



Bureau of Public Enterprises

Privatisation Procedures Manual

March 2006

Government Economic Reform Program - Mission:

To improve allocative efficiency and reduce wastages in the public sector

To diversify the economy

To make the private sector the engine of economic growth

BPE Vision

To be the model reform agency

BPE Mission

To be the key driver of Government economic reform program

To be the resource centre for capacity building and sustenance of reforms

Through:

Promoting a competitive economy and enfranchising Nigerians

Enthronement of effective corporate governance and financial discipline in the public and private sectors

Institutionalising social accountability and efficient deployment of public resources.

Core Values:

Transparency and Integrity

Accountability and Team Work

Commitment and Diligence

Result Orientation

and Hospitals would therefore include the following:

- Enterprise information gathering/details on functionality of the enterprise.
- Selection of Consultants for Diagnostic review depending on the enterprise.
-
- Expression of Interests (EOIs)
- Requests For Proposal
- Short listing of Consultants
- Obtain Approvals
- Appointment
-
- Advisory work on enterprises (on case-by-case basis)
- Stakeholders Workshop on Commercialization options
- Development of implementation Work plan
- Submit report to BPE
- Implementation actions
-

Commercialization out of which, 24 are for partial and 9 for full commercialization. Though many upgrading had been carried out over the years of implementation.

The main thrust of the Commercialization program is to: -

- Provide enhanced operational autonomy at enterprise level;
- Provide competitive remuneration system to be able to attract, recruit and retain suitably qualified personnel;
- Evolve a more result oriented and accountable management based on performance contract;
- Strengthen financial/accounting controls at the enterprise level;
- Upgrade the management information system of the affected enterprises;
- Ensure financial solvency of public enterprises through effective cost recovery, cost control and prudent financial management;
- Remove bureaucratic bottlenecks and political interference through clear role definitions between the supervising Ministry, the Board of Directors and the Management of public enterprises.

A critical component of the Commercialization program is the Performance Contract Agreement, which is designed to govern the relationship between the Government and the commercialized enterprise. Under the contract, the Board and Management of the enterprise will guarantee the attainment of certain level of financial and operating performance in return for enhanced operational autonomy.

Process and Sequencing of Activities

The commercialization process usually involves the following stages:

1. Preliminary data collection (Accounts, Debts, Subventions, Staffing etc.);
2. Diagnostic Review/Quick Assessment of the enterprise;
3. Commercialization Adviser Selection;
4. Corporatization/Legal Framework Review;
5. Setting up of Commercialization Committees (if need be);
6. Review of Reform Package by the Commercialization Committees;
7. Approval of Reform Package by the NCP;
8. Approval of the Reform Package by the FEC;
9. Execution of Performance Agreements;
10. Implementation of the Reform Package.

The process/sequence for the Commercialization of RBDAs, National Parks, Media

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Doc G 1(d)

COMMERCIALIZATION: EXPLANATORY NOTES, PROCESS AND SEQUENCING OF ACTIVITIES

Legal and General Framework

The Privatization and Commercialization Act of 1999 provides the legal framework for the implementation of the Federal Government of Nigeria's (FGN) programme of commercialization as an integral part of the restructuring of the economy. The Act defines commercialization as the reorganization of an enterprise wholly or partly owned by the FGN such that the enterprise operates as a profit-making venture without subvention from the government

The Act also categorizes Commercialization into Full Commercialization and Partial Commercialization:

- 1 Full Commercialization: Enterprises in this category are expected to operate profitably on commercial basis and be able to raise funds from the capital market without recourse to government. Such enterprises are expected to adhere to private sector procedures in their operations.
- 2 Partial Commercialization: Enterprises in this category might be considered for capital grants (from the Government) to finance capital projects. However, they are expected to generate enough revenue to cover operating expenses
 - In both cases, there is no alienation of the Government's equity holding.
 - In many circumstances, commercialization is used interchangeably with the term, corporatization.

Commercialization, whether full or partial, is a dynamic process, which ultimately leads to eventual **privatization or some form of public-private partnership (PPP)**. This does not mean just applying existing approaches to privatization such as concessions, but also entails utilizing specific contracts. This approach to commercialization is however deployed on a case-by-case basis

Commercialization would be in tandem with the objectives of the Bureau of Public Reforms (BPSR) since there is the need for the resolution of some jurisdictional overlap, requiring closer collaboration between the BPE and the BPSR. Commercialization also recognizes the important roles of Supervising Ministries, Board of Directors and Management

Privatization and Commercialization Act listed 33 public enterprises for

the sanction of the CAC and directives of NCP/BPE.

A. PREFACE

As the Federal Government of Nigeria's (FGN's) leading reform agency, the Bureau of Public Enterprises (BPE) is responsible for implementing sustainable and wide-ranging reform and divestiture of Public Enterprises (PEs). Given the importance and sensitive nature of this mandate, it is imperative that transparency, accountability and due process govern the programme. Publishing the procedures manual therefore provides stakeholders with information on the process and basis on which BPE's implementation of the programme can be assessed.

The Privatisation Procedures Manual is a set of guidelines by which the BPE implements the FGN reform programme and National Council on Privatisation (NCP) directives on the privatisation of PEs. The Manual, which draws impetus from Nigeria's experience and inspiration from global best practices, is designed to:

- Assist the realisation of privatisation objectives
- Optimise the institutional effectiveness of the BPE
- Maximise the success rate of privatisation transactions
- Accelerate the implementation of the privatisation programme in line with NCP directives
- Ensure due process, transparency and accountability in Privatisation Transactions
- Ensure that transactions are conducted in line with global best practices, with a view to attracting quality investors

Essentially, the manual has three sections, namely:

- Section 1 highlights BPE's procedures for transactions
- Section 2 provides details in annexure format (C1a through G1d),
- Section 3 describes sequence of activities for selected methods of privatisation.

There is also an addendum detailing sequence of activities for other commonly used methods of divestiture and forms of privatisation namely: Public Offers, Private Placement, Guided Liquidation, Concession and Commercialization

We are confident that by adhering to the provisions of this manual we could truly declare that “we do the right job, the right way, and at the right time”

Irene N. Chigbue
Director General
Bureau of Public Enterprises

investor is technically, financially and managerially competent. Thus instead of selling the assets of the enterprise in parts as a liquidator is wont to do, the sale should be to a core investor who would be able to turn around the enterprise.

Procedure and sequencing of activities

- a) Carry out a diagnostic review of the enterprise to ascertain whether it is a candidate for Guided liquidation
- b) Recommend to the Director General/Management Committee that the enterprise be liquidated
- c) Report to the Technical Committee and then to NCP
- d) Advertise for the appointment of Liquidators
- e) Liquidators to appear before the Technical Committee to discuss the details of the assignment
- f) Appoint a Counsel to file the winding up petition
- g) Summon a meeting of the Board of Directors and EGM to pass the necessary resolutions
- h) Obtain a Court order to wind up
- i) Appointment of a Liquidator by the Court
- j) Constitution of a Committee of Inspection
- k) Advertisement for EOI, where necessary
- l) Preparation and dispatch bidding Documents
- m) Evaluation of the Technical Proposal by committee of Inspectors
- n) Financial Bid Opening by the Technical Committee/Liquidator
- o) Negotiations of SPA
- P) Execution of the SPA

What 'guided liquidation' entails is a combination of the process of core investor sale with that of liquidation. The process is transparent and competitive. The other option open to NCP is the combination of a Scheme of Arrangement and Liquidation or during liquidation to hive off the core assets and liquidate the non-core assets.

The powers of the liquidator under CAMA are enormous. There are certain decisions that s/he can take without their sanction. For instance, s/he can sell the property of the company of whatever nature by public auction or private contract, with power to transfer the property to any person or company or to sell the same in parcels and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal without the sanction of the Court. However the liquidator needs the approval of the Court or Committee of Inspection to pay creditors and to appoint a legal practitioner or any other relevant professional to assist him in the performance of his duties.

Other than the Court or Committee of Inspection, a Liquidator is also subject to

(GUIDED) LIQUIDATION PROCESS

A company registered or incorporated under the provision of the Companies & Allied Matters Act of 1990 (CAMA) comes into being through a legal process. It also ceases to be in existence through a legal process. This latter process is commonly referred to as 'liquidation'. Though the phrase used in CAMA is 'winding up' the two concepts (liquidation and winding up) are used interchangeably.

The CAMA has elaborate provisions on the modes of winding up and the processes involved. Essentially there are three modes, namely:

- a) By the Court
- b) Voluntary; or
- c) Winding up subject to the supervision of the court (section 401).

Voluntary winding up is further broken into two: members' voluntary winding up and creditors' voluntary winding up. There are circumstances in which a company can be wound up voluntarily.

The procedure for winding up a company voluntarily depends on whether it is a members' voluntary winding up or a creditors' voluntary winding up. Where a company is to wound up voluntarily by members, a declaration of solvency is required by law to the effect that the directors have formed the opinion that the company will be able to pay its debts in full within such period, not exceeding 12 months from the commencement of the winding up. The candidates identified by BPE for liquidation are insolvent and therefore do not qualify for members voluntary winding up. On the passage of the appropriate resolution, a voluntary winding up can be subject to the supervision of the court. In the case of creditors' winding up, no declaration of solvency is required.

NCP POLICY OF GUIDED LIQUIDATION

Section 2(3) of the Public Enterprises (Privatization & Commercialization) Act provides that where the shares of an enterprise are not to be offered for sale by public issue of shares or private placement, the NCP may approve that the shares be offered for sale through a willing seller and willing buyer basis or through any other means. Thus NCP has adopted 'guided liquidation' as a mode of privatization.

'Guided liquidation' is a process whereby the normal liquidation process as provided in CAMA and the Companies Winding Up Rules 2001 are integrated into the bidding processes of BPE. The bidding processes of BPE are in conformity with international best practices. The processes ensure that whoever emerges as a core

SECTION 1

MAIN DOCUMENT

C. LEGAL FRAMEWORK

The legal basis for privatisation and commercialisation in Nigeria is the Public Enterprises (Privatisation and Commercialisation) Act Cap P.38 Laws of the Federation of Nigeria (LFN) 2004 (the Act). The Act establishes a council (NCP) to determine political, economic and social objectives for privatisation and commercialisation of public enterprises (PEs). NCP approves policy and decisions in privatisation and commercialisation of PEs. The Act establishes BPE as a secretariat to NCP and the body that implements NCP policy and decisions. NCP supervises the activities of the Bureau and issues directions on the implementation of the privatisation and commercialisation programme

Part 1 of the First Schedule to the Act, lists PEs for partial privatisation while Part 2 lists PEs for full privatisation. FGN shareholdings in enterprises listed for full privatisation in Part 2 are mostly minority shareholdings. The Second Schedule Part 1 lists PEs for partial commercialisation and Part 2 lists PEs for full commercialisation. The Privatisation Procedures Manual describes enterprises for full commercialisation as those expected to operate profitably on a commercial basis, and to raise funds from the capital market without FGN guarantee. Such enterprises are to adopt private sector procedures in the running of their businesses. Enterprises for commercialisation are expected to generate enough revenue to cover their operating expenditures. FGN may consider giving capital grants to finance capital projects.

The objectives of the privatisation and commercialisation programmes and NCP functions are listed for ease of reference at C1(a) and C1(b) respectively.

C0.1 NCP: AUTHORITY TO AMEND SCHEDULES AND MAKE REGULATIONS

Section 1(3) of the Act provides that NCP may, from time to time, by order published in the Gazette alter, add, delete, or amend the provisions of the First Schedule.

Section 6(3) of the Act provides that NCP may, from time to time, by order published in the Gazette, amend the Second Schedule to this Decree so as to alter the category to which any enterprise listed in that Schedule shall be classified.

Section 31 of the Act provides that NCP may make regulations generally for the purpose of giving effect to the provisions of the Act.

C0.2 FUNCTIONS

transferred assets (where applicable) and the amount of the fixed concession fee.

Contract Administration

The concession agreement must set out such terms as would ensure the successful operation of the concession. This will also entail putting in place adequate regulatory framework.

Summary of Concession Process

1. Obtain Approval for Concession
2. Engage Concession Advisers, where required
3. Visit enterprise or part thereof to ascertain condition of infrastructure and obtain information for the preparation of bidding document
4. Draw up concession plan and framework and seek approval
5. Advertise for Expression of Interest for the concessions
6. Prepare RFP and bidding documents
7. Receive EOI's, evaluate and pre-qualify bidders and seek approval thereof
8. Draw up, finalise and run the concession model to determine reserved price
9. Issue out RFP and bidding document to pre-qualified bidders
10. Prepare and hold pre-bid conference, data room and Physical Due diligence
11. Send out addendum on answers to questions and any other necessary information
12. Receive and evaluate proposals and bids
13. Seek approval for the technical evaluation result and opening of the bids
14. Public Opening of the bids of the technically qualified bidders
15. Obtain approval for the preferred and reserved bidders
16. Negotiate with the preferred bidder (if it fails negotiate with the reserved bidder)
17. Execute the concession agreement
18. Receive commencement fee
19. Commence transition period
20. Hand over the concession area to the concessionaire
21. Receive payment for first year lease and equipment (if any)
22. Monitor the implementation of the concession agreement

- reduce financial and administrative burden of managing the PE on Government
- render the PE viable and sustainable
- meet Government's overall economic objectives

To be able to ascertain this, among other things, the TT must conduct an independent assessment of the PE, evaluate the state of the PEs assets /infrastructure, perform preliminary review of costs and benefits, review legal and regulatory issues and identify all relevant stakeholders.

Market Consultations

As part of the communication and marketing plan for a concession transaction, prior to the advertisement of the invitation to bid, efforts should be made to proactively engage sector operators in order to understand the unique issues involved in the sector and also source potential concessionaires who will submit pre-selection documentation.

Bid Document Preparation

These will typically include instructions to bidders, Information Memorandum and the draft concession agreement.

Invitation of Offers/ Request for Proposals/Pre-Selection

Pre-selection will involve the pre-qualification of candidates based on their technical and financial capability. Bidders are furnished with bidding documents including draft concession agreement. (Bidders will usually be required to comment on the draft concession agreement)

Due Diligence

Bidders have the responsibility for conducting an independent analysis of the feasibility of the concession and assume the risks associated with the concession. In order to facilitate due diligence, bidders should be given access to the data room containing information on the PE and also afforded the opportunity to tour the facilities.

Evaluation, Selection and Award

The Technical evaluation should cover the organizational structure, experience, financial capability of the bidders, and the business plan for the operation of the concession. Financial evaluation will cover the purchase price quoted for the sale of

As the designation "Bureau of Public Enterprises" implies, BPE is more than a privatisation agency having statutory functions in commercialisation as well as privatisation of PEs. The statutory functions of BPE are set out in C1.2(a). The functions include advising NCP on privatisation and commercialisation of PEs and implementing NCP policy and decisions on privatisation and commercialisation. BPE may perform such functions with respect to privatisation and commercialisation, and carry out such other duties and responsibilities, as NCP may assign to it from time to time.

The Act also requires BPE to carry out particular functions including to:

- prepare public enterprises approved by the Council for privatisation;
- advise the Council on further public enterprises that may be privatised;
- advise Council on the capital restructuring needs of the public enterprises to be privatised;
- carry out all activities required for the successful issue of shares and sale of assets of the public enterprises to be privatised;
- ensure the updating of the accounts of all commercialised enterprises to ensure financial discipline;
- ensure the success of the commercialisation exercise and monitor, on a continuous basis for such period as may be considered necessary, the operations of the public enterprises after commercialisation;
- review the objectives for which public enterprises were established in order to ensure that they adapt to the changing needs of the economy;
- ensure that public enterprises are managed in accordance with sound commercial principles and prudent financial practices;
- interface with the public enterprises, together with the supervising Ministries, in order to ensure effective monitoring and safeguarding of the public enterprises' managerial autonomy.

To carry out these statutory functions, BPE requires accurate, up to date information on PEs listed in the Schedules to the Act.

D. PRE-TRANSACTION ACTIVITIES

D1. PREPARATION

D1.1 GLOBAL PRIVATISATION PLAN

BPE prepares and adopts biannual rolling Privatisation Plan setting out for a period of two years, public enterprises that are scheduled for privatisation along with a realistic time-table for completion. The Plan reflects the capacity of BPE to manage and successfully implement privatisation of the PEs in the Plan. The Plan is usually revised after an annual review of performance taking into account events and changed circumstances. The overall plan is based on individual transaction plans prepared by BPE Transaction teams (see D4.1 below).

The sequence for inclusion of individual PEs in the Global Privatisation Plan reflects;

- privatisation policy objectives,
- the objectives of the privatisation of the specific enterprise,
- the size and importance of the PE as measured by financial performance, production, employment, likely value,
- the nature of the PE and sector in which it operates,
- demand and supply conditions that will influence potential purchasers,
- complicated matters to be addressed before privatisation such as changes in the legal or regulatory framework,
- the likely method of privatisation.
- National security interests

D2. TRANSACTION TEAM

For each proposed transaction, a small transaction team of BPE staff is established. The transaction team can include out-sourced transaction advisers. The transaction team is responsible for implementation of the transaction process.

The sector manager on the transaction team is advised and assisted by a BPE in-house lawyer and accountant. The BPE lawyer, accountant, environmental and labour advisers participates in transaction teams in professional capacities rather than as sub-ordinates of the transaction team convenor. When a transaction team in the same sector is formed for a separate transaction there may be a different BPE lawyer and accountant appointed as team members to ensure independent advice.

The transaction team determines the types of out-sourced advice that may be

Doc G.1 (b)

CONCESSION PROCESS

Concession is usually resorted to for infrastructure-type projects that require huge capital outlay over a period of time or for projects with strategic national interest implications where outright divestiture is not feasible. The general principles, procedures and processes established in this Manual for a typical privatisation transaction apply to concession transactions. However, because concession arrangements entail a myriad of legal and economic issue, which impacts on implementation of concession, the TT must pay attention to the complex range of the issues and options involved in the implementation of concessions. Such issues include:

- Identifying and coordinating all relevant government agencies whose roles are important at the different levels of the process.
- Understanding the role of the sector regulator and future relationship with the concessionaire.
- Need for institutional arrangement for post concession and award monitoring.

In addition to prescribed transaction procedure and sequence, a typical concession transaction entails the following steps:

Rationale for Concession

- Infrastructure type Project
- High capital outlay requirements over a period of time
- National interest consideration

Planning the Concession Structure

In the design and implementation of concession contracts, allocation of risks and responsibilities and the mechanisms for evaluating and awarding projects are of paramount importance. To determine the options and process to adopt in the selection of concessionaires, the TT must critically examine whether the concession option and process to be adopted would achieve the following objectives:

- improve the efficiency of the PE

Doc G.1(a)

BPE SEQUENCE OF ACTIVITIES FOR INITIAL PUBLIC OFFER (IPO) AND PUBLIC OFFER (PO)

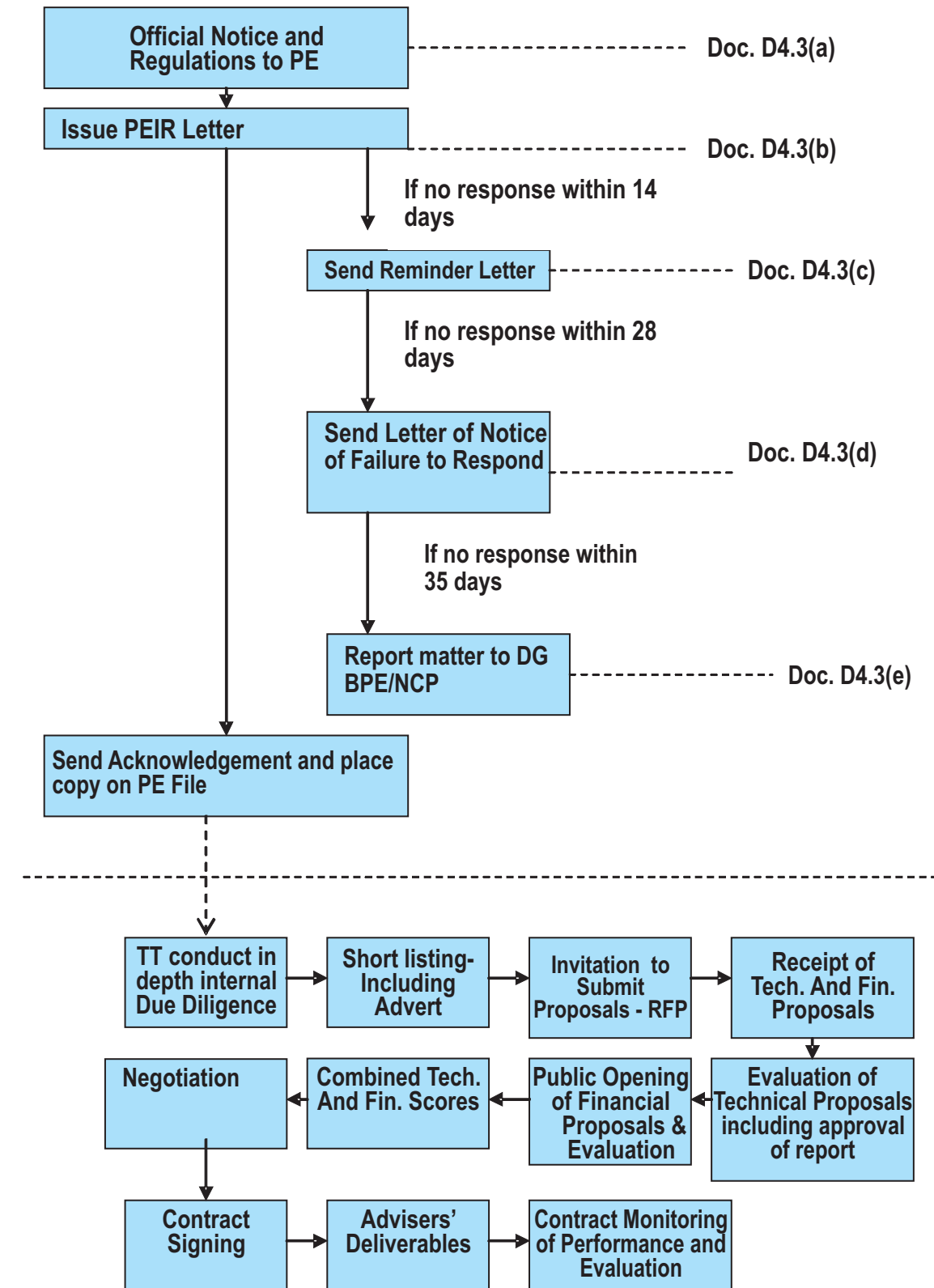
1. Obtain NCP Approval for IPO or PO
2. Procure Professional Parties to the Offer
3. Convene First "All Parties" Meeting
4. Prepare Documentation Checklist
5. Forward Documentation Checklist to Enterprise Managers
6. Request for Documentation
7. Prepare Offer documents
8. Review and Approve Draft Offer Documents
9. Incorporate Accountant's Report/ Memorandum of Profit Forecast into offer documents
10. Submit Updated Draft offer documents to All Parties
11. Review and Approve of Marketing Plan
12. Present Draft Memorandum on Pricing for approval
13. Obtain approval for Offer price
14. Convene All Parties Meeting/ Finalise offer documents
15. File Application/ Marketing Materials with SEC and NSE
16. Prepare for NSE Quotation Committee Meeting
17. Attend NSE Quotation Committee Meeting
18. Obtain SEC Clearance of Offer Documents / Authorisation
19. Obtain formal approval-in-principle of the Quotations Committee
20. Print offer documents for Completion Board Meeting
21. Hold Completion Board Meeting
22. File executed documents with SEC/ forward same to stockbrokers
23. Obtain SEC's final clearance to open the offer
24. Print offer documents/ dispatch same
25. Share Offering (Opening and Closing) / Direct Marketing
26. Submissions of returns by receiving agents
27. Collate returns & forward to the Issuing House
28. Prepare basis of allotment
29. Send basis of allotment to BPE
30. Convene Meeting of Allotment Committee to vet and approve preliminary allotment of shares
31. File basis of allotment with SEC
32. Receive SEC clearance on basis of allotment
33. NCP/BPE receive cheques for proceeds
34. Dispatch surplus monies/rejected applications
35. Advertise allotment results in Newspapers
36. File returns with CAC
37. Dispatch share certificates to allottees
38. Send letter of compliance to SEC
39. Prepare transaction Closure Report
40. Dealing in shares commence on the floor of the NSE

required based on the size and complexity of the transaction and identifies out-sourced advisers according to standard procedures.

