission debarred list, World Bank debarred list or the United States Treasury Office of Foreign Assets Control list. Please note that if, in the sole judgement of the FGN, an Applicant has or has in all reasonable likelihood engaged in any corrupt practice or fraudulent practice, the FGN may, at its sole discretion, disqualify such applicant at any stage of the bid process.

### **c. Documentation and Submission of Statement of Qualification**

In responding to the RFQ, applicants are to submit Statement of Qualification ("SOQ") which is divided into four main parts: (i) Details about the applicant, (ii) Technical qualifications (iii) Financial qualifications; and (iv) Legal qualifications for consortia. Each applicant is required to complete and submit a SOQ and pay the non-refundable SOQ submission fee of the sum of \$1,000 no later than 5pm (local time) on 20 January 2019. The FGN reserves the right, in its sole discretion, to extend the SOQ submission deadline. Please note that an applicant may modify its SOQ after submission if such modification is received by the FGN prior to the SOQ submission deadline.

The FGN will issue a receipt to the Applicant confirming delivery of the SOQ and record the Applicant's name, time and date of receipt of the relevant SOQ as well as the name and number of envelopes received as part of the relevant SOQ. Applicants will be permitted to request for clarification on any aspect of the RFQ by submitting a request in writing to the NGFCP contact person through the NGFCP Portal (the "Portal") no later than ten business days prior to the stipulated SOQ submission deadline. The FGN will respond to such request via the Portal with e-mail notification within three business days. The FGN will respond concurrently to ALL who request for clarification, but it will make every reasonable effort to conceal the identity of a party that requests any clarification.

## || 2. EVALUATION AND NOTIFICATION PROCESS

The evaluation process has three parts:

- Evaluation to check compliance with the RFQ requirements;
- Technical Evaluation; and
- Financial Evaluation.

A Proposals Evaluation Committee (the "Committee") is to be appointed by the Minister of Petroleum Resources to review and evaluate the SOQ. A panel of independent observers will also be appointed by the Minister to observe and monitor the evaluation process to be conducted by the Committee.

The procedure for opening and examination of each SOQ will be open to the public. After the SOQ submission deadline, the Committee will hold a meeting to open every SOQ submitted by applicants that have paid the SOQ submission fee and submitted their SOQ by the SOQ submission deadline.

Compliant SOQs will be subject to technical and financial evaluations by the Committee in order to become Qualified Applicants. The Committee is also entitled to carry out investigations or seek out confirmation of any information furnished by an Applicant.

The Commitment Letter contains a clause which the applicant waives its right to contest or challenge the decision of the FGN ensuing from its applications.

## || 3. NOTIFICATION PROCESS

The FGN will notify each Applicant in writing as to whether or not it has been selected as a Qualified Applicant. The list of Qualified Applicants will be published on the NGFCP

Portal. Thereafter, Qualified Applicants will then receive Request for Proposal (RFP) inviting them to propose their business plans for developing and implementing gas monetisation projects (Proposals) and, if selected as Preferred Bidder, develop their Projects to purchase and utilise available Flare Gas from existing flare sites. Qualified Applicants may submit Proposals for one or more flare sites. The flare gas will be sold under a Gas Sales Agreement to be executed between each Preferred Bidder whose proposal is accepted by the FGN and the Seller (an FGN-authorized entity).<sup>2</sup>

## || CONCLUSION

While the government has shown commitment towards ensuring that the NGFCP is successful, it is our hope that the bid process is not truncated by the pending elections, political and or other bureaucratic reasons.

For further information on the foregoing, please contact Oyeyemi Oke ([Oyeyemi.oke@ao2law.com](mailto:Oyeyemi.oke@ao2law.com)); Moyo Omidiran ([moyo.omidiran@ao2law.com](mailto:moyo.omidiran@ao2law.com)); or Damilola Oshodi ([Damilola.oshodi@ao2law.com](mailto:Damilola.oshodi@ao2law.com)) with the subject: *"An Overview of the Tender Process Under the Nigerian Gas Flare Commercialisation Programme."*

<sup>2</sup> Other Agreements to be entered into successful bidder may include Milestone Development Agreement, Connection Agreement and, if applicable, the Deliver-or-Pay Agreement.