

BENEFITTING FROM THE NIGERIAN OIL AND GAS INDUSTRY

ACT

The Minister of Petroleum recently said that the Nigerian Oil and Gas Industry Content Act 2010 “the Act” has aided in providing employment to about 30,000 Nigerians. The idea behind the Act is to develop Nigerian capacity in the oil and gas sector. The Nigerian Content Development and Monitoring Board “NCDMB” has identified that implementation of the Act has had its challenges.

Some of the challenges faced include interpretation of ambiguous terms used in the Act such as “Nigerian Independent Operator; “Nigerian Indigenous Service Company”; “Catchment Areas”. The NCDMB is working at clarifying some of these terms to ensure the intentions of the legal draftsmen are achieved. Further, how will the provisions of the Act be enforced? The Act says that the NCDMB can only enforce the penalties provided in the Act after “a conviction” has been obtained. This provision connotes having to go through the law courts before an Operator acting in contravention of the Act can be punished. Was this the intention of the draftsmen and will this encourage disregard for the provisions of the Act?

Whilst the NCDMB works at mitigating the challenges, we must all be aware of the benefits to be derived from the Act. The Act provides that Nigerian Independent Operators be given first consideration in all projects for which contracts are to be awarded in the oil and gas industry. The NCDMB reviews contract awards to determine compliance with this provision and expects to see that a Nigerian Independent Operator is awarded the

contract even where its bid was not the lowest bid, as long as its bid was not more than 20% of the bid of the lowest bidder.

The Act also provides for exclusive utilization of the services of Nigerian Indigenous Service Companies which demonstrate capacity on projects in swampy areas. The NCDMB ensures this by insisting a Nigerian Indigenous Service Company is used even where the company does not have all equipment required for the project but has a technical partner that will implement provided there is a plan for equipment transfer to the Nigerian Indigenous Service Company.

The Act requires operators in the oil and gas industry to undertake the training of Nigerian personnel where the personnel lack the requisite training and to have a succession schedule or plan for Nigerians by which they understudy the incumbent expatriate for a period of four years after which the position will become Nigerianised. The operators are also mandated to employ only Nigerians in their juniors and intermediate cadre or any other corresponding grades. All projects or contracts whose total budget exceeds \$100 million (USD) are required to contain a "Labour Clause" mandating the use of Nigerian labour in specific cadres as may be stipulated by the Board. All operators must submit a Nigerian Content Plan for any planned project which the NCDMB reviews to ensure these provisions of the Act are complied with.

An interesting benefit of the Act is the online Joint Qualification System portal which requires Nigerian operators to register with the NCDMB by entering required details about their company on the portal to which Operators in the industry have access. The NCDMB has started registering Nigerian operators

on this portal and the oil operators refer to this portal in awarding their contracts. A Nigerian operator who just registered on the JQS exclaimed at the ease of doing so.

The NCDMB is working closely with the oil operators to implement the Act and it says the operators do not resist compliance with the Act. Many Nigerian operators have experienced increased participation in the oil and gas sector due to the Act's implementation. There are however many still ignorant of the opportunities presented by the Act. The NCDMB and Operators organize training sessions on the Act to ensure awareness. It will be a shame if we do not attain the FGN's intended higher Nigerian capacity in the oil and gas sector for ignorance of Nigerian businesses on the provisions of the Act.