The transaction team receives and assesses material from the out-sourced advisers and prepares a transaction plan which sets out transaction objectives and recommendations for privatisation strategy and method of privatisation as appropriate. The Draft Information Memorandum and Bid Documents (including bid procedures, requirements, terms and conditions of the Bid and draft sale and purchase agreement and other documents) are prepared, and documents and materials are gathered for the data room. These are made available to bidders.

The Documentation and Compliance Officer (DCO) (see section F below) submits a report that procedures have been correctly followed. The report is signed by the DCO and countersigned by the sector manager on the transaction team, to the Director General. BPE managers must take responsibility for compliance with procedures. While the DCO ensures compliance and records deviations.

CHART 1: PRE-TRANSACTION ACTIVITY SEQUENCE



SECTION 3

SEQUENCE OF ACTIVITIES FOR SELECTED PRIVATISATION METHODS

D3. DATA GATHERING

D3.1 INTRODUCTION

It is imperative that BPE obtains sufficient information on the enterprises slated for privatisation well in advance of making any decisions on the mode and method of privatisation. A thorough information gathering exercise is necessary to enable BPE:-

- (i) obtain familiarity with the enterprise and the sector within which it operates;
- (ii) establish the current operational and financial, status of the enterprise; and
- (iii) determine strategy, decide on appropriate privatisation options and create a realistic privatisation plan.

At the outset, BPE typically will need sufficient information to be able to at least answer the following questions:-

- Is the enterprise founded by statute and have all applicable permits?
- Is the enterprise a company in which FGN holds 100% shareholding?
- Is the subject for sale a shareholding of less than 100% held by FGN in a company and what % is held by FGN?
- Is the subject for sale a minority shareholding held by FGN and what % is held by FGN?
- Is the subject for sale an asset owned by or on behalf FGN or by or on behalf of a person that is owned or controlled by FGN?
- If shares are to be sold are the shares listed on stock exchange and actively traded?
- Is the enterprise financially distressed with annual losses and / or liabilities (including contingent liabilities) greater than assets (in which case creditors have priority over shareholders)?
- Is the enterprise active and producing output and providing services?
- What is the size, importance, sensitivity of enterprise, shareholding or asset?
- Is there a pre-emption right for other shareholders and / or pre-determined method of sale in a shareholders' agreement, articles of association or other document?
- Are assets subject to charge / mortgage?
- Do the shares have any value?

A sample information request list is shown at D4.1 (a).

D3.2 ENSURING COOPERATION

Section 16 of the ACT states that BPE shall, subject to the overall supervision of NCP, have power to

“request for and obtain from any public enterprise statistical and other information including reports, memoranda and audited accounts and other information relevant to its functions and to liaise with relevant bodies or institutions locally or overseas for effective performance of its functions.”

In spite of the above, experience has shown that public enterprises tend to be recalcitrant in providing detailed, accurate and up-to-date information on a timely basis as and when requested. Indeed, in some cases, some public enterprises have been less than diligent in ensuring that their statutory corporate and financial documents are up-to-date. This invariably leads to delays and obstructions in the sale process, making it difficult for BPE to plan appropriately. In addition, public enterprise managers may often be tempted to enter into contracts, dispose of assets or engage in other activities likely to be inimical to the smooth conduct of the privatisation transaction.

In order to ensure that this problem is remedied, NCP shall invoke its powers under Section 31 to *“make regulations generally for the purpose of giving effect to the provisions of the Act”*.

Such regulations will provide for a notice to be served on a public enterprise (where it is wholly owned or controlled by FGN), or a person holding and FGN asset or interest in an enterprise to be privatised or divested, and the supervising Ministry, of NCP approval giving BPE clear authority to proceed with the transaction and obtain full cooperation and support, particularly in the provision of information. This notice will specify the following:-

- Co-operation with BPE and carrying out written directions given by BPE to prepare for privatisation;
- Providing access to information, books and records and inspection of premises;
- Not permitting the disposal or dissipation of assets above a specified value by act or omission without BPE prior written approval;
- Limiting new expenditures above a specified value without BPE prior written approval;

- Only one consultant is qualified or has exceptional experience to carry out the assignment.

4.50 Least cost selection (LCS) Good for appointment of Accounting or Auditors firms

- Prepare the TOR and cost estimate.
- Request for expressions of interest (consultant's experience and competence)
- Establish a short list from response to Request for Expression of Interest /internal data or written request from a donor agency, if necessary.
- Establish minimum qualifying mark for quality in the RFP (specifying that proposals scoring less than the minimum qualifying mark in the RFP will be rejected)
- Invite the short listed consultants to submit proposals in two envelopes (technical and financial).
- Open technical envelopes first and evaluate.
- Envelopes of those scoring less than the minimum qualifying marks are rejected and returned unopened
- Upon approval of the technical evaluation report, by DG/MC/donor agency, the financial envelopes of those that scored the minimum mark are opened in public.
- Select and negotiate contract with the firm with highest combined scores.
- Award contract after approval by DG/MC/ or donor agency's approval of the minutes of negotiations and draft contract.
- Submit copies of signed contract to relevant parties.

- Prepare Terms of Reference (TOR) and cost estimate.
- Advertise for Expression of Interest (EOI)
- Evaluate EOIs and prepare a shortlist
- Issue Request for Proposals (RFP) after obtaining approvals for the shortlist and the draft RFP with relevant authorities.
- Receive and evaluate technical proposals and seek DG's/MC's approval.
- Evaluate financial proposals
- Evaluate quality and cost (i.e., combined technical and financial evaluation)
- Negotiate and award contract(s) to selected firm(s) after approval of minutes of negotiations by DG/MC.
- Submit copies of signed contract(s) to relevant parties.

4.20 Selection Based on Consultant's Qualification (CQ)

- Prepare the TOR and cost estimate and seek DG/MC/donor agency's clearance.
- Request for expressions of interest to be based on experience and competence of the consultant
- Evaluate the proposals and establish a shortlist.
- Select consultant with the appropriate qualifications and references.
- Request for combined technical and financial proposal from the consultant with highest score.
- Evaluate the proposals and invite the firm for negotiations
- Negotiate and award contract.
- Submit copies of signed contract to relevant parties

4.30 Individual Consultant

BPE shall select individuals on the basis of their qualifications for the assignment:

- When teams of personnel are not needed
- When no additional outside professional support is required
- When the experience and qualification of the individual is the paramount requirement.

4.40 Single Source Selection

The Bureau should discourage the use of this method as it lacks transparency and does not provide the benefits of competition in regards to quality and cost. It is used only in exceptional cases where:

- The tasks represent a natural continuation of previous work carried out by a consultant;
- The assignments are very small;

- Limiting the incurrence of liabilities other than in the ordinary course of business (and then only at similar levels to the recent past);
- Not incurring additional borrowings above a specified value without BPE prior written approval.
- Penalties for non-compliance with the above.

In addition, for each proposed transaction, BPE shall establish a Transaction Liaison Team made up of a nominated representative of the public enterprise, the Ministry and BPE for each proposed transaction. The team shall meet on a regular basis during the transaction to ensure full and free flows of information and co-operation.

D3.3 INFORMATION GATHERING PROCESS

Below is an outline of the information gathering process to be followed (also shown below as Chart 1):-

- (i). Provision of official Notice and Regulations to PE together with request for nominees for Transaction Liaison Team
- (ii). Issue of PE Information Requirement Letter
- (iii). Within a period of 21 calendar days from the date of NCP making Regulations providing for the BPE Privatisation Procedures, the BPE staff member responsible for a PE ("BPE Manager") shall cause a letter, together with the NCP / BPE Public Enterprise Information Requirements 2005 (PEIR), together with Environmental Data Screening Sheet (EDSS) to be sent to each PE for which he or she is responsible.
- (iv). The letter and PEIR shall be sent in electronic form by e-mail and in hard copy paper form to the PE Chairman, Managing Director and the shareholder that holds shares for or on behalf of FGN.
- (v). The BPE Manager shall ensure that (a) the date of dispatch by e-mail and registered post, and (b) the last date for receipt of the completed PEIR, which shall be 21 calendar days from the date of dispatch, are marked on the face of the PEIR prior to dispatch.
- (vi). The BPE Manager shall ensure that copies of the dispatched PEIR, the letter and accompanying e-mail are placed on the PE File and shall record the dates

of dispatch of the PEIR and last day for receipt of the PEIR response in the NCP/BPE.

- (vii). On receipt of a PEIR Response by BPE, the BPE Manager shall (a) immediately mark the date of receipt of response on the face of the PEIR Response, (b) place the completed PEIR response on the PE File, (c) record the date of receipt of the PEIR response in the PEIR Register (Doc. D4.3(f)).
- (viii). The BPE Manager shall examine with due care and attention the PEIR response to ensure that it is complete and satisfactory. If the PEIR response is complete and satisfies BPE, the BPE Manager shall send an acknowledgement of receipt of the PEIR response to PE Chairman, Managing Director and FGN shareholder copy to Chairman NCP, place a copy of the acknowledgement on the PE file and record the dispatch of the acknowledgement (Doc. D4.3 (g)) on the PEIR Register.
- (ix). If BPE does not receive a PEIR response on or before 14 calendar days from the date of dispatch of the PEIR then on the next working day after the expiry of the 14 calendar days the BPE Manager shall send a reminder letter to the PE Chairman, Managing Director and FGN shareholder. The BPE Manager shall place a copy of the reminder letter on the PE File and record dispatch of the reminder in the PEIR Register.
- (x). If BPE does not receive a PEIR response or receives a PEIR response that is not completed to its satisfaction, by the last date for receipt of the PEIR response, then on or before the 28th calendar day from the date of dispatch, the BPE Manager shall send a Letter of Notice of Failure to Respond specifying that there is a [failure to respond] or [failure to respond satisfactorily in respect of identified matters]. The Letter of Notice of Failure to Respond is sent to the PE Chairman, Managing Director and FGN shareholder by e-mail and registered post. The BPE Manager shall place copies of the Letter of Notice of Failure to Respond, e-mail and evidence of dispatch on the PE File, and record the date of dispatch of the Letter of Notice of Failure to Respond in the PEIR Register. The Letter of Notice of Failure to Respond shall state that the PEIR response should be received by BPE on or before the 35th day from the initial date of dispatch of the PEIR.
- (xi). On receipt of a late PEIR Response by BPE within the extended time, the BPE Manager shall (a) immediately mark the date of receipt of response on the face of the PEIR Response, (b) place the completed PEIR response on the PE File, (c) record the date of receipt of the PEIR response in the PEIR Register.

Doc F2 (a)

PROCUREMENT PROCESS FOR CONSULTANCY ADVISORY SERVICES

1.00 Introduction

Procurement of consultancy services can best be realised through Competitive Bidding where consideration is given to quality, economy, efficiency and transparency. This process ensures that eligible prospective bidders have equal opportunity and timely/adequate notification of BPE's requirements to bid.

This manual is aimed at putting in place procedures that would bring about a transparent procurement process consistent with international best practices aimed at having value for money.

2.00 Procurement Planning

Departments shall prepare work plans indicating consultancy services to be procured within a specified period. Based on these work plans, the Central Procurement Unit shall prepare a procurement plan which shall indicate a description of services to be procured; the quantities required, estimated costs, procurement method to be used, completion period, etc. The plan shall be approved by the DG/MC and shall be updated on quarterly basis.

3.00 Procurement Methods

As much as possible consultancy services shall be procured through Quality and Cost Based Selection (QCBS) method. However where QCBS is not the most economic method in terms of cost, efficiency and transparency, any of the following methods could be used.

- Selection Based on Consultant Qualification (CQ)
- Individual Consultants
- Single Source Selection
- Least Cost Selection

4.00 Procurement Steps for Consultancy Services

The details below describe steps to be followed for each procurement method for consultancy services. Where a donor agency is involved, approvals must be obtained from the agency at each stage of the selection process.

4.10 Quality and Cost Based Selection (QCBS):

No. 59 of 1992 as amended by Decree 14 of 1999

- National Environmental Protection Management of Solid and Hazardous Wastes Regulation 1991 S.I.15, FEPA, 1991, Official Gazette, 31st December 1991, Vol. 78, No. 102, Lagos
- Regulation (EC) No.761/2001 of the European Parliament and of the Council of March 19 2001 Allowing Voluntary Participation by Organizations in a Community Eco-management and Audit Scheme (EMAS) see at: [Http://europa.eu.int/comm/environment/emas/index_en.htm](http://europa.eu.int/comm/environment/emas/index_en.htm)
- Environmental Auditing, Environmental Assessment Sourcebook Update No. 11, Environment Department, The World Bank, Washington, DC, August 1995
- Environmental Audit in Industrial Projects, Pollution Prevention and Abatement Handbook, The World Bank, Washington DC, July 1998 at: [http://lnweb18.worldbank.org/ESSD/essdext.nsf/51DocByUnid/CC76691EF56E3D0285256BA500588B2C/\\$FILE/HandbookEnvironmentalAuditsInIndustrialProjects.pdf](http://lnweb18.worldbank.org/ESSD/essdext.nsf/51DocByUnid/CC76691EF56E3D0285256BA500588B2C/$FILE/HandbookEnvironmentalAuditsInIndustrialProjects.pdf)
- http://www.ifc.org/enviro/pollution/Pest_app.pdf
- Environmental Management Systems and ISO 14000, Pollution Prevention and Abatement Handbook, The World Bank, Washington, DC 1998, [http://lnweb18.worldbank.org/ESSD/essdext.nsf/51DocByUnid/250CB4D43984D09685256BA50058B31B/\\$FILE/HandbookEnvManagementSystemsAndISO14000.pdf](http://lnweb18.worldbank.org/ESSD/essdext.nsf/51DocByUnid/250CB4D43984D09685256BA50058B31B/$FILE/HandbookEnvManagementSystemsAndISO14000.pdf)

The PEH provides links to sectoral environmental guidance.

- (xii). The BPE Manager shall examine with due care and attention the late PEIR response to ensure that it is complete and satisfactory. If the late PEIR response is complete and satisfies BPE the BPE Manager shall send an acknowledgement of late receipt of the PEIR response (Doc. D4.3(h)) to PE Chairman, Managing Director and FGN shareholder copy to Chairman NCP, place a copy of the acknowledgement of late receipt on the PE file and record the dispatch of the acknowledgement of late receipt on the PEIR Register.
- (xiii). If BPE does not receive a PEIR response, completed to its satisfaction, by either e-mail or registered post, on or before the 35th day after the initial dispatch of the PEIR, then on the working day immediately after the expiry of the 35th day from the date of dispatch the BPE Manager shall (a) record the failure of the PE to respond or to respond satisfactorily in the PEIR register and (b) report the matter to the Director General of BPE (DG). The Director General shall bring the matter to the immediate attention of NCP for the taking of appropriate action, including where necessary disciplinary action or a penalty as provided for in the Regulations.
- (xiv). The BPE Manager shall place a copy of the report to the Director General on the PE File and record the date of submission of the report to the Director General in the PEIR Register. Copies of the NCP decision on the matter to be placed on PE file and recorded in the PEIR Register.
- (xv). BPE Annual Report should include a table naming the PEs and individuals that failed to provide a [satisfactory] PEIR response.
- (xvi). BPE Manager should check PEIR Response to identify if there are subsidiary companies of the PE that should be sent PEIR if not already requested to send a PEIR response.

D3.4 INSTITUTIONAL MANAGEMENT OF INFORMATION

An up-to-date comprehensive and integrated public enterprise file is essential to BPE's operations. Keeping a PE file ensures transparency, leads to greater organisation in the management of a transaction and provides reliable record in the event of personnel changes. The PE File ensures that PE information and activity related to a PE that is owned or controlled by FGN is available to NCP / BPE as public institutions as and when required. Information on PEs and their activities is not personal to individual BPE staff members but forms an important part of BPE's institutional knowledge base.

The BPE staff member responsible for a PE (BPE Manager) shall ensure that a PE File on each PE for which he or she is responsible is created and maintained up-to-

date at all stages of preparing for, implementing and completing privatisation. The levels of access to such files will be on the basis of right and need to know.

The information shall be gathered and stored in hard (paper) format and soft (electronic) format.

In respect of each PE listed in the First Schedule of the Act for privatisation there shall be:

- a file containing printed documents such as the PE constitutional documents including memorandum of association, articles of association, shareholder agreements, other legal documents, all applicable environmental permits, annual reports and accounts, financial statements, consultancy reports etc;
- a file with response to BPE information requests and follow up queries;
- files containing all information and materials from previous efforts at privatisation or reform;
- a correspondence file for all correspondence between BPE and the PE;
- notes and records of meetings;
- a daily file in which all material relating to that PE, including correspondence, is kept in date order regardless of the subject.

Another set of transaction files shall also be maintained containing information on the transaction and transaction process. These will include:-

- files with material stored by subject e.g. finance, legal, employment, assets, valuation, liabilities including contingent liabilities, loans, should have a list of glossary etc.
- correspondence file containing all correspondence with any person relating to the individual PE;
- file recording notes of all meetings relating to the PE including transaction team meetings and transaction liaison team meetings;
- transaction process files register of interested persons, records of bids received etc through to evaluation reports and signed sale and purchase agreements.

The files should show the chain of reasoning leading to decisions. The files should

mechanisms should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms.

17. Organizational responsibilities: The organizational framework for implementing resettlement, including identification of agencies responsible for delivery of resettlement measures and provision of services; arrangements to ensure appropriate coordination between agencies and jurisdictions involved in implementation; and any measures (including technical assistance) needed to strengthen the implementing agencies' capacity to design and carry out resettlement activities; provisions for the transfer to local authorities or resettlers themselves of responsibility for managing facilities and services provided under the project and for transferring other such responsibilities from the resettlement implementing agencies, when appropriate.
18. Implementation schedule: An implementation schedule covering all resettlement activities from preparation through implementation, including target dates for the achievement of expected benefits to resettlers and hosts and terminating the various forms of assistance. The schedule should indicate how the resettlement activities are linked to the implementation of the overall project.
19. Costs and budget: Tables showing itemized cost estimates for all resettlement activities, including allowances for inflation, population growth, and other contingencies; timetables for expenditures; sources of funds; and arrangements for timely flow of funds, and funding for resettlement, if any, in areas outside the jurisdiction of the implementing agencies.
20. Monitoring and evaluation: Arrangements for monitoring of resettlement activities by the implementing agency, supplemented by independent monitors as considered appropriate by the Bank, to ensure complete and objective information; performance monitoring indicators to measure inputs, outputs, and outcomes for resettlement activities; involvement of the displaced persons in the monitoring process; evaluation of the impact of resettlement for a reasonable period after all resettlement and related development activities have been completed; using the results of resettlement monitoring to guide subsequent implementation.

Use the attached for information purposes and guidance (additional guidance will be provided for every individual EAU assignment):

- National Guidelines for Environmental Audit in Nigeria, FEPA, 1999
- National Policy on Environmental Management System in Nigeria, Decree No.

comparable services to host populations; any necessary site development, engineering, and architectural designs for these facilities.

13. Environmental protection and management: A description of the boundaries of the relocation area; and an assessment of the environmental impacts of the proposed resettlement³ and measures to mitigate and manage these impacts (coordinated as appropriate with the environmental assessment of the main investment requiring the resettlement).
14. Community participation: Involvement of resettlers and host communities, ⁴ including
 - (a) A description of the strategy for consultation with and participation of resettlers and hosts in the design and implementation of the resettlement activities;
 - (b) A summary of the views expressed and how these views were taken into account in preparing the resettlement plan;
 - (c) A review of the resettlement alternatives presented and the choices made by displaced persons regarding options available to them, including choices related to forms of compensation and resettlement assistance, to relocating as individuals families or as parts of preexisting communities or kinship groups, to sustaining existing patterns of group organization, and to retaining access to cultural property (e.g. places of worship, pilgrimage centers, cemeteries);⁵ and
 - (d) Institutionalized arrangements by which displaced people can communicate their concerns to project authorities throughout planning and implementation, and measures to ensure that such vulnerable groups as indigenous people, ethnic minorities, the landless, and women are adequately represented.
15. Integration with host populations: Measures to mitigate the impact of resettlement on any host communities, including
 - (a) Consultations with host communities and local governments;
 - (b) Arrangements for prompt tendering of any payment due the hosts for land or other assets provided to resettlers;
 - (c) Arrangements for addressing any conflict that may arise between resettlers and host communities; and
 - (d) Any measures necessary to augment services (e.g., education, water, health, and production services) in host communities to make them at least comparable to services available to resettlers.
16. Grievance procedures: Affordable and accessible procedures for third-party settlement of disputes arising from resettlement; such grievance ability of

be of a standard of completeness and clarity that would satisfy a court that decisions were made on reasonable grounds. It is possible that discovery of the files could be sought and granted in judicial review of a privatisation transaction.

Document D4.4(a) lists the minimum contents for a PE file.

Document 4.4(b) lists the contents of a typical transaction plan file

Document 4.4(c) lists the contents of a typical transaction file

D3.5 DUE DILIGENCE

The Transaction Team shall also conduct its own in-depth due diligence investigations (including environmental audit) on the enterprise. Document D4.5 (a) provides a sample checklist for investigating a PE as part of the preparation for sale. Clearly, the contents of the checklist will vary on an enterprise-by-enterprise basis.

Information obtained in the course of the due diligence investigations by BPE will:

- inform NCP / BPE / FGN about the subject to be privatised,
- help decide the method of sale,
- identify factors that affect valuation estimates,
- detect problems and issues that will be of concern to purchasers which could delay or derail the sale or cause post bid complications unless resolved,
- give NCP / BPE the opportunity to specify clearly what is being sold and how issues will be addressed so that there is a common understanding among potential buyers,
- define assets and liabilities, particularly contingent liabilities and give NCP / BPE the opportunity to define how these are to be treated in the course of privatisation,
- reduce uncertainty and increase confidence in the transaction which will encourage high quality purchasers,
- ensure that the Information Memorandum and Bid Documents including draft sale and purchase agreements are clear and consistent.
-

D4. STRATEGY AND TRANSACTION PLANNING

D4.1 TRANSACTION PLAN

Upon analysis of available information on the public enterprise, each Transaction Team within BPE shall be required to outline the appropriate strategy and method of divestiture of FGN's equity and develop a work plan outlining a realistic timetable of activities to achieve the end result.

D4.2 STRATEGY DEVELOPMENT

Developing a strategy for sale is a critical first stage in the planning process. The process of preparing an enterprise for sale and executing a sale transaction must of necessity be dynamic and flexible. The strategies to be developed should be intended at confining the thinking of the various departments and staff handling each enterprise in the context of prevailing social imperatives, political circumstances and with reliance upon available information.

In devising the Strategies, each enterprise would be reviewed separately considering enterprise-specific issues and divestiture options such as:

- Size of equity tranche to be divested and to whom
- Most appropriate method of sale
- Sequencing of equity transfers
- Main conditions of sale (eg. land tenure, employment levels, subsidies and debt treatment)
- The need for a legal and regulatory framework in the sector;
- The need for sector restructuring/liberalization;
- Market structure design;
- Shareholding structure and
- Organizational structure

D4.3 SELECTING METHODS OF SALE

The choice of privatisation method is influenced by:

- Socio-economic and policy objectives
- the quality and availability of verifiable documentary information regarding the business / assets / liabilities,
- present and likely future performance of the PE,
- degree of legal certainty regarding all matters covered by due diligence investigations,

7. Institutional Framework: The findings of an analysis of the institutional framework covering
 - (a) The identification of agencies responsible for resettlement activities and NGOs that may have a role in project implementation;
 - (b) An assessment of the institutional capacity of such agencies and NGOs; and
 - (c) Any steps that are proposed to enhance the institutional capacity of agencies and NGOs responsible for resettlement implementation.
8. Eligibility: Definition of displaced persons and criteria for determining their eligibility for compensation and other resettlement assistance, including relevant cut-off dates.
9. Valuation of and compensation for losses: The methodology to be used in valuing losses to determine their replacement cost; and a description of the proposed types and levels of compensation under local law and such supplementary measures as are necessary to achieve replacement cost for lost assets.¹
10. Resettlement measures. A description of the packages of compensation and other resettlement measures that will assist each category of eligible displaced persons to achieve the objectives of the policy (see [OP 4.12](#), para. 6). In addition to being technically and economically feasible, the resettlement packages should be compatible with the cultural preferences of the displaced persons, and prepared in consultation with them.
11. Site selection, site preparation, and relocation: Alternative relocation sites considered and explanation of those selected, covering
 - (a) Institutional and technical arrangements for identifying and preparing relocation sites, whether rural or urban, for which a combination of productive potential, locational advantages, and other factors is at least comparable to the advantages of the old sites, with an estimate of the time needed to acquire and transfer land and ancillary resources;
 - (b) Any measures necessary to prevent land speculation or influx of ineligible persons at the selected sites;
 - (c) Procedures for physical relocation under the project, including timetables for site preparation and transfer; and
 - (d) Legal arrangements for regularizing tenure and transferring titles to resettlers.
12. Housing, infrastructure, and social services: Plans to provide (or to finance resettlers' provision of) housing, infrastructure (e.g., water supply, feeder roads), and social services (e.g., schools, health services);² plans to ensure

is available at the time of their displacement.

(b) Other studies describing the following

- (i) Land tenure and transfer systems, including an inventory of common property natural resources from which people derive their livelihoods and sustenance, non-title-based usufruct systems (including fishing, grazing, or use of forest areas) governed by local recognized land allocation mechanisms, and any issues raised by different tenure systems in the project area;
- (ii) The patterns of social interaction in the affected communities, including social networks and social support systems, and how they will be affected by the project;
- (iii) Public infrastructure and social services that will be affected; and
- (iv) Social and cultural characteristics of displaced communities, including a description of formal and informal institutions (e.g., community organizations, ritual groups, nongovernmental organizations (NGOs)) that may be relevant to the consultation strategy and to designing and implementing the resettlement activities.

6. Legal framework: The findings of an analysis of the legal framework, covering

- (a) The scope of the power of eminent domain and the nature of compensation associated with it, in terms of both the valuation methodology and the timing of payment;
- (b) The applicable legal and administrative procedures, including a description of the remedies available to displaced persons in the judicial process and the normal timeframe for such procedures, and any available alternative dispute resolution mechanisms that may be relevant to resettlement under the project;
- (c) Relevant law (including customary and traditional law) governing land tenure, valuation of assets and losses, compensation, and natural resource usage rights; customary personal law related to displacement; and environmental laws and social welfare legislation;
- (d) Laws and regulations relating to the agencies responsible for implementing resettlement activities;
- (e) Gaps, if any, between local laws covering eminent domain and resettlement and the Bank's resettlement policy, and the mechanisms to bridge such gaps; and
- (f) Any legal steps necessary to ensure the effective implementation of resettlement activities under the project, including, as appropriate, a process for recognizing claims to legal rights to land including claims that derive from customary law and traditional usage (see [OP 4.12](#), para. 15 b).

- whether PE is likely to attract international investors as well as Nigerian investors,
- regulatory framework and issues and stability of these,
- likely proceeds compared with costs / resources of different methods of privatisation,
- contractual obligations of PE,
- is there a clear definition and reliable estimate of liabilities and debts and how they are to be handled in the course of the transaction to enable offers to be made on a strictly comparable basis.
- Contingent or hidden liabilities - e.g. environmental remediation/compliance, labour and community issues

The Act has given NPE/BPE some flexibility in deciding the appropriate method of privatisation, however, over the years BPE has predominantly used the following methods:

- Core Investor Sale (of minority or majority)
- IPO/PO
- Asset Sale
- Liquidation (including as going concern)
- Management Contract
- Private Placement or Sale on basis of "Willing Buyer/Willing Seller"
- Concession

Other options that could be considered are as follows:-

- Minority stake sale to employees
- Public auction
- Sale by share-issue (majority tender)
- Sale by share-issue (minority tender)
- MBO/MEBO/MBI
- Debt Equity swap
- Mass privatisation

D4.3.1 BRIEF DESCRIPTION OF SELECTED METHODS

1. **Core Investor Sale**-this is the sale of majority stake to a strategic investor/group, usually 51% of the total equity of the company or more. The core investor is not merely a financial investor but a trade investor who possesses the required technical and managerial expertise to turn around the enterprise. This option is mostly suitable where there is established future potential for the line of business or the public enterprise is in a strategic sector of the economy but its

performance has been hampered by lack of adequate capital and/or poor management.

2. **Initial Public Offer and Public Offer-** An Initial Public Offering refers to a company offering its shares to the public for the first time and enabling the stock to be traded on a stock exchange. Sometimes referred to as going public. A company will do this in order to raise money and profile. And sometimes an existing publicly traded company will spin off a subsidiary through an IPO.

In an IPO, companies write a prospectus that outlines the nature of the business, profiles the principal executives and reveals the company's financial situation and its prospects. The prospectus includes use of the proceeds, which details how the publicly raised money will be spent. This allows prospective shareholders to assess the risk of investing in the company.

On the other hand, a public offer refers to sale of shares of a company already quoted on the stock exchange. This sale could be by way of offer for sale or offer for subscription.

3. **Assets Sale-**it is the break up of a company into various assets and then sold as individual units. This is mostly applied where the future potential of the enterprise is deemed bleak or where breaking-up the enterprise into assets is likely to generate more proceed than when sold as a whole and there is no particular desire to maintain that line of business.
4. **Concession-**it is very similar to a long term lease. It does not involve divestiture of government shares. It is a contract that confers the right to use the services of an asset over a defined period, usually ranging from 10-25 years. The concessionaire utilises the services of an asset at an agreed fee and involve making investments to grow the asset over the period of the concession. This is mostly used for complex transactions and utilities where outright sale is not feasible.
5. **Management/Employee Buy-out-** This is the purchase of business by its existing Management, usually in corporation with outside financiers. Buy-outs vary in size, scope and complexity but the key feature is that the managers acquire an equity interest in the business, sometimes a controlling stake, for a relatively modest personal investment. The existing owners mostly sell most or usually all of their investment to the managers and their co-investors. Often the group of managers involved establishes a new holding company, which then effectively purchases the shares of the target company. As a policy, BPE operates a level-playing field to all investors and does not provide any special

Doc. F1(b)

Resettlement Plan

1. The scope and level of detail of the resettlement plan vary with the magnitude and complexity of resettlement. The plan is based on up-to-date and reliable information about (a) the proposed resettlement and its impacts on the displaced persons and other adversely affected groups, and (b) the legal issues involved in resettlement. The resettlement plan covers the elements below, as relevant. When any element is not relevant to project circumstances, it should be noted in the resettlement plan.
2. Description of the project: General description of the project and identification of the project area.
3. Potential impacts: Identification of
 - (a) The project component or activities that give rise to resettlement;
 - (b) The zone of impact of such component or activities;
 - (c) The alternatives considered to avoid or minimize resettlement; and
 - (d) The mechanisms established to minimize resettlement, to the extent possible, during project implementation.
4. Objectives: The main objectives of the resettlement program.
5. Socioeconomic studies: The findings of socioeconomic studies to be conducted in the early stages of project preparation and with the involvement of potentially displaced people, including
 - (a) The results of a census survey covering
 - (i) Current occupants of the affected area to establish a basis for the design of the resettlement program and to exclude subsequent inflows of people from eligibility for compensation and resettlement assistance;
 - (ii) Standard characteristics of displaced households, including a description of production systems, labor, and household organization; and baseline information on livelihoods (including, as relevant, production levels and income derived from both formal and informal economic activities) and standards of living (including health status) of the displaced population;
 - (iii) The magnitude of the expected losstotal or partialof assets, and the extent of displacement, physical or economic;
 - (iv) Information on vulnerable groups or persons as provided for in OP 4.12, para. 8, for whom special provisions may have to be made; and
 - (v) Provisions to update information on the displaced people's livelihoods and standards of living at regular intervals so that the latest information

- A. Names of those responsible for preparing audit
- B. Terms of Reference (TOR) for the audit
- C. Written material references used
- D. Copies of principal permits, licenses, etc.
- E. Records of consultations and site visits
- F. Other data, including topographic maps, historic maps, aerial photographs and photos of the facility.

preference for MBO /EBO groups over other investors. All have to compete through a clear and transparent acquisition process.

- 6. **Private placement**-this is sale of securities directly to institutional investors such as banks, mutual funds, insurance companies, pension funds and foundations. It does not require Securities and Exchange Commission's Registration provided the securities are bought for investment purposes rather than resale as specified in their investment letter. This is mostly applied to companies that could not meet the listing requirements of the stock exchange.
- 7. **Sale by share issue**-where a company is bedeviled by lack of capital, it could be privatised through new share issue to private operators. While this does not lead to complete absence of government it would result in the dilution of government shareholding. The remaining government shareholding could then be disposed of through other appropriate methods later.
- 8. **One-on-one negotiations and debt-equity swap**-in a small number of enterprises, it could be difficult to get ample investors to indicate interest in their acquisition despite several adverts and direct marketing to prospective investors due to either very bad shape of these enterprises, lack of any perceived prospect or some other such reasons. In such cases, there may be only one or few interested investors and direct one-to-one negotiation is applied to dispose of the public enterprises. This method is not transparent and fraught with its own complications and should be avoided unless as a last resort after other competitive methods failed. Debt-Equity Swap involves converting debts owed into equity. This is usually applied with the consent of both parties through negotiations.

D4.4 WORKPLANS AND BUDGETS

Each Transaction Team within BPE is required to prepare a workplan outlining a timetable of activities for the proposed transaction. The plan also provides an indication of resources required, both in terms of internal and external personnel and financial support.

This plan include a business case for the engagement of advisers, where considered necessary. Also included is a marketing plan, social, labour and environmental strategies, as appropriate.

The Transaction Team makes an oral presentation of the overall plan to the Transaction Review Panel.

D4.5 ADVISERS ESTABLISHING A BUSINESS CASE

The Transaction Team must decide whether there is in-house capacity to carry out tasks relating to privatisation of a PE before engaging advisers for specific tasks. If the Transaction Team decides that essential advice is not available within BPE it should prepare a business case for out-sourced advice to be presented showing the necessity for the advice and the costs (including how much the project is expected to cost) and benefits of obtaining the advice in the context of the value and significance of the proposed transaction. Most importantly, there should be a clear plan of how such advisory inputs are to be procured and funded.

D5. ENGAGING ADVISERS

D5.1 GUIDELINES

- (i). Typically, external privatisation transaction advice should only be required for large, complex transactions. In most circumstances, in-house expert should be used as the privatisation transaction adviser.
- (ii). The approach taken to appoint advisers is determined by the likely size of the assignment. As a general rule, advisers should be appointed via competitive tender. However, where the size of the assignment is small (eg. where an adviser is required to provide a simple legal opinion), NCP may exercise its discretion in appointing advisers from a pre-approved shortlist or via such other methods considered appropriate by NCP. Sample letters of invitation to submit proposals are shown at D6.1(a) and (b).
- (iii). Where advisers are to be funded by the World Bank through the IDA Credit facility, the applicable World Bank procedures (QCBS or other) shall apply.
- (iv). In all cases, advisers shall be required to sign a Confidentiality Agreement (Doc.D6.1(c)) which includes an indemnity for loss suffered as a result of breach of undertakings.
- (v). Advisers shall not be engaged on open-ended contracts, on a retainer basis or on the basis of time inputs unrelated to outputs. Payment of fees should be phased and linked to the provision of defined outputs, quality standards and delivery times and performance should satisfy BPE before payments are made.
- (vi). Progress on the project should be monitored by regular contact with the adviser by the BPE Manager to ensure that work is progressing and that the adviser performance satisfies contracted deadlines, outputs and standards.

- J. Housekeeping
- K. Radioactive materials
- L. Energy and energy conservation
- M. Waste reduction
- N. Areas of concern (in terms of both existing facilities and operations and contamination or damages due to past activities)

VII. Product Issues

VIII. Social issues

As appearing following the interviews [from IV(c) above]

- IX. Occupational Health and Safety Status
 - A. Summary of accident reporting, recording and investigation
 - B. Health and safety management
 - C. Site safety procedures
 - D. Medical monitoring program
 - E. Air quality
 - F. Noise and vibration level exposure
 - G. Chemical/material handling
 - H. Temperature exposure
 - I. Personal protective equipment and training
 - J. Emergency response capability and training
 - K. Fire protection
 - L. Training programs
 - M. Survey of regulatory compliance

X. Conclusions

- XI. Mitigation Recommendations (EMP/ERCP)
 - A. Identify appropriate measures
 - B. Priorities
 - C. Financing
 - D. Implementation schedule
 - E. Further investigation, including time and cost implications for undertaking them, and TOR

XII. Environmental Enhancement Opportunities

- A. Energy and energy conservation
- B. Waste minimization
- C. Cleaner technology initiatives
- D. Training programs
- E. Community development activities/opportunities

XIII. Annexes

- E. Expected changes in production resulting from the change in ownership and/or from an investment, including economic and financial analysis

- III. Applicable Legislation, Regulations and Standards
 - A. Act, Decrees, Regulations
 - B. Standards
 - C. International environmental agreements

- IV. Audit Procedures (Protocol)
 - A. Historical research
 - B. Records review
 - C. Interviews with local stakeholders, workers and site management
 - D. Site inspections
 - E. Sampling and analysis (quality assurance and control) procedures

- V. Review of Environmental Management
 - A. Environmental management structure, including allocation of staff responsibilities, systems, procedures
 - B. Environmental insurance coverage
 - C. Emergency, security, safety and monitoring plans
 - D. Company-community interaction program
 - E. Handling of complaints and media coverage
 - F. Has one of the following been recently completed, conducted, issued, etc.:
 - Environmental impact assessment
 - Environmental, including compliance, audit
 - Risk and hazard assessment
 - Clean-up, remediation, rehabilitation, restoration, etc. actions
 - Regulatory inspections
 - Permits
 - Licenses
 - Fines, citations, pending cases, etc.

- VI. Environmental Status
 - A. Air emissions
 - B. Raw water and waste water
 - C. Material and solid (non-hazardous) waste handling, disposal, including transportation, storage and treatment
 - D. Hazardous materials and management, including transportation
 - E. Oil-filled electrical and hydraulic equipment
 - F. Noise, vibration and other physical factors
 - G. Groundwater and soil contamination
 - H. PCBs
 - I. Asbestos, mineral dusts and fibres

If performance is unsatisfactory BPE must be able to immediately terminate the contract.

- (vii). A set fee for each advisory project should be determined in advance of any work being undertaken. A full breakdown of the fixed fee proposal expressed as per diem rates for each individual involved setting out his / her level in the firm, the number of days each individual will spend on the project and the specific tasks each individual will perform. The fixed fee proposal should show all additional costs such as secretarial and other charges. Reimbursable expenses e.g. For travel and subsistence within Nigeria will be paid on production of vouchers and receipts but these expenses should not be incurred without BPE's prior approval. In engaging advisers the emphasis should be on the experience and proven skills of the individuals that will be deployed in the specific tasks involved in an assignment and not the size or reputation of the firm that employs them.

- (viii). In general the information to be provided to advisers to assist in making proposals should include a statement of the problem and the issues involved, including the scope and boundaries of the project, the objectives to be achieved and / or tasks to be performed, likely skills required to carry out the project effectively. The information to advisers should contain a statement of the evaluation criteria on which the contract will be awarded e.g. cost, expertise, time frame etc. Other information includes the final date and time for receipt of proposals and format required. Incomplete or late proposals should not be considered. A contact name, e-mail address and telephone number from whom further clarification may be obtained should be provided.

- (ix). The BPE Manager and BPE Transaction Team are required to reconcile the findings of the various reports to ensure consistency and elimination of errors and omission. In particular information on assets and liabilities in financial statements, valuation reports, legal report and environment report must be reconciled.

D5.2 ADVISORY SERVICES

The necessity for different types of advice will depend on the nature, facts and circumstances of the PE or matter that is subject to privatisation. Typically required forms of advice are as follows:-

- An asset valuation estimate from a reputable and experienced valuer for real estate and plant and machinery is required in all FGN wholly or majority owned PEs. (Doc.D6.2(a)).

- In accordance with internationally accepted accounting standards, a business valuation estimate, as well as an asset valuation estimate, is required from a financial adviser in the case of a FGN wholly owned or majority owned PE where either an asset and business or a share sale is intended. (Doc.D6.2(b))
- Share valuation estimate is required where a sale of majority or minority shareholding is contemplated. An asset valuation may also be required depending on the circumstances of the enterprise. (Doc.D6.2(c))
- Financial advice that investigates financial issues affecting the transaction, FGN interests and buyer perceptions, tax issues in the transaction, including relevant elements of the due diligence investigation checklist is required in all cases. Updating of accounts, verifying liabilities, business valuation or tax advice may be required. (Doc.D6.2(d) and (e)).
- Legal advice that investigates legal issues affecting the transaction or buyer's perception of sale, share or asset transfer issues, including relevant elements of the due diligence investigation checklist and in particular a scrutiny of title to assets that verifies tenure or type of ownership or possession of assets that have an impact on the transaction. (Doc.D6.2(f))
- Legal and regulatory advice where the PE is operating in a sector and market where elements of competition are absent prior to or after privatisation. (Doc.D6.2(g))
- Environmental advice and assessment where there is or is likely to be environmental risks and compliance issues that will affect the transaction or buyer perception together with estimates of likely remediation costs and compliance costs; (Doc.D6.2(h))
- Engineering advice see Doc. D6.2(i)
- Social advice, including community relations.
- Economic advice may be required in certain instances. For example, when examining tariffs or other standards of performance that might form part of a concession agreement or in sector regulation. Economic advice may be required to assess the economic costs and benefits of a project where for example FGN is providing subsidies or there are likely external economic benefits from a project such as when incentives are necessary to achieve national socio - environmental priorities.

the BPE. The Consultant shall submit the following reports in English in the course of its assignment:

1. Inception Report, in 6 (six) copies within 7 (seven) days of commencement
2. Issues and Financial Report in 6 (six) copies .
3. Draft Final Report in 6 (six) copies
4. Final Report, in 6 (six) copies on the last day of assignment ; the Final Report shall also include an electronic database of all EAU reports.

ATTACHMENT 1

Recommended Content and Format of an Environmental Audit Report

The purpose of an environmental audit is to determine the nature and extent of all environmental areas of concern, including health, safety and social, at and around existing facility(ies) and/or with corporate practices. The audit determines compliance with applicable EHSS legislation, regulations and standards, identifies and justifies the appropriate measures to mitigate the areas of concern, estimates the cost of mitigation measures, and recommends a schedule for implementing these measures (EMP/ERCP.)

The information should be sufficient (factual, adequate and convincing), reliable (best attainable), relevant (supports findings and recommendations), and useful, i.e. helps to meet the goals of an audit and enlightens the decision-making.

- I. Executive (concise) Summary
 - A. Environmental, safety, health and social areas of concern
 - B. Recommended mitigation measures/enhancement opportunities/priorities
 - C. Cost estimates (range) and financing mechanisms
 - D. Any gaps in information, further studies needed, and the potential cost and time implications for undertaking them
 - E. Implementation schedule
- II. Facility (Project) Description
 - A. Location of the site, including neighboring towns, housing, industry, agriculture, rivers, schools, including maps, as well as information on the ecological systems surrounding the plant, if relevant, and distance to the nearest national park, reserve or any other protected habitat
 - B. Past operation history, including past owners, processes, materials used, key changes (demolition or replacement of buildings, underground tanks, waste disposal, etc.)
 - C. Current operations
 - D. Reasons for the audit and its scope

measures are required (EMP/ERCP.) The recommendations and costs should be separately provided as follows: 1) the main site and remaining sites of the company, 2) past, ongoing and future activities, and 3) in order to meet Nigerian standards and in their absence those applicable international standards.

5. Reports prepare 6 (six) copies of a draft EAU report in English with Executive Summary, four weeks after issuance of TOR for every individual EAU assignment for review and approval by the BPE & FME, and 6 (six) copies of the final report 6 weeks after issuance of every individual TOR for EAU. Each final EAU report shall be also send by e-mail to the BPEEA and accompanied by a disc in Word2000 and scanner-ready copy. A meeting with the BPEEA and FME in Abuja, Nigeria to discuss every individual draft EAU report is required. The EAU report will be finalized only after incorporating BPE and FME comment thus ensuring that every individual EAU report is 100% ready for FME certification.

QUALIFICATIONS

The selected Consultant shall be a reputable international or national environmental firm accredited for operations in Nigerian by appropriate government authorities and shall be able to demonstrate that the firm and each of its designated staff has appropriate education background, expertise and at least 5 (five) years of experience of conducting environmental audits and impact assessments (EAU/EIA) on national and international arena for enterprises and operations and various sectors of economy. With proven capacity to carry out EAU/EIA, the Consultant shall also have expertise in dealing with EHSS liabilities and designing EMP/ERCP. Experience in public relations and consultations will be an additional advantage. International consultants are encouraged to partner with Nigerian accredited environmental consulting companies.

DURATION

Duration of this assignment depends on the nature of the enterprise.

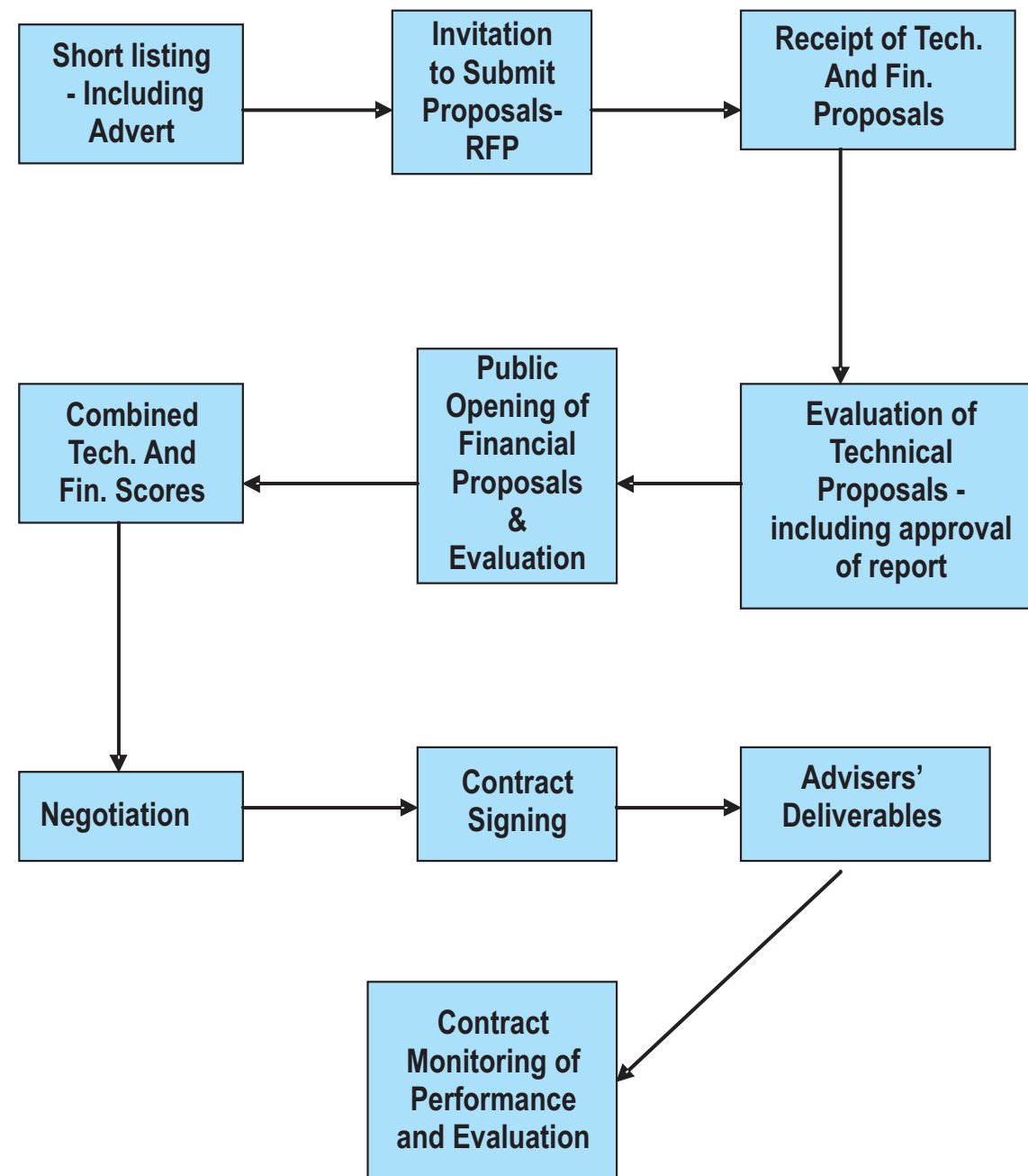
REPORTING AND MANAGEMENT

The Consultant shall report to the BPE Environmental Adviser (BPEEA.) The BPE Senior Management will communicate all instructions to the Consultant through the BPEEA.

The Consultant shall submit individual EAU reports for specific PE as instructed by

- Sector advice may be required in order to provide BPE with insights into the sector in which a large PE operates to ensure BPE is familiar with issues that will have a bearing on likely bidder interest or on the transaction structure.

D5.3 ENGAGEMENT PROCESS



compliance plan (ERCP)] and monitoring activities to timely and efficiently address the identified problems.

Every will require a tour of the site(s), survey of site(s) characteristics, review of applicable legislation and standards, review of all available records and applicable permits and licenses, pending litigation, interviews with appropriate personnel and public consultations with affected groups of population, communities, and/or local non-governmental organizations.

Large-scale sampling is not part of the scope of EAU-related work. As appropriate or necessary, spot sampling may be required (the consultant's proposal should include a cost per unit sample for laboratory analysis, and identify where the samples, if any, would be analyzed) and agreed to by the BPE.

An EAU report along the Table of Content (TOC, Attachment 1) shall be prepared as the last step of each individual environmental audit.

This general EHSS audit is to measure observations against a set of criteria. In this case the criteria will be relevant regulations and standards of the Government of Nigeria, the World Bank, and where these do not exist, those of the European Community, applicable international agreements ratified by Nigeria. The Consultant is requested to propose a suitable format to compare existing conditions with the referred criteria.

The Consultant will work closely with the BPE Environmental Adviser (BPEEA) and FME staff, and as appropriate, with representatives of other relevant Federal and State agencies. The work will include, but not be limited to, the following aspects:

1. Initial Meeting an initial briefing will take place at the BPE Headquarters in Abuja, Nigeria between the Consultant, appropriate BPE staff, BPEEA, and a designated FME representative for every individual EAU assignment.
2. Environmental Institutional Review a review in detail of relevant EHSS legislation, regulations and standards, permits, etc., pertinent to the facilities' operations, collecting all other data and documentation related to the EHSS aspects of facilities and operations.
3. Site Inspection all buildings and properties in which significant manufacturing, laboratory, storage, disposal operations are conducted by the company are to be included in an EAU.
4. Prioritize EHSS Concerns a) identify all EHSS concerns related to past, ongoing and future activities, b) prepare a prioritized list (i.e. high, medium and low) of concerns related to past, ongoing and future activities, c) for past, ongoing and future concerns provide recommendations and estimated costs for any additional work or remediation, monitoring and capacity building

SPECIMEN TERMS OF REFERENCE FOR ENVIRONMENTAL AUDIT OF PUBLIC ENTERPRISES IN VARIOUS SECTORS OF NIGERIAN ECONOMY

BACKGROUND

Duty and responsibility for EHSS protection and management, related to the commercialization and privatization of public enterprises in various sectors of Nigerian economy are mandated under:

- Current Federal, State and Local EHSS and related acts and decrees, rules, regulations and standards, and the common law of the Federal Republic of Nigeria
- International environmental agreements and treaties ratified by the FRN
- World Bank Privatization Project [under Project Appraisal Document (Report No: 21921-UNI, dated May 21, 2001) and Credit Agreement (No. 3520-UNI dated August 23, 2001) with the referred to project's "pre-audit report" (dated January 2001.)]

Existing legislation established environmental impact assessment (EIA) and audits (EAu) as mandatory instruments to support design, planning and decision-making, evaluate environmental performance and develop necessary environmental management plans (EMP.) Numerous environmental regulations and standards, applicable to different sectors of economy, have been in place since 1991. In addition, the 1999 National Environmental Action Plan and Nigeria's National Agenda 21 proclaimed national and sectoral goals and policies in achieving sustainable development. It has established "pollution prevention" and "polluters pays" principles. Current Nigerian environment-related laws stipulate corporate, owners' and operators' as well as directors', officers' and managers' (administrative, civil and criminal) liability for environmental pollution and damage, and mandate their responsibility for environmental mitigation, clean-up, rehabilitation, compensation, etc.

SCOPE OF WORK

The principal task of an environmental consultant (Consultant) shall be to conduct Eau of PE in various sectors of Nigerian economy, including oil and gas, ferrous and non-ferrous metals, natural resources, mining, chemicals, infrastructure, services, agriculture, transportation (roads, ports, aviation,) and telecommunications as and when instructed by the BPE.

The purpose of each individual EAu shall be to identify past, ongoing and potential future EHSS concerns, which may be a potential liability, and develop the scope, costs and schedule for mitigation [EMP or environmental remediation and

D5.4 ADVISERS' CONTRACT MONITORING

Doc. D6.4(a) Transaction Related Contracts - Monitoring Workplan

Transaction related contracts should be monitored using a team of contract evaluators formed to oversee the deliverables of the assignment in relation to the terms of reference. The names of the evaluation committee should be included in the terms of reference for the information of the consultant. This is in line with the best practice obtainable worldwide. The committee ensures full implementation of contracts' conditions (including scope and deliverables) and also protects consultants' interest by way of ensuring timely payments to consultants thereby avoiding and/or reducing potential conflicts with consultants. The team should compose not more than three members within the department; two (2) senior management cadre and Enterprise Officer who are responsible for the successful implementation and monitoring of the consultants' deliverables. The contract implementation sub unit under the Planning and monitoring unit (headed by a contract consultant) liaises with the various committees formed for regular updates of all contracts, which form the basis for monthly contract status reporting. Directors of the various departments maintain the overall coordination of each contract within their various departments, authorising and approving all decisions reached by the committee before it is sent to the contract monitoring sub unit for inclusion in a final report.

Doc. D6.4(b) In-house Consultant Contracts Monitoring Workplan

In-house Consultants monitoring entails a similar approach as in the above however with a little modification. All resident consultants are required to submit either quarterly or monthly reports of their activities depending on the nature of their assignments in relation to their signed contracts. These reports should be endorsed by the consultant's coordinators and subsequently compared with their terms of reference for compliance. The evaluation of in-house consultant deliverables is however the responsibility of the contract monitoring subunit of the Planning and monitoring unit. A report will be written on a quarterly basis on the performance of each consultant in relation to his quarterly reports and his terms of reference. The report would then form a basis for an amendment of particular consultants TOR.

E. TRANSACTION PROCESS

In order to ensure transparency and provide best value, sales of government equity shall be by way of a competitive bid process, where practicable. In certain exceptional cases, negotiated sales or sales on a "Willing Buyer/Willing Seller" basis may be approved by NCP.

A flowchart depicting the typical form of competitive bid process is shown in Chart 2 below.

E1. TENDER ELIGIBILITY

E1.1 ADVERTISEMENT

The advertisement should be aimed at persons knowledgeable and experienced in the PE sector being advertised to apply for registration to participate in the bid process.

Doc. E1.1(a) provides a sample advertisement

E1.2 REGISTRATION

This entails providing the required information in the specified format to enable the prospective bidder participate in the bid process.

Doc. E. 1.1(b) provides a sample Registration Form.

E1.3 DECLARATION OF ELIGIBILITY

A Registered Person should immediately notify BPE / NCP in writing of any circumstances that mean that the Registered Person no longer meets the eligibility criteria set out in the signed Declaration of Eligibility.

Doc. E1.1(c) provides a sample Declaration of Eligibility

Doc. E1.1(d) "Letter of Member of a Registered Person" provides a statement of members of the bidding group that they are fully aware of the bid and agree to be jointly and severally liable for the bid

E1.4 CONFIDENTIALITY AND NON-INTERFERENCE

Throughout the Bid Process, a Registered Person is bound by the terms of the Confidentiality and Non - Interference Agreement, signed at the time of registering interest and paying the registration fee.

Doc. E1.1(e) provides a sample Confidentiality and Non-Interference Agreement.

WARRANT STATEMENT

The undersigned authorized officer(s) of the public enterprise agrees that if the information supplied on the EDSS changes between the date of the submission and the effective date of the privatization, he/she (undersigned) will immediately notify the BPE of such changes, and the BPE may undertake any appropriate action. Signing of the EDSS does not bind the public enterprise or the BPE to initiate development and implementation of any environmental management plan.

Notice to the public enterprise: Any person who knowingly and with intent to defraud the BPE or any potential new owner or investor (NOI) files any false information, or conceals for the purpose of misleading, information concerning fact material thereto, commits a fraudulent act, which is a crime.

I, _____, certify on behalf of _____ [public enterprise name] that the foregoing information is true, complete and correct.

The BPE, a NOI and its contracted experts can gather information about our EHS status through the inspection of the property, relevant documentation and interviews with third parties.

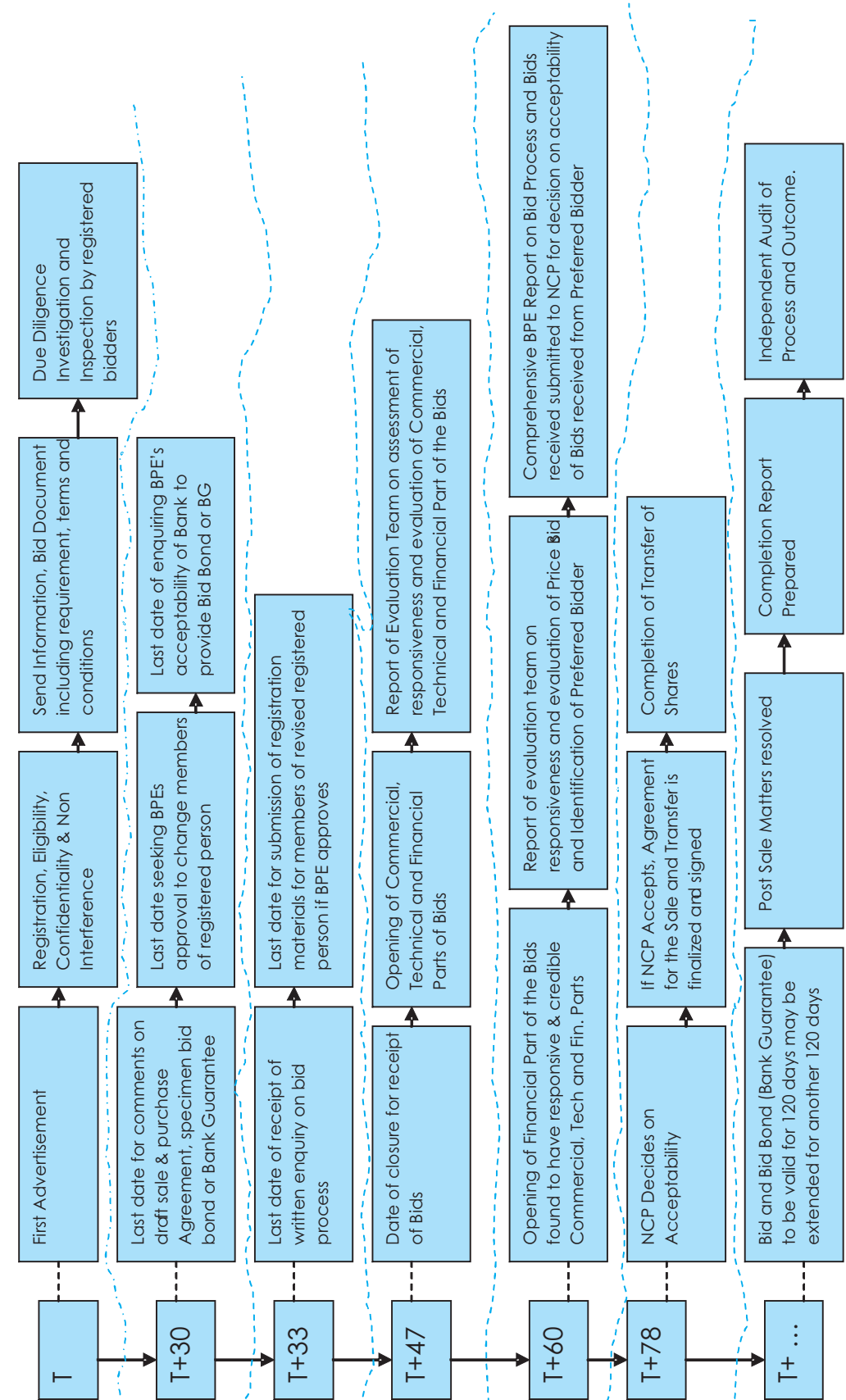
Signed by (name and title): _____ Date: _____

Environmental Liabilities: Risks to the Company

[Does the PE have any environmental liabilities from past, existing or future environmental conditions identified above, or any other EHSS-related? If “yes” please provide the following information for each liability identified, and quantity where possible. (This table should be updated by BPE EA based on information provided by othre technical advisers, e.g. Valuers, accountants, etc.)

Liability categories (past, present and contingent)			
Type of environmental condition (e.g., existing, not previously recognized)			
Actual or potential environmental condition			
Liability sources (e.g. remediation, damages for health and safety effects)			
Estimate of gross liability (maximum, minimum, expected)			
Source of liability estimate (e.g., environmental audit, company estimate, etc.)			
Recovery claims (e.g., insurance, third parties, government, etc.)			
Validity of claim (e.g., disputes concerning claim)			
Expected recovery claim			
Estimate of net liability			
Estimate of total net environmental liabilities			
Reserves available to cover environmental liabilities			

Chart 2: SEQUENCE OF PRIVATISATION PROCESS



E1. BID

E2.1 BID REQUIREMENTS

Bid Requirements will be sent to all registered bidders (including provision of information and Bid Document requirements, terms and conditions of bid process, bid forms) etc.

Doc. E2.1

(a) provides outline terms and conditions for a bid for shares.

Doc E2.1

(b) is a sample Requirements Form, outlining the manner in which the commercial, technical, financial and Financial bid are to be submitted.

Doc. E2.1

(c) is a sample Bid Form for the commercial, technical and financial part of a bid.

Doc. E2.1

(d) is a sample Price Offer Form

Doc. E2.1

(e) is a formal Acknowledgement of Receipt Form.

These documents will vary depending on the terms of the transaction (eg, if an asset sale).

E2.2 DUE DILIGENCE

Due Diligence investigation and inspections by registered persons

E2.3 RECEIPT OF TECHNICAL, COMMERCIAL AND FINANCIAL ASPECT OF THE TECHNICAL BID

A Bid submitted after the deadline for submission of Bids on the Date of Closure shall be declared late, rejected and returned unopened to the Registered Person. No special pleadings will be accepted.

A Registered Person is responsible for the timely delivery and receipt of Bids prior to the time and Date of Closure and no liability shall attach to the NCP in this matter.

Hard (paper) versions of the Bid should be submitted along with the diskette

Compliance with EHS legislation and standards:

A n y e n v i r o n m e n t a l l i a b i l i t i e s :

Major environmental and social issues (identified or suspected in the project):

Other EHS and social, including public concerns, issues (of lesser scope associated with the project): _____

Actions to be taken (to avoid, reduce, mitigate and monitor EHS and social issues identified above) :

TOR for EAu/EA/EIA or any other types of environmental analysis required (indicate briefly scope, schedule and due time, including for various types of mandatory Governmental Reviews (FME), approximate cost, public participation, etc.):

Date for receipt of any EAu/EA/EIA reports and Conclusions of Government reviews (FME) and other mandatory types of the Governmental Review (and submission to the World Bank for review):

Remarks [gives status of any other environmental and social studies, lists local groups and NGOs consulted and, where EAu/EA/EIA reports were made public locally, indicates whether the applicant (project sponsor) has given permission to release the EAu/EA/EIA Report):

—

Next steps (environmental, social and other related actions agreed as part of the Contract for monitoring purposes) :

ENVIRONMENTAL DATA SCREENING SHEET (EDSS)

PART TWO [to be completed by the BPE Environmental Adviser EA, cleared by the Federal Ministry of Environment (FME)]

Public Enterprise
Name: _____

Public Enterprise Identification Number (ID No)

Sector :

–

Subsidiaries :

–

Privatization benefits :

Privatization risks :

Public Enterprise's Director (Officer, Manager) & Assigned Environmental Specialist (contact details): _____

Environmental Status :

Justification/rationale for further EAu/EA/EIA: _____

Date EDSS prepared / updated :

Public Enterprise location (besides geographic and administrative location, information about the key environmental characteristics of the area affected by the public enterprise, and proximity of any areas or sites or critical natural habitats, archeological, historical, religious importance as well as migration and transboundary routes);

containing a soft copy of the Commercial, Technical and Financial Aspect of the Technical Bid.

Electronic transmission of the Bid to BPE or to any other person by fax or e-mail at any time during the Bid Process may lead to the Bid being disqualified.

E2.4 OPENING AND EVALUATION OF COMMERCIAL, TECHNICAL AND FINANCIAL ASPECT OF THE TECHNICAL BID

Bidders should refer to the Requirements of the Bid for the information to be supplied for the purposes of evaluation. Bidders should know that it is only the information that is submitted that forms the basis of the evaluation. A Bidder's general reputation or information presumed by the Bidder to be in the public domain cannot be assumed to be available to the evaluation. It is the sole responsibility of the Bidder to ensure that adequate information is available to assist an accurate evaluation.

A sample Bid Requirements Comparison form is shown as Doc. E2.4(a)

E2.5 OPENING OF FINANCIAL BID

Confirmation of the date and time of opening of the Bids will be communicated to all Bidders who shall be informed of the outcome of the Commercial, Technical and Financial evaluation.

A sample letter of invitation is shown at Doc.E2.5(a).

A person that is connected with a Bid, that has been evaluated as qualified to have the Financial Bid opened, shall be entitled to attend, or send authorised representatives, to the opening of the Financial Bids.

The BPE may in its absolute discretion invite media coverage of the event.

The sealed envelope containing all the envelopes with the Financial Bids will be examined by BPE and representatives of Bidders to verify that the envelope is intact and to rule out the possibility of tampering before being opened.

Each envelope containing the Financial Bid is in turn examined to ensure that it is intact and to rule out the possibility of tampering. The envelopes are then opened and the name of each Bidder and the price offered per share for the Sale Shares as set out on the Form of Bid shall be announced and recorded.

The Bid recorded as highest at the opening of the Financial Bid need not necessarily

be evaluated as the highest bid. The Bids have yet to be examined for responsiveness and compliance or evaluated and the ranking of bids can change due to elimination or disqualification of a Bid.

E2.6 EVALUATION OF THE FINANCIAL BID

Eligible bids that are substantially responsive and compliant will be evaluated and the Bidder that submits the highest price offer per share for all the Sale Shares shall be identified as the Preferred Bidder.

A specimen acceptable Bank Guarantee is shown as Doc. E2.6(a).

A specimen acceptable Bid Bond is shown as Doc. E2.6(b).

E2.7 BIDDER'S STATEMENTS

Bidders will be required to sign statements after the opening of the commercial, technical, financial and price parts of their bid regarding the process and the fact that they are satisfied that due process has been followed.

A sample statement is attached at E2.7(a).

E2.8 NCP DECISION ON ACCEPTABILITY OF BID

NCP shall consider the Bid of the Preferred Bidder. It shall be for NCP to decide if the Bid is acceptable. If NCP accepts the Bid, notice shall be given to the Preferred Bidder that NCP has accepted its offer.

E2.9 FINALIZATION AND SIGNING OF AGREEMENT

BPE and the Preferred Bidder shall finalise the Sale and Purchase Agreement within a reasonable time of the NCP decision.

F. ENSURING TRANSPARENCY AND DUE PROCESS

F1. DOCUMENTATION AND COMPLIANCE OFFICER

A Documentation and Compliance Officer shall be appointed by the Director General. The Documentation and Compliance Officer certifies that the requisite steps have been taken to ensure compliance with BPE privatisation procedures and practices, NCP regulations and procedures, and other general guidelines set out by NCP and Director General.

The convenor of the transaction team counter-signs the compliance certificate. The Documentation and Compliance Officer attends meetings of the TT as an observer and shall have access to all materials related to a transaction.

The Documentation and Compliance Officer reports to the Director General prior to submission of the transaction plan, information memorandum and bid documents to NCP for approval before inviting bids. The Documentation and Compliance Officer also reports to the Director General at the completion of the transaction. Should a transaction team fail to apply procedures, the Documentation and Compliance Officer should immediately alert the Director General. The Documentation and Compliance Officer's work provides an assurance to the Director General and NCP that required steps have been taken.

A draft Documentation and Compliance checklist is attached as Doc. F1(a).

G. POST-TRANSACTION MANAGEMENT

G1.1 CONTRACT MONITORING - SCOPE

The Contract Monitoring and Enforcement (CME) department has a duty to monitor and enforce compliance by investors in fulfilling the legally binding covenants stated in the privatisation contract, i.e. Sales and Purchase Agreement (SPA).

The focus of CME is on the legally binding and enforceable elements of SPAs pertaining to privatisation transactions that were completed during Phase II of Privatisation, starting in 1999, and that did not involve unconditional sale of equity or assets in enterprises will be compiled into a master data base. This will encompass all:

- Divestitures of core investment blocks in enterprises through the competitive tender method that were awarded on the basis of combination of cash payment and various T&C;

Other forms of private sector participation on which the use of public

- infrastructure assets were conditioned upon conformance with specified payment and performance T&C, these being concessions, leases, franchising, and similar.

G1.2 DUTIES

The Director will be properly accredited to negotiate with enterprises on behalf of the BPE, to engage litigators as needed, in accordance with established procurement procedures and, potentially, possess the BPE's power of attorney in reference to administration of indemnification receipts, if appropriate.

The Director will advocate a strategy of:

- Proactivity in contract enforcement but with professional maturity, prudence and impact awareness prior to any action, particularly to minimize damage to Nigeria's investment climate and equally importantly the international perceptions of such.
Conducting status resolution under oversight of, and following consultations with, NCP Commissions and other stakeholder representatives;
- Eliciting the support and involvement of appropriate legal and regulatory expertise pertinent to the specific case;
Keeping his organization as lean as possible, outsourcing wherever advisable
- (to not be creating new dynasties, particularly due to the signalling effects of this function to the sensitized investment community);
Maintaining a transparent status of activities but demonstrating stealth in dispute resolution and properly coordinating public disclosures to mitigate disproportionate effects on stakeholders.

The Director will have at his disposal a pool of resources from which to compose teams for each subject enterprise. The skills required will vary by case, but in most cases will include expertise in (a) financial analysis, (b) sector-specific technology and operations, (c) legal matters and (d) corresponding regulatory issues.

G1.3 MONITORING APPROACH

Monitoring regimes applicable to each enterprise will be defined during the preparation of the SPA, and clearly stated in the SPA.

Frequency and type of CME activity afforded to each transaction will vary by case, for each of which a customized monitoring regime will be assigned.

A customized monitoring plan will be required for the transfer of jurisdictions for the case, from the privatisation transaction authority to the CME authority.

Monitoring activity is scheduled to take place throughout the year, with clearly stated periodic assignments for each enterprise.

Initial CME activity will commence with visits, within 6 months of the SPA signing, to

the enterprises by senior representatives from the CME department, to meet with investors and management of enterprises on their premises and explain in detail the monitoring regime.

Subsequent monitoring will proceed according to customized regimes that differ in the frequency and form of follow-up, applying 3, 6, and 12 month intervals as appropriate and the choice of monitoring methods.

Monitoring will be performed through a combination of methods, including personal visits and submission of documents (affidavits, depositions, etc.). Monitoring visits to enterprises will be arranged to optimize on geographic proximity and pragmatic considerations.

A data base of transactions comprising the enterprise portfolio under CME jurisdiction will be maintained to support the assignment of customized monitoring regimes.

Stratification of enterprises will be applied to group them into 3-5 categories that reflect:

- differing order of magnitude of expected impact on potential value to the economy from fulfilment of the T&C, and
- their degree of compliance as assessed from subsequent monitoring activities
- other criteria as deemed appropriate by the Director
-

The highest impact cases requiring the tightest monitoring scrutiny will require the tightest monitoring regime, and similarly down the line in descending order.

Enterprises may be reclassified among categories over time, depending on the evolution of their compliance status and the perceived risk management regimes adopted for each of them by the CME authority.

Additional grouping and classification may be warranted as dynamics dictate.

- Non-compliant enterprises will be subjected to a further enforcement regime (see G4. REMEDIAL PROCESS section below).
- Enterprises in regulated industries will follow a more consultative process involving other regulatory and stakeholder institutions.

Regulated Enterprises: Enterprises under regulatory oversight by other institutions will be monitored in close consultation and with proper delegation and leverage according to respective jurisdictions.

Regulatory institutions will preserve supremacy in assessing compliance with

I. General Information

- S. Public Enterprise: _____
- T. Public Enterprise's address: _____
Telephone _____ Telex _____ Facsimile: _____ E-mail _____
- U. Do you operate your business from more than one facility or location/site (provide addresses):

- V. Company is a: Corporation _____ Joint-venture _____
Other (describe) _____
- W. Have there been any acquisitions, consolidations, dissolutions, mergers

ENVIRONMENTAL DATA SCREENING SHEET (EDSS)

PART ONE [to be completed by a Public Enterprise (PE)]

The purpose of the EDSS is to provide relevant environmental, occupational health, safety (EHS) and social enterprise-related information. The EDSS is also intended to reveal actual or potential EHS, social and related circumstances that would have a major or unreasonably adverse effect on the environment, worker safety, public health or social fabric of the society as well as may hinder an effective and efficient privatization process. This information will be considered as part of potential privatization process with due regard to its confidentiality.

Please respond fully and completely to every item/question. The information you provide in this EDSS will help to determine whether additional environmental assessment, audit and/or impact assessment (EA and/or EIA) is necessary. This information is crucial to the appropriate and timely privatization process.

Clarifications to items/questions should be made in the space immediately following the item/question. Please do not leave any item/question blank. Use "N/A" (not applicable) or "TBD" (to be determined) where appropriate. Where space is inadequate or copies of documents are requested, please attach additional pages or copies, as needed referring to the appropriate item/question. Please provide a complete copy of any document referred to or, if a complete copy is not available, advise of the circumstances applicable.

The EDSS will be used as a public disclosure document and as such must be signed by the public enterprise management with signature authority. The public enterprise may wish to indicate (and give reasons for) which items cover commercial or other sensitive information and should not be disclosed to public.

The public enterprise management (facility owner) is assumed to possess the level of knowledge of the property and operations, and of neighboring property and/or projects, that is reasonably to be expected of a prudent and well advised corporate entity that has routinely undertaken EHS due diligent inquiries, the relevant searches and investigation regarding the public enterprise, its property and its impacts on neighboring properties as mandated by Nigerian environmental and other relevant legislation, regulation and standards. If you are in any doubt you are strongly advised to seek expert advice and consult the BPE and the FME.

The singular shall be deemed to include the plural, the plural to include the singular and the male to include the female and neuter.

specific T&C that involve public service targets affecting consumer welfare, competition policy and associated sectoral and environmental policies.

Coordination with the CME function of the BPE aims is in recognition of the government's continued interest in the durability, quality and effectiveness of the transactions for which it remains accountable to the public.

This is particularly significant where complex privatisation transactions contained:

- Upfront financial concessions by the government to the investor (operator, concessionaire, lessee, etc.)
- Conditions precedent or subsequent, or concurrent conditions, all of which imply that the investors' contractual obligations are contingent upon the government's fulfilment of its own contractual obligations
- Residual property ownership by the government, this is materially affected by the privatisation transaction

G1.4 REMEDIAL PROCESS

Remedies and sanctions in cases of non-compliance will follow legally prescribed avenues already stated upfront in the SPAs. The degree (i.e. severity) of non-compliance will be evaluated by the CME department in terms of impact on the quality of results expected from the original transaction. These deliberations will be consultative and follow guidance from NCP that is provided upon digestion of information submitted by the CME department. All discussions that take place prior to the verdict on compliance must be kept confidential, since leaks would damage the government's negotiating position while also giving rise to speculative movements in capital markets and investor community.

Remedies range from liquidation of bank guarantees or cash deposits in escrow accounts, to various forms of discharge or termination of the SPA, some also involving restitution of ownership rights. The CME would have latitude to conduct dispute resolution through litigation or other settlements, to renegotiate T&C within boundaries of national interest, and to pursue additional compensation for damages and penalties in cases where non-compliance contributed to measurable erosion in enterprise capital.

In cases where non-compliance with T&C was detected, decisions might include the renegotiation of T&C in order to make them more achievable, with or without penalties or sanctions imposed as incentive to act more diligently. However, decisions to approve renegotiated T&C will be highly scrutinized and accountable, as well as made public, and then categorized under a special CME regime.

Legal and regulatory assessments will be subjected to scrutiny and second

opinions within respective units.

G1.5 PUBLIC DISCLOSURE

To ensure an adequate degree of transparency and public accountability, special efforts and prudence will be applied to managing information and perceptions of the public and of investors:

- All investors involved with the transactions will at all times be aware of their monitoring status and rating, as well as of the specific regime that is being afforded to their enterprise. Investors and management of enterprises will be informed by official correspondence in advance and at conclusion of every monitoring activity or decision.
In the interest of transparency, this information will be made public via internet and mass media, so that there is no misinformation in the public that gives rise to conspiracy theories.
- Any disclosures to be made public will be undertaken according to a carefully formulated plan that assumes close consultations with other stakeholder institutions (e.g. capital markets and other regulatory agencies), to mitigate any speculative reactions in equity and/or debt markets from the availability of asymmetric information.

G1.6 INTERNAL ACCOUNTABILITY

The status of all activities will be shared with the BPE department performing centralized monitoring and evaluation of BPE processes.

The CME department's compliance with the above, as well as other statutory aspects and policies of the BPE, will be regulated by the relevant Compliance authority.

designated authorized representative of the FME, participates in the Bank's supervision missions, prepares annual and quarterly reports.

legislation may introduce new standards which cannot automatically be met by the NOI, thus exposing both parties to new sources of risk and liability as well as may lead to a contraction of the NOI's markets.

The FME, together with BPEEA, should develop a case-by-case strategy for EHSSM involving the following steps: (a) developing appropriate schedule for EHSSM of RWI and EMP/ERCP/CP, (b) identifying resource requirements, and (c) agreeing the EHSSM and reporting formats with the NOI [in addition, the NOI should be required in the Privatization Sale Contract to submit brief annual environmental performance reports, and the FME may specify the format for these reports.]

Evaluations should be planned, conducted and reported in ways that encourage follow-through by the NOI and stakeholders, so that the likelihood that the evaluation will be used is increased. The perspectives, procedures and rationale used to interpret the findings should be carefully described, so that the bases for evaluation judgments are clear.

7. NOI's submission of bidding documents (technical and financial)	BPEEA, together with BPELD and FME, shall review any EHSS stipulations and commitments provided by a NOI	BPEEA, together with BPEGC, BPELA and BPESA, reviews relevant EHSS and investment sections of bids to ensure their comprehensiveness and consistency with the findings and recommendations of any EAU., and that any EHSS commitments by a NOI are budgeted. BPEEA advises BPEGC on any changes necessary to update draft RWI, and on any EMP/ERCP/CP which should be reflected in a privatization(sale) contract/SPA.
8. Negotiations	EMP/ERCP and RWI shall be part of negotiations	<p>BPE negotiates with the selected NOI to establish primary terms and conditions of an individual transaction, including all EHSS aspects as well as agree on RWI and any EMP or ERCP, particularly their cost, financing, schedule, performance and monitoring requirements, and ways and means to resolve any outstanding or emerging issues.</p> <p>BPE discusses with the NCP the scope, terms and conditions of any incentives it may be authorized to offer to a NOI to facilitate implementation of an EMP/ERCP/CP, and stimulate corporate social and environmental responsibility.</p>
9. Signing of sale contract	When deemed necessary and/or required by law, EMP/ERCP/CP shall be annexed to a SPA, which must contain relevant definitions and RWI	
10. Ownership is transferred to the NOI	<p>BPE and FME monitors and enforces implementation by the NOI of the EHSS stipulations in the relevant SPA and of any EMP/ERCP/CP; FME ensures NOI compliance with all existing and EHSS laws and standards. BPE EA distills lessons learned, i.e. ex-post evaluation.</p> <p>BPEEA, together with</p>	<p>EHSS post-privatization monitoring (EHSSM) is a continuous and consistent process of gathering information relating to compliance and performance of the NOI. The EHSSM is essential because EHS and social risks are dynamic and may change significantly after privatization.</p> <p>EHSSM should focus on two aspects of the privatized PE: (a) the NOI's compliance with Nigerian environmental and other legislation in general, and with any EHSS RWI and EMP or ERCP set forth in the Privatization Sale Contract, and (b) regulatory trends, particularly as changing environmental</p>

A.LIST OF ANNEXURES AND TEMPLATES

No	
C1(a)	Objectives of the privatisation programme
C1(b)	Objectives of the commercialization programme
C1.2(a)	Statutory functions of BPE
D4.1(a)	Sample information request list
D4.3(a)	Official Notice and Regulations
D4.3(b)	PEIR Letter
D4.3(c)	Reminder Letter
D4.3(d)	Letter of Notice of Failure to Respond
D4.3(e)	Report to DG/NCP
D4.3(f)	PEIR Register
D4.3(g)	Acknowledgement
D4.3(h)	Acknowledgement of Late Receipt
D4.4(a)	Basic PE File
D4.4(b)	Transaction Plan File
D4.4(c)	Transaction File
D4.5(a)	Due Diligence Checklist
D6.1(a)	Sample proposal invitation letter (i)
D6.1(b)	Sample proposal invitation letter (ii)
D6.1(c)	Adviser Confidentiality Agreement
D6.2(a)	Sample TOR Asset Valuation
D6.2(b)	Sample TOR Business Valuation
D6.2(c)	Sample TOR Share Valuation
D6.2(d)	Sample TOR Financial Adviser
D6.2(e)	Sample TOR Financial Adviser (Utility)
D6.2(f)	Sample TOR Legal Adviser
D6.2(g)	Sample TOR Legal Adviser (Utility)
D6.2(h)	Sample TOR Sample for Environmental Audit
D6.2(i)	Sample TOR Engineering Report
E1.1(a)	Draft advertisement
E1.1(b)	Registration Form
E1.1(c)	Declaration of Eligibility
E1.1(d)	Letter of Member of a Registered person
E1.1(e)	Confidentiality and Non-interference Agreement

E1.1(f)	Acknowledgement of Receipt of Registration
E1.1(g)	Letter of Authority for Registered Person to Inspect PE and Document
E2.1(a)	Sample Terms and conditions of Bid Process (Sale of Shares)
E2.1(b)	Sample Requirements Form
E2.1(c)	Sample Bid Form
E2.1(d)	Sample Price Offer Form
E2.1(e)	Acknowledgement of Receipt
E2.4(a)	Bid Requirements comparison form
E2.5(a)	Invitation to Opening of Financial Bid
E2.6(a)	Specimen Bank Guarantee
E2.6(b)	Specimen Bid Bond
E2.7(a)	Bidder's Statement
F1(a)	Documentation and Compliance Checklist
F1(b)	Resettlement Plan
F1(c)	Environmental Data Screening Sheet
F1(d)	Coordination with & Integration of Environmental Dimension into Privatization Process
F2(a)	Procurement Manual Consultancy Advisory Services
G1(a)	Initial Public Offer and Public Offer Process
G1(b)	Concession Process
G1(c)	(Guided) Liquidation Process
G1(d)	Commercialisation Process

4. Invitation to and EOI by potential NOI		
5. Issuance of Information Memorandum	Carefully worded environmental language (EHSS representations) should be incorporated into an IM to ensure timely and transparent EHSS disclosure.	BPEEA, in coordination with BPEGC, advises relevant BPETL/BPESEO on the scope of environmental disclosure; samples of standard environmental language are available from BPELD. Any EHSS-related data and information contained in reports prepared by privatization advisers and/or environmental consultants must be reviewed by the BPEEA, and after consultations with BPEGC should be made available at the BPE Data Room (upon request.)
6. Due diligence by a NOI	BPEEA, BPELD and supervising Department shall: Draft, in close coordination with FME & based on EAu/EA/EIA, when deemed necessary & required by law, an Environmental Management Plan (EMP) or an Environmental Remediation and Compliance Plan (ERCP.) The second time public consultations are conducted to take into account the views and concerns of affected local populations. Draft privatization sale contract's EHSS representations, warranties and indemnifications (RWI.)	By this time, any EAu/EA/EIA should be completed to allow BPE and FME to review their adequacy, including of proposed draft EMP and ERCP, and any community development/resettlement plans. FME shall initiate certification process for any submitted or available EAu/EA/EIA. At this stage, BPE should seek Bank's guidance on the adequacy of any EAu/EA/EIA. This activity is essential to exclude situation when any EAu/EA/EIA may be certified by the FME and fail to pass the Bank's EA review and vice versa. This coordination with the Bank will not compromise Nigerian EAu/EIA process or create "conflict of interest" situation, rather it will help to facilitate preparation of various types of EA of high quality as well as budget implementation of any EMP or ERCP. EDSS, Part II is updated by BPEEA and cleared by designated authorized FME representative. These will also allow BPE start drafting EHSS RWI. Review of any EAu/EA/EIA is an interactive process requiring timely and transparent communication between the BPE, FME, a PE and all relevant consultants appointed by the BPE to advise of a specific privatization transaction and conduct EAu/EA/EIA.

		<p>If a PE formally indicates its unwillingness to authorize disclosure of all or part EHSS information, BPEEA seeks guidance from DGBPE, BPELD and relevant BPE Director on how to proceed.</p> <p>If the PE's decision to withhold disclosure does not relate to concealing of information about past or ongoing activities (and EHS liabilities) that might pose a threat to public health, safety, social order, natural environment, neighboring countries as well as violate national legislation or international agreements, the BPE proceeds with the application.</p> <p>If the PE's decision to withhold disclosure intends to conceal information about past or ongoing activities (and EHS liabilities) that might pose a threat to public health, safety, social order, natural environment, neighboring countries as well as violate national legislation and international agreements, the BPE does not continue processing the application until the NCP guidance or decision.</p> <p>In this case, the BPE formally informs the applicant of NCP's decision.</p>
<p>3. Preparation for sale & selection & appointment of privatization advisers, like lawyers, valuers, accountants and technical consultants.</p>	<p>ALL Expression of Interest (EOI,) Request for Proposals (RFP,) TOR/SOW shall contain a carefully worded and fine-tuned requirement for EHSS due diligence.</p> <p>An EAu or rarely an EIA shall be initiated in concurrence with the FME.</p> <p>TOR/SOW for EAu/EIA shall be cleared with FME.</p>	<p>In accordance with the NCP and BPE Management Committee decision, each BPEEO must ensure that EDSS, Part I has been completed by all public enterprises scheduled for privatization.</p> <p>It is important to ensure that, when circumstances change or new information becomes available, PE timely furnishes BPEEA with EHSS information to update an EDSS, Part I,</p> <p>BPEEA starts, in coordination with the FME, drafting TOR/SOW for any EA work necessary. A model TOR for an EAu, approved by the World Bank, is used. Additional sector-specific environmental information is available from the PEH and BPEEA.</p> <p>Relevant BPE Departments should ensure that funding for an EAu is timely available.</p>

SECTION 2 (ANNEXURES AND TEMPLATES)

PRIVATISATION & COMMERCIALISATION PROGRAMME OBJECTIVES

- (i). to send a clear message to the local and international community that a new transparent Nigeria is now open for business;
- (ii). to restructure and rationalise the public sector in order to substantially reduce the dominance of unproductive government investment in the sector;
- (iii). to change the orientation of all public enterprises engaged in economic activities towards a new horizon of performance improvement, viability and overall efficiency;
- (iv). to raise funds for financing socially-oriented programmes such areas as poverty eradication, health, education and infrastructure;
- (v). to ensure positive returns on public sector investments in commercialised enterprises, through more efficient private sector-oriented management;
- (vi). to check the present absolute dependence on the Treasury for funding by otherwise commercially oriented parastatals and so, encourage their approach to the Nigerian and international capital markets to meet their funding needs;
- (vii). to initiate the process of gradual cession to the private sector of public enterprises which are better operated by the private sector;
- (viii). to create jobs, acquire new knowledge, skills and technology, and expose Nigeria to international competition.

Source: Privatisation Handbook 3rd Edition, 2001

COORDINATION WITH & INTEGRATION OF ENVIRONMENTAL DIMENSION INTO PRIVATIZATION PROCESS

(Consistent with the process stipulated in Privatization Procedures and Process Guidelines, BPE, Abuja, Nigeria, March 2006)

Stage of Privatization	EHSS Actions and EA Tools to be Used	Guidance and Comments
<p>1. Decision to privatize a public enterprise [4 (four) process streams are available.]</p> <p>Approved list of public enterprises to be privatized is attached to the decree & revised accordingly by the NCP.</p>	<p>Environmental Screening</p> <p>3 (three) EA screening categories (EA Category A, B & C) are available in accordance with Nigerian legislation and consistent with World Bank policies.</p> <p>EDSS Part I must be completed by a PE. BPEEA reviews it and assigns EDSS an ID for internal filing, processing and monitoring.</p> <p>EDSS, Part II must be completed (after review of EDSS, Part I) by the BPEEA and cleared by the FME.</p>	<p>PE is responsible for furnishing the BPE with satisfactory EHSS information.</p> <p>BPEEA & BPEEO provide a PE with a copy of PEH and request in writing to complete EDSS, Part I.</p> <p>If the BPEEA identifies that PE falls under EA Category A "red flag" or "Extreme Caution List", s/he immediately notifies DGBPE, BPELD and supervising department. BPEEA notifies BPELA and BPESA on all sensitive transactions; BPEEA coordinates with and seeks inputs from BPELA and BPESA at all stages of privatization process.</p> <p>BPE & FME discuss and agree on the appropriate EA-related course of action.</p> <p>If classified into EA Category C, BPEEA files EDSS, Parts I & II and any other documents received from a PE in the BPE files and closes the case.</p>
<p>2. Diagnostic review of a public enterprise</p>	<p>Environmental Scoping</p> <p>Decision is taken on whether EDSS is sufficient, or extra EHSS work, like EAu, is necessary. Public consultation with potentially affected local communities is initiated at this stage it leads to finalization of TOR/SOW for EAu/EA/EIA</p>	<p>Scoping is based on a review of readily available public EHSS data and information.</p> <p>If additional EA work is necessary, BPEEA notifies (copied to BPETL/BPESEO) in writing a PE of the decision & applicable EA requirements; requests PE to formally confirm its commitment to comply and indicate what EHSS information should be considered confidential, and authorize the BPE to disclose EHSS leaflet from BPEPRMD.</p>

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
110	BPE Manager and DCO submit joint one page Status Statement Listing Progress Achieved and Matters Outstanding to DG twenty four weeks after date of NCP approval notice or mid way between advertisement and closing date for bids whichever is earlier								
111	Transfer proceeds to Privatisation Proceeds Account								
112	NCP Notice in Gazette re sale in accordance with Regulations (to be drafted)								
113	Independent audit of transaction, process and outcome								

Doc. C1.2(a) STATUTORY FUNCTIONS OF BPE

Sections 13, 14 and 15 of the Act set out the statutory functions of BPE in privatisation and commercialisation.

Section 13: Statutory Functions in Privatisation:

- (a). implement the Council's policy on privatisation;
- (b). prepare public enterprises approved by the Council for privatisation;
- (c). advise the Council on further public enterprises that may be privatised.
- (d). advise Council on the capital restructuring needs of the public enterprises to be privatised;
- (e). carry out all activities required for the successful issue of shares and sale of assets of the public enterprises to be privatised;
- (f).make recommendations to the Council on the appointment of consultants, advisers, investment bankers, issuing houses, stock brokers, solicitors, trustees, accountants and other professionals required for the purposes of privatisation;
- (g). advise the Council on the allotment pattern for the sale of the shares of the public enterprises set out for privatisation;
- (h). oversee the actual sale of shares of the public enterprises to be privatised, by the issuing houses, in accordance with the guidelines approved, from time to time, by the Council;
- (i). ensure the success of the privatisation exercise taking into account the need for balance and meaningful participation by Nigerians and foreigners in accordance with the relevant laws of Nigeria; and
- (j). perform such functions with respect to privatisation as the Council may, from time to time, assign to it.

Section 14: Statutory Functions in Commercialisation:

- (a). implement the Council's policy on commercialisation;
- (b). prepare public enterprises approved by the Council for commercialisation;
- (c). advise the Council on further public enterprises that may be commercialised;
- (d). ensure the updating of the accounts of all commercialised enterprises to ensure financial discipline;
- (e). ensure the success of the commercialisation exercise and monitor, on a continuous basis for such period as may be considered necessary, the operations of the public enterprises after commercialisation;
- (f).review the objectives for which public enterprises were established in order to ensure that they adapt to the changing needs of the economy;
- (g). ensure that public enterprises are managed in accordance with sound commercial principles and prudent financial practices;

- (h). interface with the public enterprises, together with the supervising Ministries, in order to ensure effective monitoring and safeguarding of the public enterprises' managerial autonomy;
- (i). ensure that the Board and Management of each commercialised enterprise and the Government of the Federation, keep to the terms and conditions of the Performance Agreements, if any, between the public enterprise concerned and the Government of the Federation;
- (j). maintain and review on a continuous basis, any Performance Agreement between a public enterprise and the Government of the Federation; and
- (K). evaluate and recommend to the Council whether or not a public enterprise is eligible for funding through grants, loans, subventions or equity; and
- (l). Perform such functions with respect to commercialisation as the Council may, from time to time, assign to it.

Section 15: The Bureau shall:

- (a). provide secretarial support to the Council; and
- (b). carry out such other duties and responsibilities as may be assigned to it from time to time by the Council.

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
105	Media statement re signing of agreement and payment								
106	Completion of sale, receipt of payment, transfer of ownership shares or assets.								
107	Media statement re receipt of full payment and transfer of ownership								
108	Post sale issues								
109	TT prepares Completion Report on Transaction with reasoned statement of steps and decisions and showing how transaction outcome compared with criteria and identify improvements and lessons for future transactions								

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
98	Evaluation and ranking of compliant price bids								
99	Evaluation report including commercial, technical and financial evaluation and price evaluation								
100	Submission of evaluation report to NCP								
101	Decision to accept or reject highest price offer								
102	Media statement re NCP decision								
103	Notify bidders of outcome of process								
104	Proceed to sign agreement, receive part payment with approved purchaser pending completion of transaction e.g. transfer of shares or transfer of assets. Note this is not deferred payment. merely payment conditional on completion of the transaction by vendor and purchaser carrying out actions required for completion.								

Doc D4.1(a) Sample Information Request List

No.	Topic	PE Response	Leave Blank for BPE use
1	Full Name of PE and abbreviated title		
2	Business address		
3	Telephone Numbers		
4	Fax number		
5	e-mail address		
6	Name of person authorised to complete the PEIR and to have further contact with BPE for the purposes of meeting BPE's information and other requirements		
7	Relationship / position of authorised person with PE		
8	Mobile phone number and address for the authorised person		
9	e-mail address for authorised person		
10	Land line phone number, fax and address of authorised person		
11	State laws [primary legislation and subsidiary laws including, regulations, rules and orders, together with amendments, under which PE is formed or which govern the activity in which the PE is engaged.		
12	Supply copies of relevant laws to BPE		
13	To which Ministry/Department does the PE report		

14	Legal status of PE (is it a statutory corporation, private company, public company, partnership, unincorporated association etc.)		
15	Is the PE a subsidiary of another enterprise and if it is provide details of the parent enterprise and the extent of ownership and control held by the parent enterprise		
16	Company Number and Registered Office and address or if not a company other identification details		
17	Supply copy of certificate of incorporation		
18	Details of authorised, issued and paid up equity share capital		
19	Details of issued preference share capital (if any)		
20	Details of corporate debentures (if any)		
21	If a company list the name and addresses of individual shareholders and name, registered offices and Company numbers of companies holding more than 5% of the issued share capital and shareholding		
	State if any of the registered shareholders are legal owners holding the shares on behalf of others		

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
91	Compliance examination and commercial, technical and financial evaluation report								
92	Letter to bidder eliminated for non-compliance or ineligible for failing to reach min. Rating								
93	Return bids that will not be opened to bidders and bid bonds unless forfeited for disqualification								
94	Letter to bidders eligible to have price part of bid opened								
95	Opening price parts of bid invite eligible bidders and media								
96	Media statement at bid opening re process and warning not to reach conclusions as examination and evaluation to follow								
97	After departure of bidders examine price parts of bid for compliance with bid procedures and requirements								

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
85	DG appoints evaluation committee								
86	Invite bidders and possibly media to bid opening which takes place immediately after closing time for receipt of bids								
87	Media statement at bid opening re process and warning not to reach conclusions as examination and evaluation to follow								
88	Record bids received and have bidders sign bid opening statement of agreement with conduct of process to date								
89	After departure of bidders evaluation team examines commercial, technical and financial parts of bid for compliance with bid procedures and requirements.								
90	Evaluation against published criteria								

23	Provide name and address of beneficial owners of shareholdings over 5% of total shareholding in PE		
24	In the case of a company state (a) where the share certificates are held (b) confirmation that the share certificates exist and are in safe-keeping (c) if unable to provide the information required at (a) or (b) state where the most likely physical whereabouts of the share certificates		
25	Details of members of board of directors including names and positions held outside of the Board and state who has appointed the members		
26	Please supply or prepare an organogram of the PE and provide the names of senior management, title of post, qualifications, age, number of years with PE, previous work experience		
27	Auditor's name and contact point		
28	Lawyer(s) name and contact point		
29	Banker(s) name and contact address		

30	Brief History of PE		
31	Year of Formation PE		
32	Year Commenced Business		
33	Details of main business activities, nature of business, locations of business		
34	Number of employees full time / part time / permanent / seasonal break-down by main work categories e.g. management, administration, clerical, production, distribution etc and location to which attached		
35	Provide staff / employee handbook or information showing terms and conditions of employment, provision for pensions, redundancy etc.		
36	Are employees members of trade unions and if so state which Trade Union		

Ref									
80	BPE Manager and DCO submit joint one page Status Statement Listing Progress Achieved and Matters Outstanding to DG fifteen weeks after date of NCP approval notice or mid way between advertisement and closing date for bids whichever is earlier								
81	External legal adviser to be provided with procedure related queries by TT and is to provide TT and DG with sign off letter and sign the sign off document that satisfactory responses on the procedure issues are prepared or advise on alternatives								
82	TT prepares revised response to Bidders								
83	Communication of BPE responses to Bidders								
84	TT organises receipt of Bids in accordance with procedures								
	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
75	TT Monitoring of interest and adjusting marketing and communications and contact with interested persons								
76	TT Provision of Information Memorandum and Bid Documents to bidders								
77	TT Letter permitting access to documents and materials and enterprise management and facilities to interested persons								
78	Bidders' investigations of PE								
79	TT Admin. of Sale Process incl. bidders queries on issues, documents including bid bond, approval of bank issuing bond, legal agreements, approval to change in consortium etc. Having bidders submit written queries substitutes for pre-bid conference.								

37	For the past five years show value and volume measures of production and sales (defined as sales excluding subsidies and net of any taxes and duties levied, such as excise duty, sales tax, etc if any.) Show subsidies, taxes and duties separately		
38	What has been capacity utilisation in recent years, has the PE ever ceased production and if so give details		
39	Profit / Loss in each of last five years		
40	Net Worth based on estimated market values of assets and liabilities. Net Worth is defined as equity share capital + free reserves and surplus (excluding revaluation reserves)		
41	Details of borrowings, with terms, security and interest rates and debt service ratios and coverage. Provide copies of legal documents		
42	Details of charges over / pledges, hypothecation / other encumbrances over fixed assets, current assets, investments etc. Provide copies of legal documents.		
43	Details of guarantees by the PE on behalf of others or by others on behalf of the PE. Provide copies of legal documents.		
44	Details of off balance sheet liabilities.		

45	Details of all contingent liabilities that, if materialised, have or would reasonably be expected to have a material adverse affect on the business, operations (or results of operations), assets, liabilities and/or financial condition of the PE.		
46	Ratio of current assets : current liabilities		
47	Does PE receive subsidies from Federal or State Government and if so give details		
48	List major creditors of PE and sums involved and when and how the liabilities arose		
49	Give brief specific examples of dealing with environmental standards and plans in this matter		
50	Briefly describe the PEs track record of achievements in business		
51	Briefly describe key business risk factors for PE		
52	Briefly describe ability and experience in raising capital funds for investment and details of any investment plans in this regard		

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
68	Proof of Plan, Strategy and Documents. TT presents plan, strategy and documents to DG and small group of senior managers with signed off Sign Off Document								
69	TT Finalisation of Plan, Strategy and Documents								
70	TT Finalised material submitted by DG to NCP for approval								
71	Receipt of NCP Approval								
72	TT continued implementation of marketing, promotion and communications strategy for transaction including communications within BPE on what is happening								
73	TT Advertisement inviting participation in the sale process								
74	TT Registration of interest, receipt of confidentiality and non-interference agreement, letters re consortium membership etc.								

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
65	External Legal Adviser sign off letter received by TT, DG and Approval Point Document signed by External Legal Adviser in appropriate cell								
66	If at any stage after receipt of External Legal Adviser sign off letter it is proposed to change the Information Memorandum and Bid Documents procedures, requirements, terms and conditions or other documents the proposed change must be forwarded by TT / DG to the external legal adviser								
67	The External Legal Adviser either signs off on the proposed change or proposes an alternative approach or informs that the change is not appropriate.								

53	Sources of funds and evidence of availability to finance future investment								
54	List all subsidiary or associate companies showing number of shares and percentage held by PE								
55	List all shareholdings (number of shares and %) held in other companies								
56	Supply 3 Copies of Memorandum of Association								
57	Supply 3 Copies of Articles of Association								
58	Supply 3 Copies of Shareholders' Agreement (if there is one)								
59	Supply 3 Copies of Management Agreement (if there is one)								
60	Supply 3 Copies of Performance Agreement (if there is one)								
61	Supply a copy of the register of assets [to be discussed re significant value]								
62	Supply 3 Copies of Audited Balance Sheet and Profit and Loss Account for the three most recent financial years								
63	Supply 3 Copies of Latest interim financial statements								
64	Supply 3 Annual Reports for the three most recent years								

Date:

Signed for or on behalf of the PE by a duly authorised person: -----

Name and position held

Doc. D4.3(a) Official Notice and Regulations

65CP / BPE PE INFORMATION REQUIREMENTS (PEIR) FORM

1. The Public Enterprises (Privatisation and Commercialisation) Regulations 2005 provide for:
 - (a). the legal authority of BPE to issue the PEIR,
 - (b). the legal obligation on the PE and named officers to provide a satisfactory response to the PEIR on or before the 21st day from the date of dispatch by BPE,
 - (c). the liability of the PE Board and management to disciplinary action or penalty for not responding to the PEIR within the specified time,
 - (d). the publication of the names of PE and officers that fail to provide a [satisfactory] PEIR response.

2. When responding to the PEIR:
 - (a). The same headings and numbering system must be kept in the document and no question should be deleted.
 - (b). There should be no blank answers. If a question is not relevant, or information is not available, there should be a statement giving reasons why the question is not answered.
 - (c). It is essential that the responses be stated in a clear and concise manner.
 - (d). The PEIR response should be sent by e-mail and registered mail to BPE.
 - (e). The PE shall keep evidence of the dispatch of the PEIR response by storing copies of the PEIR response sent by e-mail and registered post to BPE, together with a printed copy of the sent e-mail showing the date, time, e-mail address from which sent and to whom sent, the content of the mail and any attachment to the e-mail. The PE shall store evidence of the registration and sending of the letter or package to BPE and a copy of the materials included in the letter or package.
 - (f). A claim by a PE that it has sent a PEIR response to BPE, by either e-mail or registered post, will not be entertained unless supported by copies of the response and evidence of dispatch of the response.

Ref	63	64
Action	Sign off letter from external legal adviser to TT copy to DG stating that bid procedures are consistent with BPE procedures, that the Information Memorandum and Bid Documents are suited to achieving the transaction objectives and consistent with the advisers' reports, letters and forms and advertisement are suitable and that there are no material issues from viewpoint of FGN and potential buyers that would delay or create uncertainty in the transaction. (Sign off letter to be drafted).	If External Legal Adviser does not sign off it should advise TT and DG on issues to be addressed and how they should be resolved and TT revises Information Memorandum and Bid Documents and revised materials are sent to external legal adviser for provision of sign off letter.
Procedure Doc No		
Responsibility and resources		
Target Date		
Achieved		
State (a) Not Required (b) Not Achieved Give Reason		
Sign Off BPE Manager at all points		
Sign Off Process Auditor at all points		
Sign Off External Legal Adviser		

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
61	If PE / Ministry does not sign off and advises of material issues the TT is to examine, if necessary resolve and revise Information Memorandum and Bid Documents								
62	TT Send (revised) Information Memorandum and Bid Documents all Advisers' Reports, BPE report on Advisers' reports including legal, financial, environment etc, Transaction Plan, communications, promotion and marketing plans, letters and forms, advertisement to External Legal Adviser								

Doc. D4.3(b) PEIR Letter

66. BPE PE INFORMATION REQUIREMENTS (PEIR) LETTER / E-MAIL

To:
PE Managing Director:
Copy to:
Chairman PE,
Shareholder Holding the PE shares for or on behalf of FGN
Vice President Federal Republic of Nigeria and Chairman of NCP
Director BPE
Date

Re: Obligation of [Name of PE and Named Officers] to respond to NCP/ BPE PEIR

Dear Sir/Madam

Sequel to the approval of the National Council on Privatisation at its meeting of [date], we wish to inform you that [name of enterprise] has been scheduled for privatisation. This is in furtherance of the Federal Government's policy on privatisation of Public Enterprises (PE) as contained in the Public Enterprises (Privatisation and Commercialisation) Act No. 28 of 1999. In this regard we respectfully seek your kind cooperation in ensuring the smooth implementation of government's policy.

Consequently, in accordance with the provisions of the Public Enterprises (Privatisation and Commercialisation) Regulations 2005 (the Regulations) you are required to respond to the attached NCP / BPE public Enterprises Information Requirements (PEIR) on or before [Date] being 21 calendar days from the date of dispatch of this letter and the PEIR.

The Public Enterprises (Privatisation and Commercialisation) Act 1999 and the Regulations specify that BPE is obliged to obtain responses to the PEIR as well as specifies the obligations of the PE and its officers to provide information, access to information and cooperation with BPE. The Regulations specify in particular the liability of the PE and its officers to disciplinary action and /or penalties if there is a failure to provide a satisfactory PEIR response within the specified time. A copy of the relevant part of the Regulations is attached for your attention.

If you have any questions regarding the PEIR, this letter or completion of the PEIR please address them to [Name & Telephone No. of BPE Enterprise Manager]. Any communication by phone must be subsequently confirmed in writing.

Yours sincerely

Director General

e-mail address

Doc D4.3(c) Reminder Letter

REMINDER LETTER NCP / BPE PEIR

To:
PE Managing Director:

Copy to:
Chairman PE,
Shareholder Holding the PE Shares for or on behalf of FGN
Director BPE

Date:

Re: Reminder to Respond to NCP/ BPE PEIR

Dear Sir/Madam

BPE has not yet received the PEIR Response of [Name of PE] and is informing you of the close proximity of the expiry of the statutory response period on [last date for receipt of PEIR response]. BPE looks forward to receiving your PEIR response on or before that date, failing which the PE and named officers are liable to disciplinary action or penalty and the publishing of the names of the PE and named officers that fail in their statutory obligations to provide a [satisfactory] PEIR response. If you have any queries regarding the PEIR or this letter please contact me immediately.

Yours sincerely

Director General
e-mail address
postal address
BPE office telephone number
Mobile number

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
56	Valuation Reports (if to be supplied to Bidders depends on circumstances)								
57	Any Other Document Required e.g. Regulatory Framework								
58	BPE Manager and DCO jointly submit one page Status Statement Listing Progress Achieved and Matters Outstanding to DG nine weeks after date of NCP approval notice or after Information Memorandum and Bid Documents prepared whichever is earlier								
59	TT Send Information Memorandum to PE and Ministry for comments and suggestions with sign off letter (to be drafted)								
60	Receipt of sign off letters from PE and Ministry								

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
45	Letter of approval for Bidder access to PE information and facilities								
46	TT Terms and Conditions for Bid including evaluation criteria and rating system geared towards transaction objectives								
47	Requirements for bids								
48	Bid Form Commercial Technical and Financial Part of Bid								
49	Bid Form Price Part of Bid								
50	Letters and Forms to be used by BPE in transaction								
51	Draft Bank Guarantee								
52	Draft Bid Bond								
53	Draft Sale and Purchase Agreement								
54	Draft Shareholders Agreement								
55	Draft Management Agreement								

Doc D4.3(d) Letter of notice of Failure to Respond

To:
PE Managing Director:
Copy to:
Chairman PE,
Shareholder Holding the PE Shares for or on behalf of FGN
Director BPE

Date:

Re: Failure to Provide PEIR Response

Dear
[BPE has not received the PEIR Response of [Name of PE] within the statutory response period which expired on [last date for receipt of PEIR response].

As a matter of urgency please supply the PEIR Response immediately. If a satisfactory PEIR Response is not received on or before [35 days from initial date of dispatch of the PEIR] the failure to provide the PEIR response will be reported to the Director General of BPE and member of NCP who will inform NCP. Disciplinary action or a penalty may be imposed by NCP on the PE and named officers.]

Yours sincerely

Director General
e-mail address
postal address
BPE office telephone number
Mobile number

OR
Re: Failure to Provide Satisfactory PEIR Response

To:
 PE Managing Director:
 Copy to:
 Chairman PE,
 Shareholder Holding the PE Shares for or on behalf of FGN
 Director BPE

Date:
 Dear -
 [The PEIR Response of [Name of PE] furnished to BPE on date is not satisfactory for the following reasons:

As a matter of urgency please supply the missing or defective information. If the missing information or remedy for the defective response is not received on or before [35 days from initial date of dispatch of the PEIR] the failure to provide the PEIR response will be reported to the Director General of BPE and member of NCP who will inform NCP. Disciplinary action or a penalty may be imposed by NCP on the PE and named officers.]

In accordance with the Public Enterprise (Privatisation and Commercialisation) Regulations 2005 BPE shall publish the names of the PE and named officers as being in default in of statutory obligations in providing a PEIR response.

If you have any queries regarding the PEIR or this letter please contact me immediately.

Yours sincerely

 Director General
 e-mail address
 postal address
 BPE office telephone number
 Mobile number

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
37	TT identify actions to be taken and where necessary approvals to be obtained to take actions to implement Transaction Plan								
38	TT draft Information Memorandum and Bid Documents geared towards achieving transaction objectives								
39	TT Advertisement to be used: format, content, where and how often ad will be published and supporting rationale								
40	Registration Form								
41	Declaration of Eligibility e.g. net worth (definition), sales value								
42	Confidentiality and Non-Interference Agreement								
43	Letter from member of Registered Person								
44	Acknowledgement Receipt of Registration								

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
34	TT Transaction Plan including transaction objectives, strategy and structure for achieving objectives, plans for resolution of all issues including labour, environment, creditors / liabilities, disputes, marketing, promotion and communications plans. Link with existing approaches and documents in issues such as labour and environment.								
35	Ensure PE File, Transaction Preparation Transaction Plan and Transaction Implementation Files are maintained and up-to-date								
36	BPE Manager DCO jointly submit one page Status Statement Listing Progress Achieved and Matters Outstanding to DG six weeks after date of NCP approval notice or after TT Transaction Plan whichever is earlier								

Doc. D4.3(e)

REPORT TO DG BPE OF FAILURE TO PROVIDE PEIR RESPONSE

Name of PE, PE Chairman, Managing Director

The BPE PEIR Register shows that [Name of PE, PE Chairman and Managing Director] have failed or refused to provide a [satisfactory] PEIR Response within the statutory response period, in spite of an extension of time and being informed by a letter of notice of failure to respond by the PE and named officers. In accordance with the Public Enterprise (Privatisation and Commercialisation) Regulations 2005 and the BPE Privatisation Procedures I am reporting the failure of the PE and the named officers to provide a [satisfactory] PEIR response for the matter to be placed before the NCP. BPE shall publish the name of the PE and the named officers that failed to provide the [satisfactory] PEIR response in the Gazette / media.

Name PE	Extract BPE PEIR Register
Date of dispatch of PEIR	
Date of dispatch of reminder letter to respond to PEIR	
Last date for receipt of PEIR	
Date of Dispatch of Letter of Notice of Failure to Respond giving extra time to provide PEIR Response OR Date of Dispatch of Letter of Notice of Failure to Satisfactorily Respond giving extra time to provide a satisfactory PEIR Response	
Last day for receipt of PEIR including extension of time	

Signed:

Name of BPE Manager:

Signed:

Name of person in charge of BPE PEIR Register:

1	Date of Dispatch PEIR	BPE Manager name and signature	PEIR Registrar name and signature
2	Last Date for Receipt of PEIR Response (on or before 21 calendar days after Date of Dispatch)	BPE Manager name and signature	PEIR Registrar name and signature
3	Date of Receipt of satisfactory PEIR Response	BPE Manager name and signature	PEIR Registrar name and signature
4	Date of Ack. of Receipt of satisfactory PEIR Response	BPE Manager name and signature	PEIR Registrar name and signature
5	Date of Reminder Letter	BPE Manager name and signature	PEIR Registrar name and signature
6	Date Dispatch Letter of Notice of Failure to Respond (max of 28 calendar days after date of dispatch)	BPE Manager name and signature	PEIR Registrar name and signature
7	Date of Receipt of satisfactory PEIR Response (on or before 35 calendar days after date of dispatch)	BPE Manager name and signature	PEIR Registrar name and signature
8	Date of Ack. of late satisfactory PEIR response	BPE Manager name and signature	PEIR Registrar name and signature
9	Date Report Failure to Provide [satisfactory] Response in PEIR to DG (max working day after expiry 35 calendar days from date of dispatch)	BPE Manager name and signature	PEIR Registrar name and signature
10	Date of publication of Default in Gazette	BPE Manager name and signature	PEIR Registrar name and signature
11	Date of NCP decision	BPE Manager name and signature	PEIR Registrar name and signature
12	Date action taken on NCP decision	BPE Manager name and signature	PEIR Registrar name and signature

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
30	TT / Market Research, Marketing, Promotional Strategy and Actions link to plans and implementation later in process								
31	TT / Communications Strategy and Actions link to plans and implementation later in process								
32	TT Identification, Quantification and Verification of Employee and Former Employee Issues (link to review of existing policy framework for labour issues)								
33	TT Report of Decisions and Actions on Pay Arrears, Severance, End of Service Benefits, Pensions past and future etc (current process in different circumstances?)								

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
22	BPE Manager DCO submit one page Status Statement Listing Progress Achieved and Matters Outstanding to DG three weeks after date of NCP approval notice or after TT report above whichever is earlier								
23	TT Consultation with Ministry / MOFI (shareholder)								
24	TT Consultation Creditors [current process?]								
25	TT identification, quantification, verification of liabilities, including hidden and contingent liabilities of PE and FGN, environment liabilities etc.								
26	TT Report on Decisions and Actions on creditors and all liabilities including environmental liabilities								
27	TT Consultation Employees and Former Employees								
28	TT Consultation Community								
29	TT Consultation Political								

Doc. D4.3(g)

ACKNOWLEDGEMENT OF RECEIPT OF PEIR RESPONSE

To:
PE Managing Director:

Copy to:
Chairman PE,
Shareholder Holding the PE Shares for or on behalf of FGN
Director BPE

Date:

Re: Acknowledgement of Receipt of PEIR Response

Dear

BPE acknowledges that the PEIR Response of [Name of PE] was received on day of -. BPE is grateful for your co-operation in providing the response within the statutory response period.

Yours sincerely

Director General
e-mail address
postal address
BPE office telephone number
Mobile number

Doc D4.3(h)

ACKNOWLEDGEMENT RECEIPT LATE PEIR RESPONSE

To:
PE Managing Director:

Copy to:
Chairman PE,
Shareholder Holding the PE Shares for or on behalf of FGN
Director BPE

Date:

Re: Acknowledgement of Late Receipt of Satisfactory PEIR Response

Dear

BPE acknowledges that the PEIR Response of [Name of PE] was received on day of -. BPE is grateful for your co-operation in providing the PEIR response.

Yours sincerely

Director General
e-mail address
postal address
BPE office telephone number
Mobile number

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
9	Adviser Appointment and Evaluation Process								
10	List of advisers appointed and dates reports due								
11	Valuation Report Assets								
12	Valuation Report Assets and Business								
13	Valuation Report Shares								
14	Financial Adviser / Due Diligence Report								
15	Financial Adviser Utility / Regulation								
16	Legal Adviser Report Due Diligence / Title Scrutiny								
17	Legal Adviser Report Utility and Regulation								
18	Environment Report								
19	Economic / Sector / Engineering / Regulatory Adviser (complex transactions)								
20	Overall Privatisation Adviser (if necessary)								
21	TT Report drawing together conclusions and issues in various adviser reports with recommended actions								

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
5	DG Appoints Transaction Team (TT)								
6	DG Appoints DCO								
7	TT business case for engaging advisers								
8	Approval by (senior management?) to Appoint External Advisers								

Doc D4.4(a)

Basic PE File

- File containing printed documents such as the PE constitutional documents including memorandum of association, articles of association, shareholder agreements, founding and regulatory legislation, other legal documents, annual reports and accounts, financial statements;
- File relating to PEIR including materials sent to PE, PE response and follow up queries;
- File containing all information, reports and materials from previous efforts at privatisation or reform including advisers and consultants reports;
- Correspondence file including correspondence BPE PE, BPE-Shareholder, BPE-Regulator, BPE-Ministry, BPE-NCP;
- Contemporaneous notes and records of meetings and significant telephone conversations including meetings with PEs, Ministries, Regulators, Persons interested in participating in the privatisation process for a PE and others;
- Record of early marketing exercises and media communications related to PE including media comment, statements on PE and the PE's privatisation and copies of articles, news reports and media releases placed by BPE;
- Daily file in which all material relating to that PE, including correspondence, notes of meetings etc is kept in date order regardless of the subject;
- Process decision log record signed at identified stages by BPE Manager and DCO with copy sent to Compliance.

Doc. D4.4(b)

PE TRANSACTION PREPARATION FILE

- Advisers' File: records that show reasons for engaging advisers and recording the process of identifying advisers invited to submit proposals to provide advice, terms of reference, letters of engagement, reasons for choice of adviser according to criteria published in advance of submission of proposals, records of receipt of advisers reports, BPE analysis of advisers' reports and advisers' responses to BPE queries, Transaction Team's conclusions and recommendations from the material in the advisers' final reports, BPE manager's approval of staged payments to be made at different stages.
- Files with material stored by subject including:
 - finance,
 - legal,
 - labour and employment,
 - environment,
 - assets,
 - liabilities and loans,
 - valuation estimates reports and reasons
- BPE's report on the outcome of various due diligence investigations.
- File of correspondence with all persons relating to the PE transaction;
- File recording notes of all meetings relating to the PE privatisation including minutes of transaction team meetings and transaction liaison team meetings (to be continued throughout the transaction plan and implementation);
- Process decision log record signed at identified stages by BPE Manager and DCO with copy sent to Compliance

Doc. F1(a)

Documentation and Compliance Checklist

Ref	Action	Procedure Doc No	Responsibility and resources	Target Date	Achieved	State (a) Not Required (b) Not Achieved Give Reason	Sign Off BPE Manager at all points	Sign Off Process Auditor at all points	Sign Off External Legal Adviser
1	Enterprise File (Public Enterprise Information Requirements PEIR)								
2	NCP Privatisation Approval Notice in Gazette (Regulations to be drafted)								
3	BPE Notice to PE Chairman, Managing Director (MD) and Holder of FGN Assets or Shares stating BPE / PE / Ministry duties and obligations in Act and Regulations (to be drafted)								
4	DG Appoints Transaction Liaison Team (TLT) (DG or Nominee, BPE Mgr., MD, Ministry issues to be referred if lack of co-operation / access to information / access to facilities / other problem								

STATEMENTS TO BE SIGNED BY BIDDERS AT OPENING OF BIDS

STATEMENT OPENING PRICE PARTS OF BIDS

Bid for XXXX: Price Part of Bid

“It is acknowledged that the Financial Bids opened are those submitted. The conduct of the Bid Process to date including the opening of the Financial Bids has been conducted properly”

Name of Bidder

The Statement should be signed by, or on behalf of, each of the Bidders who are present as well as by a representative of the BPE.

PE TRANSACTION PLAN FILE

- Transaction Plan showing transaction objectives, choice of privatisation method, proposed handling of potentially contentious issues with reasons supporting the planned actions and containing as appendices the advisers' final reports and BPE's conclusions and recommendations on the advisers' reports and the process decision logs to date that show all required reports have been obtained and steps taken;
- Report to BPE senior management / NCP (where necessary) showing issues to be addressed in advance of advertising with recommendations for approval of proposed actions with respect to settlement of all labour related liabilities (overdue pay, pensions etc) and approach and cost and financing of labour rationalisation (if necessary), settling other secured and unsecured liabilities, addressing contingent and hidden liabilities and resolving environment issues;
- Record of NCP / BPE senior management approval put in place steps to address the issues;
- Record of steps taken to implement the approved steps before advertising; Draft Information Memorandum and Bid Documents;
- Written confirmation by external legal advisers after perusing items 13-17 (inclusive) to ensure all necessary steps and reports have been carried out and that there are no outstanding issues from the perspective of FGN and a potential buyer that would disrupt or delay the completion of a sale;
- Record of presentation of Transaction Plan strategy and Information Memorandum and Bid Documents to senior BPE team.
- Record of NCP / BPE approval to advertise on basis of Transaction Plan and Information Memorandum and Bid Documents.

DUE DILIGENCE INVESTIGATION CHECKLIST

This is a list of items to be checked when carrying out a due diligence investigation of a PE prior to privatisation. The list should not be used in this format as it has to be substantially changed after examining the list of PEs for privatisation in Nigeria. When investigating an asset or interest in an enterprise held by or on behalf of FGN a different list is required. Some of the material may already be on the Enterprise File at BPE having been obtained through the PEIR.

The list is not exhaustive and needs to be adapted for different circumstances. For some PEs the list is too elaborate, for others more specialised information may be needed e.g. mining leases etc. Not every question needs to be asked on all occasions but the list helps to focus on matters that might arise in the course of a transaction.

Particular care should be taken to ensure that items that are not listed here are identified during the investigation. The checklist is a guide and not a blueprint. A PE with special circumstances may require additional enquiries and great care should be taken to ensure that the checklist is not taken as being complete for all PEs.

The person(s) carrying out the due diligence investigations need to visit the PE and meet with the responsible persons to obtain all relevant information and copies of materials.

A. Legal status / corporate form

1. Obtain all legislation, decrees, regulations and orders establishing and dissolving the PE.
2. Obtain from the PE the official company register number of the PE.
3. Carry out a search of the company file at the Corporate Affairs Commission Registration Department (CAC). Obtain copies of important materials on the file. If not possible take notes of the contents of the file, in particular take a note when the company was first incorporated, when the last returns were made, the date on the Articles of Association of the company, details of any registered mortgages, charges, judgements etc against the property of the company, resolutions passed in general meetings, any changes in name. Establish in co-operation with the Company Secretary what, if anything is needed to bring the company file at CAC up to date especially if shares are being sold.
4. Obtain copy of Certificate of Incorporation of the PE.
5. Where is the registered office of the company?

The Bid Security Bond will remain effective for one hundred and eighty days from the date hereunder and shall become void at the expiration of the tenure stated.

The Bid Security Bond is personal to the BPE and is not assignable.

DATED THIS _____ DAY OF _____ 20__

The common seal of the Within Named

Was hereunto affixed in the
Presence of:

DIRECTOR

SECRETARY

Doc. 2.6(b)

SPECIMEN BID BOND

[Letterhead of xxxxxxx Bank]

TO: BUREAU OF PUBLIC ENTERPRISES ABUJA

BID SECURITY FOR _____

ORDER: _____

WHEREAS, _____ having its registered office at _____ (hereinafter called "The Bidder"), has submitted its bid (hereinafter called "The Bid") to PURCHASE _____ % equity interest in _____ (hereinafter called "e.g. ALSCON)

WE _____, having our registered office at _____ (hereinafter called "The Bank") is bound unto the BUREAU OF PUBLIC ENTERPRISES (hereinafter referred to as "BPE") on behalf of the Bidder, a maximum sum of _____ which payment well and truly shall be made to the said BPE on the following conditions:

1. If the Bidder withdraws its bid during the period of bid validity specified by the Bidder on its Bid form, or
2. If the Bidder having been notified of the acceptance of its Bid by the BPE during the period of the Bid validity:
 - a. fails or refuses to execute the Share sales/ Purchase Agreement, as and when required, or
 - b. fails or refuses to pay the negotiated Bid price in accordance with the terms of sale.

We the bank undertake to pay BPE the full amount of the Bid Security Bond upon receipt of the written demand, without BPE having to substantiate its demand, provided that in its demand BPE will note that the amount claimed by its due to it owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions and in respect of which we bind ourselves, successors and assigns by these presents.

6. Establish under what authority the PE became a company and if under legislation obtain a copy of the law or order under which it took place. (e.g. Is there a law on conversion of statutory corporations into limited companies and does it apply).
7. If part of a Ministry establish status and relationship between entity and Ministry.
8. Obtain a copy of the up to date by-laws/regulations/memorandum and articles of association of the Company from the Company Secretary.
9. Establish from the Company Secretary details of authorised, issued and paid up share capital and list of shareholders/share-holdings (nominee and beneficial) in the Company and the consideration paid for issued shares in cash or kind.
10. Option or other arrangements such as warrants or convertible securities relating to the shares.
11. Obtain details of shares, warrants, options etc. owned by the PE.
12. Are there pre-emption rights, liens/encumbrances on shares etc. Can good title be passed.
13. Are there consents needed for the transaction.
14. Obtain from the Company Secretary the names and addresses of the Directors (including alternate / substitute directors) of the PE with any other directorships / business interests held by them and the officers of the PE e.g. Chairman, Secretary etc.
15. Are there or has there been any associated or related undertaking(s) and what is their status? Carry out necessary searches.
16. Names and addresses of company auditor, bankers, lawyer.
17. Details of all business names / logos of the business.
18. Details of any affiliates / subsidiaries or other agreements technical, joint venture, partnership, research, development.
19. What authority is needed to transfer ownership of shares / assets. Can potential purchaser visit and examine books and records etc.

B. Structure and nature of business including on-going contracts, enforceability and ability to re-negotiate

Brief description of the Business and the function and location of each place where the Business operates including locations outside the country.
Supply contracts, purchase contracts, marketing, distribution, commission, agency or representative agreements, list of independent contractors.
Contracts which cannot be terminated without liability/notice required.
Customer lists
Competitors
Standard forms and terms of doing business

Warranties on products

Marketing and Pricing Practices / complaints from customers / business plans etc.,
price lists, pricing allowances

Insurance Policies and general, employee, product, property, vehicle coverage

Royalty payments etc. if any.

C. Real property (land and buildings) ownership and transferability

1. Get details of all property owned by the PE including copies of title deeds (are originals available?), addresses, descriptions, approximate areas with a surveyor's site plan. Check Land Registry etc.
2. Get details of all leasehold properties occupied or owned by the PE including copies of leases, Land Registry numbers, addresses, descriptions, approximate areas, terms, rent, etc. Check the Land
3. Registry. Rent, term, renewal options, option purchase prices. Location and description - manufacturing, distribution, selling, offices, inactive properties, area, age, date of last major works, capacity utilisation.
4. Are Lessor's consents to assignments required if land leased?
5. Copies of all licenses to assign or sub-let and for alterations.
6. Contracts for the supply of services to the properties water, telecommunications, electricity, sewage etc.
7. Obtain copies of Valuations of the Properties if available.
8. Has the PE leased or given licences to land to any parties and if yes obtain details of occupants.
9. Details of all mortgages, charges and debentures and other forms of security (Government guarantees?) see below also.
10. Any disputes with adjoining property owners.
11. Are all rents, service charges etc. paid up to date (get receipts close to Completion Date).
12. Any covenants, restrictions, licenses, agreements or other encumbrances. Get details.
13. Any rights of way, easements or other rights. Get details.
14. Any option to acquire property or assets of enterprise
15. Has title passed on all properties has full payment been made

D. Other tangible assets and intangible assets

1. Details of all plant and machinery and a copy of the register of assets / plant register. Compare with the valuation report list. Compare valuation report with actual assets at the PE. Establish whereabouts of all assets and who is responsible for them.
2. Details of all motor vehicles owned or used by the Business. Are there registration books for the vehicles and who holds them?

3. The demand made by FGN shall be conclusive and binding on the Guarantor irrespective of any dispute or difference raised by the Bidder / Proposed Purchaser in any suit or proceeding including arbitration proceeding pending before any Court or Tribunal.
4. The Guarantor acknowledges that its liability under this Guarantee shall constitute a primary obligation of the Guarantor, that is irrevocable, and shall not be discharged, released or otherwise affected by any delay or grant of time being given to the Bidder / Proposed Purchaser or by any other indulgence or concession being granted to the Bidder / Proposed Purchaser or by any other act, omission, dealing, matter or thing whatsoever, (including without limitation any amendment of the articles of incorporation or regulations of the Bidder or Proposed Purchaser or the Guarantor, any amendment to the XXXX Information Memorandum and Bid Document xxx 2000x, the liquidation, reconstruction or amalgamation of the Bidder / Proposed Purchaser or the Guarantor which but for this provision might operate to release or reduce the Guarantor's liabilities under this Guarantee.
5. This Guarantee shall remain valid until it expires at xx hours (xpm) GMT on xx 200x without prejudice to any demand presented under this Guarantee prior to its expiry. Ifx an extension of the guarantee is required the extension shall be until a date on or before xxxx 200x on receiving notice from FGN and an instruction from the Bidder on whose behalf the Guarantee is issued.
6. The Guarantor shall have no liability in respect of any demand under this Guarantee received after xx 200x unless the Bidder failed to instruct us seek to extend the validity of the Bid in accordance with a request from FGN to extend the Guarantee served on the Bidder prior to xx 200x.
7. This Guarantee is valid only to FGN and is not capable of being transferred or assigned.
8. This Guarantee shall be construed and take effect in all respects in accordance with the laws of Nigeria and the courts in Nigeria shall have jurisdiction to entertain any matter concerning this Guarantee.

In witness whereof the Guarantor, through its authorised officer has set its hand and stamp on this day of at

Signature

Witness

unconditionally and irrevocably guarantees to FGN / NCP, and covenants with FGN / NCP, as a primary obligation of the Guarantor, to immediately pay the Sum without protest, reservation or recourse on receipt by us, at the above address, of your first demand in writing, accompanied by the signed statement of a duly authorised person on behalf of FGN / NCP, which statement shall be conclusive that:

- 2.1. FGN / NCP is entitled to forfeit the [Earnest Money Deposit] [Bid Bond] under the terms of the Bid Process and is exercising its right to forfeit.
- 2.2. the Bidder has failed or refused, within the time required under the terms of the Bid Process, to make reasonable efforts to conclude agreement on the sale and purchase agreement for the Sale Shares, or is seeking to impose conditions on the purchase that are contrary to the Bid Process and the notice from BPE informing the Bidder of the choice of the Preferred Bidder or is acting or failing to act in a way that is regarded by you as unreasonable in the circumstances; or
- 2.3. the Bidder is seeking to change the nature or fundamental elements of the Bid or is substantially changing the ownership and participation of different persons in the Proposed Purchaser compared with the information submitted in the Bid for the Sale Shares contrary to the Bid Process and without your prior consent; or
- 2.4. agreement as to the terms of the sale and purchase of the Sale Shares has been reached, but the Bidder or the Proposed Purchaser without due and reasonable cause as adjudged by you has withdrawn or is seeking to withdraw from the sale and purchase of the Shares before expiry of this Guarantee and without your consent; or
- 2.5. agreement as to those terms has been reached, but the Bidder or the Proposed Purchaser has failed, without due and reasonable cause as adjudged by you, within 12 calendar days after your notification to the Bidder of FGN / NCP approval, to sign the sale and purchase agreement for the Sale Shares, the terms of which have been accepted; or
- 2.6. the formal sale and purchase agreement for the Sale Shares has been signed by the Bidder or Proposed Purchaser, but the Bidder or Proposed Purchaser has failed without due and reasonable cause as adjudged by you, to pay to you, in full and in accordance with its terms, that part of the price payable under the agreement on or before completion;
- 2.7. the Bidder is refusing your request to cause the time of validity of the guarantee to be extended for a period of 60 days where unforeseen circumstances have delayed approval of the Bid or completion of the sale.

3. Social assets e.g. houses, club houses, medical centres, schools etc.
4. Certification of machinery etc. on being commissioned.
5. Details of any financial / operating leases, hire, hire purchase of assets of company.

Intellectual property, brand, trade marks, trade names, designs used under licence or which is licensed etc. Get details are any of the rights shared.

E. Accounts and Finance and Commitments

1. Obtain the audited accounts and Accountant's Report (if available and also management accounts or other books and records) of the company for the most recent three years for which they are available and the most up to date management accounts. Obtain accounts for any other companies in which the Company is involved. Are the accounts available on a divisional basis - if yes obtain copies.
2. Obtain details of all bank accounts operated by or on behalf of the business including details of all overdraft facilities and up to date statements for all accounts.
3. Obtain details and copies of all loan agreements, borrowings, mortgages, charges, debentures, guarantees, indemnities, bonds and other financial commitments (hire purchase / lease agreements), outstanding letters of credit etc. undertaken by or in respect of the business by the PE or its subsidiaries. Confirm no notice requiring repayment has been served and that there are no breaches in respect of covenants in any charge, debenture or guarantee, loan agreement etc. Any contingent liabilities?
4. Obtain details and copies of the financing provided by Government. Get copies of materials from the PE. If grants given by Government are they repayable on change of control.
5. Details of all loans made to the business including security for loans.
6. Details of all loans given by the business such as staff loans etc.
7. Are costs of the business to be apportioned between different divisions and if so obtain breakdown.
8. Details of debtors, period of debt and amount.
9. Details of creditors (including trade creditors) and liabilities of the PE.
10. Details of amounts, interest rates, repayment dates etc. Any contingent or possible hidden liabilities e.g. [see H. Legal claims], environmental, health and safety, product liability etc.
11. Details of all capital commitments, hire purchase, leasing arrangements.
12. Details of all matters outside the ordinary course of business since the balance sheet date (e.g. dividends, customer losses etc.)

F. Employees

1. Schedule of all employees / consultants etc. at the PE:
 - (a) full name and identification
 - (b) male / female
 - (c) date of birth
 - (d) date of commencement of employment with the PE
 - (e) job description
 - (f) details of pay, allowances, bonuses and other forms of remuneration
 - (g) pensions - details if any scheme exists is it funded or are there any unfunded liabilities?
 - (h) end of service benefits due or paid
 - (i) severance pay entitlement
 - (j) holidays due and holiday pay position
 - (k) qualifications and experience
 - (l) any other relevant information e.g. options, bonus, profit sharing, medical, insurances, savings plans
2. Collective Agreement and other contracts of employment including confidentiality and connection between employees and intellectual property development and ownership.
3. Labour regulations and practices for employees in PE / private sector
4. Are there recognised Trade Unions and establish who are representatives?
5. Details of any claims / grievances / issues involving employees [Usually not required (or available) in this detail but might be needed to estimate redundancy costs etc].

G. Insurance

1. Details of all insurance policies taken out by or operated for the benefit of the business including but not confined to insurance of property, product liability insurance, insurance of work force etc.
2. Details of all insurance claims in past four years.
3. Ensure purchaser has adequate cover if purchasing and taking ownership but not taking possession from date of agreement.

H. Litigation / Claims

1. Details of all litigation including arbitration and alternative dispute resolution in which the company has been involved in the last four years and in which the company is currently involved directly or indirectly or which is potentially a threatened claim e.g. claims for compensation for use of land, possible claim.
2. Any product recalls or products subject to unusual Government restrictions.

SPECIMEN BANK GUARANTEE

This bank guarantee (the "Guarantee") should be made by a reputable bank that is acceptable to Bureau of Public Enterprises ("BPE") of the Federal Government of Nigeria (FGN).

[Position with respect to issue of bank guarantees and bid bonds in Nigeria to be taken into account and discussed with a reputable bank with high banking standards before finalising wording of guarantee / bid bond and position with respect to effectiveness of guarantees and bid bonds issued by a bank from outside Nigeria to be taken into account.]

A Bidder must ensure that the Bank executing the Guarantee / issuing the Bid Bond is acceptable to BPE by seeking BPE approval on or before xxx.

A Bidder may submit comments on the Specimen Bank Guarantee to BPE on or before xxx.

[Letterhead of Bank the "Guarantor"]

To:
Contact Person BPE

[date]

1. The Guarantor notes that:

1.1. In response to your invitation to submit Bids for xxxx XXXX equity shares (the "Sale Shares") held by FGN representing xx% of the issued and paid up equity share capital of XXXX, [name of Bidder] (the "Bidder") is submitting a bid (the "Bid").

1.2. that if the Commercial, Technical and Financial Part of the Bid is satisfactory and the Financial Bid for the Sale Shares is accepted by FGN that you intend to enter a written sale and purchase agreement for the sale and transfer of the Sale Shares with the Bidder or with a person named in the Bid as the Proposed Purchaser.

1.3. in accordance with the requirements of the XXXX Bid Process (which has been made known to the Bidder), it is a condition for participation in the Bid Process that the Bidder is to procure that an irrevocable bank guarantee (the "Guarantee") is submitted to you in respect of the sum of N-- US\$--- (the "Sum") by way of an [Earnest Money Deposit].

2. We,Bank (the "Guarantor"), at the request of the Bidder,

Conclusion

Out of the five Bids submitted by Date of Closure, two Bids (Bidder x and Bidder w) are eliminated from the Bid Process. Bidder y was found not to be eligible on the basis of the commercial, technical and financial evaluation. At the opening of the Financial Bids, at the date and time given in the Notice, the Financial Bids of the remaining two Bidders, Bidder v and Bidder z shall be opened.

Yours sincerely

Doc. E2.6(a)

3. What is effect of transfer of ownership and how will the disputes be dealt with?

I. Environment

1. Has environment audit / risk assessment been conducted?
2. Is environment permit needed?
3. Are there environment issues including known or contingent liabilities?

J. Contracts, Commitments and Business

1. Details of all subsisting contracts with customers and suppliers etc. especially those of unusual or long term nature are they terminable on change of control or require consent for assignment. List of major customers and suppliers by volume and value.
2. Non-arms length transactions and contracts or arrangements with and liabilities owing to/from the vendors.
3. Details of all franchise agreements (if any).
4. Details of any Patents, Copyright, Trade Marks, intellectual property owned or used by the PE.
5. Details of any restrictions on trading in any part of the world.
6. Details of any confidentiality agreements entered into by or on behalf of the PE.
7. Computer agreements, ownership and use of systems hardware, software and peripherals and of licensing of software, access to source codes; security of systems (back up and off-site storage), disaster recovery arrangements, maintenance arrangements. Strategic IT plans.
8. Details of any licences, distribution or agency agreements governing relationships with associates.
9. Details of any permits or licences needed to operate the business and how are these transferred.
10. Any partnership, consortium or trade or other association of which the enterprise is a member.
11. Shareholders agreement, management agreement, joint venture arrangements etc
12. Guarantees given by or on behalf of the enterprise including Government or parent company guarantees.
13. Details of material customer and supply arrangements, standard forms of contracts.
14. Indemnity, warranty, tax sharing or non competition agreements.
15. Compliance with competition law.

K. Consents for Sale

1. Consents required for sale and transfer of shares, assets, leases of Pes;
2. Consents of creditors, lenders or other third parties re change of control etc.
3. Environment Protection consents, filings, compliance, hazardous materials etc?
4. Employee issues e.g. severance pay who handles if negotiations required?
5. Special cases e.g. mining licenses
6. Exposure of FGN to liabilities including guarantees
7. Consents of enterprise / shareholders
8. Consents re novation / assignment of contracts
9. Stock Exchange compliance
10. Overseas consents re subsidiaries in other jurisdictions
12. Shareholders consents re changes Articles of Association / pre-emption rights etc

L. Taxation

1. What is up to date tax compliance and payment position of the PE, are there tax clearance certificates which can be issued by Tax Authorities Income tax, sales tax, hand-over of employee taxes and pay roll taxes?
2. What taxes are involved in sale - e.g. stamp duty, consent fees etc?
3. Roll-over relief, retirement relief, or liable to special charge
4. Apportionment of consideration amongst the assets being purchased.

M. Government and Other Regulation of Relevance to PE / Potential Purchaser

1. Licences, permits from regulatory bodies at home / overseas - Standards, food and drug approvals ability to transfer / issue of new licences etc.
2. Notices, reports etc infringements of regulations etc.
3. Financial Reporting
4. Securities Commission communications if a company quoted on Stock Exchange
5. Auditors
6. Intellectual Property Registration
7. Trade marks, patents, service marks, trade names, brands, copyrights owned by Company and subsidiaries also pending. Confirmation and evidence. Sources of rights.
8. Know how technology, licences, royalty agreements
9. Environment/disposal of waste/licences - need for re-mediation agreement?
10. All licences / permits etc. what are the requirements and transferability.
11. NIPC or other approvals

Both Bidders are being informed of this outcome and the reasons why the Commercial, Technical and Financial Part of the Bids were determined not to be substantially responsive and compliant.

The Bid Bonds submitted by the Bidders are being returned. At the opening of the Financial Bids, the Financial Bids submitted by Bidder x and Bidder w will not be opened and shall be returned unopened to the respective Bidders.

Bids That Are Substantially Responsive and Compliant

The Commercial, Technical and Financial Part of the Bids of

1. Bidder v
2. Bidder y
3. Bidder z

were found to be substantially responsive and compliant and eligible for evaluation.

Evaluation of Eligible Commercial, Technical and Financial Part of Bids

The Commercial, Technical and Financial Evaluation Committee evaluated the three Commercial, Technical and Financial Part of the Bids determined to be eligible for evaluation. The evaluation was carried out in accordance with the Information Memorandum and Bid Document xx 200X [as amended by notices provided to Bidders prior to the Date of Closure for receipt of Bids on xxx].

Results of Evaluation of Commercial Technical and Financial Part of Bids

The evaluation resulted in the Commercial, Technical and Financial Part of the Bids of

1. Bidder v and
2. Bidder z

achieving at least 75 points making the Financial Bid of each of these Bidders eligible to be opened.

It should be noted that names of Bidders are listed in alphabetical order and the order of listing is not necessarily indicative of the evaluation results.

LETTER OF INVITATION TO FINANCIAL BID OPENING

BUREAU OF PUBLIC ENTERPRISES

Letterhead

DATE

Dear Sir /Madam

Bid Process for xxx XXXX Shares Held by FGN

Confirmation of Opening of Price Part of Bid

BPE confirms the date and time of opening of the Price Part of Bids for FGN's shareholding in XXXX as set out in the Notice dated xxxx. The opening of the Financial Bids will take place in the Room xxx, BPE address at xx pm on xxxx 200x.

A person that is connected with a Bid, that has been evaluated as qualified to have the Financial Bid opened, is entitled to attend, or send authorised representatives, to the opening of the Financial Bids. A maximum of four individuals per Bidder should be present at the Bid Opening.

Examination of the Commercial, Technical and Financial Part of the Bids

The Commercial, Technical and Financial Part of the Bids were examined by the Commercial, Technical and Financial Evaluation Committee for responsiveness and compliance in accordance with the Information Memorandum and Bid Document xx 200X [as amended by notices provided to Bidders prior to the Date of Closure for receipt of Bids on xxxx].

Bids That Are Not Substantially Responsive and Compliant

It was determined that the Commercial, Technical and Financial Part of the Bids submitted by

1. Bidder x and
2. Bidder w

are not substantially responsive and compliant. As a result these two Bids are rejected and eliminated from the Bid Process.

12. Taxation of enterprise and other Government charges at Central and State level
13. Repatriation of Profits
14. Repatriation of Capital
15. Work permits, visas, labour regulations
16. Issues arising from international ownership of PE, Land and Buildings **Doc.**

D6.1(a)

1. ADVISER LETTER OF INVITATION TO SUBMIT PROPOSAL

**BUREAU OF PUBLIC ENTERPRISES
(Letterhead)**

Name and Address of Out-Sourced Adviser

(Send to three Advisers identified from BPE Register of Advisers)

Date

Re: NAME OF PUBLIC ENTERPRISE

state report e.g. asset valuation report or business valuation report or legal advice report

Dear

As part of the Federal Government of Nigeria (FGN) privatisation policy and with the approval of the National Council on Privatisation (NCP), the Bureau of Public Enterprises (BPE) desires to engage the services of an adviser to prepare a report on the above subject.

You are invited to submit a proposal to provide services that meet the requirements set out in the attached Invitation to Submit Proposals (the “Invitation”) which contains the Terms of Reference for the Services and the draft agreement containing the terms and conditions under which the Services are to be provided.

Comments on the Terms of Reference or draft agreement may be included with the Proposal but these comments shall not be taken into account in the evaluation of a Proposal.

A Proposal should be submitted in two separate envelopes, one with information required for the evaluation of quality, the other information required for the evaluation of cost. The basic information required and the evaluation method, criteria and weighting are described in the Invitation.

	Commercial, Technical and Financial Part of Bid	Bidder x	Bidder y	Bidder z	Bidder w	Bidder v
20	Check list of items referred to in 1-19 above. Bidders were required to state whether materials have been supplied and reasons why not supplied where required for (a) Bidder (b) Proposed Purchaser if Bidder is not the Proposed Purchaser (c) If Bidder or Proposed Purchaser is a newly formed person for the purpose of the Bid or Proposed Purchaser supply the materials listed for each member of (a) Bidder (b) Proposed Purchaser.					
21	Registration Form					
22	Confidentiality and Non Interference Agreement					
23	Declaration of Eligibility					
24	Undertaking Not to Engage in Public Offer					

	Commercial, Technical and Financial Part of Bid	Bidder x	Bidder y	Bidder z	Bidder w	Bidder v
19	<p>Comments on Draft Sale and Purchase Agreement and the Specimen Bank Guarantee showing why changes are being suggested and a draft of alternative wording. These comments may be different from those submitted on or before 11 June 2003. There is no obligation on FGN to take account of these comments and FGN reserves the right to make changes to the sale and purchase agreement including additional indemnities, warranties, representations, guarantees etc. The Bid must not be conditional on the Bidder's comments on the Sale and Purchase Agreement or the Specimen Bank Guarantee being accepted by BPE.</p>					

You should submit your proposal to BPE by no later than x pm on x date. You are solely responsible for ensuring that BPE receives the proposal on time and no proposal will be entertained after the closing time for receipt of proposals

Yours sincerely

Director General

Doc. D6.1(b)

BPE INVITATION TO PROPOSE FOR PREPARATION OF A REPORT

[on [FGN Shareholding] in Name of Enterprise]

Date:

Introduction

Describe FGN direct or indirect interest in PE (majority FGN owned or controlled enterprise) or shareholding in a majority private owned or controlled enterprise.

[SAMPLE: [XX] holds [x] number of shares in [Name of Enterprise] [a listed company on Nigeria Stock Exchange] for and on behalf of Federal Government of Nigeria, representing a [xx]% shareholding. As part of FGN's privatisation programme the National Council on Privatisation (NCP) is disposing of FGN's shareholding in [Name of Enterprise] through Bureau of Public Enterprises (BPE) which is responsible for implementing privatisation.]

To assist BPE in its work, suitably qualified and experienced firms are invited to submit proposals for the preparation of a report on [Name of Enterprise] to fulfil the terms of reference (TOR) set out in Appendix A. [see relevant TOR for different advisers].

The main elements of the report are: (depends on subject and TOR)

- [Background, trends and characteristics of the [xxx] sector and market
- Overview of [Name of Enterprise] in the context of the [xxx] industry
- Valuation of [Name of Enterprise] shares in different circumstances set out in the TOR]

A proposal should be submitted in accordance with the requirements set out in Appendix B for evaluation using the criteria and weighting described there.

The terms and conditions under which the assignment is to be carried out are set out at Appendix C.

	Commercial, Technical and Financial Part of Bid	Bidder x	Bidder y	Bidder z	Bidder w	Bidder v
17	Floppy Disk containing all the information set out in printed form above. If there is a conflict between the floppy disk material and the printed version, the printed version shall prevail.					
18	A banker's certificate of credit worthiness and financial standing showing capacity to undertake the expenditure required for the purchase of the Sale Shares and the investment plan.					

	Commercial, Technical and Financial Part of Bid	Bidder x	Bidder y	Bidder z	Bidder w	Bidder v
15	<p>Signed Parts II and III of Information Memorandum and Bid Documents</p> <p>The Bidder must sign and include a copy of</p> <p>(c) Part II of Information Memorandum and Bid Document: Procedures, Terms and Conditions; and;</p> <p>(d) Part III of Information Memorandum and Bid Document Information Memorandum and Bid Document: Requirements of the Commercial, Technical and Financial Part of the Bid and the Financial Bid</p>					
16	<p>Six (6) copies of the Commercial, Technical and Financial Bid Proposal Forms</p> <p>One of the copies must be marked "Original" and there should be no reference to the Financial Bid or references, direct or indirect to the price being offered for the Sale Shares.</p>					

Background

[Name of Enterprise] produces [products] at a manufacturing facility located at xxx.

The shareholders in [Name of Enterprise] are xxx for and on behalf of FGN (xx%), [Y] (yy%) and over [xxx] shareholders who own the balance of zz% shareholding.

[There is a [Promoters'] [Shareholders'] Agreement between FGN and Y that covers a range of matters including the intended sale of shares in XXXX by either party. Under the terms of the [Promoters' / Shareholders'] Agreement Y has a right of first refusal or a right to nominate a purchaser for shares in XXXX held by xx for and on behalf of FGN. A formula for valuing the shares in the event of failure to agree a price is set out in the agreement.]

Copies of the Annual Reports for the past three years and the Memorandum and Articles of Association are attached at Appendix D.]

Confidentiality and Undertakings on Future Work

In view of the sensitivity of the assignment and the potential for conflicts of interest [the highest level of confidentiality and care with information is required at all times.

[The selected adviser will be required to sign a Confidentiality Agreement that is shown at Appendix E attached here and must undertake not to advise or assist any person other than FGN, NCP, BPE on matters relating to the sale or purchase of the shares of held for and on behalf of either FGN or Y.]

Copies of the report must be provided only to BPE and to no other person.

A person who holds himself out to be authorised to receive the report should be immediately referred to BPE, should not be provided with the report or engage in oral commentary on the report and BPE should be informed of the approach made to obtain the report.

Ownership of the Report and Responsibility for Contents

BPE will be the sole owner of the Report and its contents and may use the Report in any way that it sees fit but the adviser shall owe a duty of care only to BPE and not to any other person.

Doc. D6.1(c)

[DRAFT] ADVISER CONFIDENTIALITY AGREEMENT

This Agreement is in connection with the preparation of a report on FGN shareholding in XXXX

To be returned to:

BPE

Private and Confidential

To: BPE

In consideration of BPE agreeing to appoint us as adviser to carry out certain services (the "Services") in connection with the FGN shareholding in XXXX and providing access to ("Documents") in connection with that work we agree as follows:

1. The information contained in the Documents is to assist us in providing the Services but as we are expected to carry out investigations and make evaluations and decisions based on our professional skills and judgement and not to rely solely on the material in the Documents.
2. BPE, FGN, NCP or XXXX which terms include their respective advisers, or any employees, officers, agents or other bodies under their ownership or control, each make no representations or warranties as to the accuracy and completeness of the information and expressly disclaim and will not be subject to any liability for any statements, opinions, information or matters arising out of, contained in or derived from, or for any omission from, the Documents, or any other written or oral communications, transmitted to us in the course of our work.
3. No announcement or disclosure of our work in connection with the Services will be made, by us or on our behalf, without the prior written consent from BPE.
4. We will not discuss the Services with any person other than as necessary in the course of the work. In particular, we will not do so with any person that is or is potentially interested in the XXXX shareholding, until the completion of the sale of FGN shareholding.
5. We accept that we have a duty to immediately report to BPE any approach made to us regarding the Services.

	Commercial, Technical and Financial Part of Bid	Bidder x	Bidder y	Bidder z	Bidder w	Bidder v
13	<p>If a contractual joint venture, consortium or specific purpose vehicle is formed as the Proposed Purchaser and it is different from the Bidder supply an agreement signed by each member agreeing that</p> <p>(e) the Bidder has more than 50% of the share capital or voting rights and how this is achieved;</p> <p>(f) the Bidder has annual sales of Nxxx US\$ and net worth of N xxx US\$</p> <p>(g) the combined net worth of the members of the Proposed Purchaser is more than Nxx and combined annual sales are more than Nxx</p> <p>(h) agreeing that each member accepts joint and several liability for the Bid.</p>					
14	<p>Bid Bond in the form shown in the Specimen Bid Bond for N (US\$) given by a reputable bank that is acceptable to BPE. The Bid Bond shall be promptly returned to unsuccessful bidders that have complied with the Bid Process.</p>					

	Commercial, Technical and Financial Part of Bid	Bidder x	Bidder y	Bidder z	Bidder w	Bidder v
12	<p>If a contractual joint venture, consortium or special purpose vehicle is formed as the Bidder or Proposed Purchaser supply an agreement signed by each member agreeing that:</p> <p>a) Each has read and understood the Information Memorandum and Bid Documents, the Commercial, Technical and Financial Part of Bid and Price Part of Bid being submitted and that each accepts joint and several liability for the Bid and for the obligations in the Share Sale and Purchase Agreement</p> <p>b) The ownership, participation and role of each person in the Bidder;</p> <p>c) Authorisation of a person to sign and submit the Bid on behalf of each member;</p> <p>d) Authorisation of named individuals to act with respect to the Bid;</p> <p>e) Authorisation of a person to sign the Share Sale and Purchase Agreement binding on each member on the terms contained in the draft Agreement and at the purchase price stated in the Price Part of Bid which price is not to be stated here.</p>					

6. We will hold and keep strictly confidential all records in any medium (whether written, computer readable or otherwise) including accounts, documents, drawings and other papers including private notes and all copies and extracts made or acquired as well as all information, statement, opinions, projections, forecasts and other matters contained in the Documents or otherwise provided to us or supplied by us, in respect of the Services, except in so far as the same may be or becomes information in the public domain, and we will only use the information as necessary for the purposes of the Services.
7. If it is necessary to make any disclosure to any of our employees, representatives or other connected persons or a third party, we will prior to making such disclosure procure that the employee or third party unconditionally agrees to be bound by the terms of this Confidentiality Agreement. We agree that we are and will be responsible for all the acts and omissions of these persons in so far as they relate to or affect any matter with which this Confidentiality Agreement or the Documents or Services is or may be concerned.
8. On completion of the Services, we may be requested to promptly return to you all copies of the Documents or of any parts of them and any papers containing extracts or based upon the contents that are within our possession or disposition.
9. The termination of our Services or the conclusion of the sale of FGN shares in XXXX or the return by us of information under paragraph 8 shall not release us from obligations under this Agreement.
10. Except as expressly set out in this Agreement, no right or license is granted to us in relation to any of the information being provided to us.
11. The furnishing of Documents or information will not constitute a representation by BPE, NCP, FGN or XXXX or the basis of any contract that may be relied upon by us.
12. Damages may not be an adequate remedy for a breach of this Agreement, and as result we unconditionally agree to waive any rights we may have to oppose the granting of equitable or injunctive or other relief in a court of law including specific performance, mandatory injunctions, prohibitory injunctions and the like that may be sought by BPE, FGN, NCP or XXXX in relation to any breach or suspected breach of the agreements and undertakings contained in this Confidentiality Agreement.

13. No failure or delay by BPE, NCP, FGN or XXXX in exercising any of powers, rights or remedies under this Agreement shall operate as a waiver of those powers, rights or remedies, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them.
14. We will do and take all lawful things and actions as BPE may request to procure that the undertakings set out in this Agreement are fully and properly complied with and performed at all times.
15. We agree that the undertakings set out here will continue in full force and effect notwithstanding any omission, event or matter.
16. This Agreement shall be construed and take effect in all respects in accordance with the laws of Nigeria.
17. As a separate and independent undertaking we will indemnify BPE, NCP, FGN or XXXX against any loss, cost, claim, damage, expense, liability, proceeding or demand which they may incur or suffer in consequence of any breach on our part, or on the part of any persons for whom we are responsible, of the undertakings contained here, and that we unconditionally consent to submit to the jurisdiction of the courts of Nigeria.

Yours faithfully,

Name of Adviser and address:

Signed this day of _____ for and on behalf of the Adviser by:

being duly authorised to act on behalf of the Adviser

Documents

1. Annual Reports of XXXX
2. Promoters' Agreement
3. Memorandum of Understanding
4. Memorandum and Articles of Association XXXX
5. Any other documents obtained in the course of providing the Services

Doc. 6.2 (a)

11	Appropriate company or board resolutions (or equivalent for unincorporated body) authorising: <ol style="list-style-type: none"> a) submission of the Bid, b) named individuals to act with respect to the Bid; c) signing of the Share Sale and Purchase Agreement on the terms contained in the draft Agreement and at the purchase price stated in the Price Part of Bid which price is not to be stated here. 				
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9	If not a company supply documents showing evidence of legal status and how formed e.g. partnership agreement, or if a consortium or joint venture formed by contract a copy of the signed agreement					
10	Supply a table certified by an independent chartered accountant showing for the last five years details of the Bidder's / members of the Bidder <ul style="list-style-type: none"> o Share Capital, o Reserve & Surplus, o Capital Reserve, o Profit & Loss, o Loans & Current Liabilities, o Gross Assets, o Net Assets, o Investments, o Bank & Cash Balances, o Working Capital o Other relevant financial information 					

TERMS OF REFERENCE FOR ASSET VALUATION REPORT

The BPE intends to appoint an Adviser to estimate market value of the Assets at X Enterprise in an exchange in a privatisation transaction and not a value in existing use to the existing owner. Valuation of intangible assets, if required, may need to be carried out by a specialist in the asset in question.

These terms of reference specify the work to be carried out by the Adviser.

Note on Definitions: The meaning and application of these terms and methods of valuation need to be discussed with valuers, lawyers and accountants in Nigeria to ensure a common understanding of the terms. There needs to be certainty in the use of terms. For example "fixed assets" to an accountant may differ from the meaning of that term to a lawyer or valuer. The classification and listing of assets used in the valuation report can be helpful in preparing the sale and purchase agreement and also in classifying assets for stamp duty and transfer taxes.

Examples of definitions to be discussed include the difference between market value and market price. Market Value is the estimated amount for which an asset should exchange on the date of valuation, between a willing buyer and a willing seller, in an arm's-length transaction after proper marketing, where the parties had each acted knowledgeably, prudently and without compulsion. Market Price is the sum realised on the disposal of an asset in a given market.

"Assets" means the Premises and Movable and Immovable Fixed Assets owned or leased by X at [location].

"Premises" means the premises, including any part of the premises and / or any building, structure and / or works on the premises, of X Enterprise at [location];

"Immovable Fixed Assets" means all fixtures and fittings and other fixed plant, machinery, equipment and hardware physically attached to the Premises and owned or leased by X.

"Movable Fixed Assets" includes all the plant and machinery, tools and equipment, vehicles, office furniture, computer hardware and other tangible assets owned or leased by X other than the Immovable Fixed Assets;

In so far as is possible valuation estimates of assets in a privatisation should estimate market value using the comparable sales method, except when this is not practicable. Where a valuer deems that market value cannot be estimated because it is not practicable, reasons must be given and these reasons should be submitted early in the valuation process and not at the time of submission of the report.

The Services

Task 1: Familiarisation

The Adviser will familiarise itself with X enterprise and, among other things, obtain from X enterprise and BPE such relevant information as is available. In particular, the Adviser shall avail of the report on title to land prepared for BPE (if available). The Adviser shall satisfy itself as to the location and area of land and the right, title and interest of X enterprise to the land by carrying out necessary searches and enquiries obtaining copies of registration details, title documents, maps and plans. Any matters in dispute with regard to the area of land, title matters, encroachment or the existence of land surplus to the requirements of X Enterprise that come to the attention of the Adviser should be recorded.

Task 2: Undertake investigations

The Adviser will carry out all such investigations and gather all such information as is necessary and / or appropriate for the valuation report.

Task 3: Value the Assets and submit a valuation report:

The Adviser will prepare, a draft valuation report:

- (a) describing and listing the Assets, specifying land areas (expressed in hectares) and where there are separate parcels of land giving the area of each parcel;
- (b) provide copies of maps, site plans and other plans and other documentation;
- (c) specifying the market value of the Assets (expressed in Naira and US\$ at the exchange rate on the date of valuation) appropriately analysed by item and group, bearing in mind that reliance on cost based measures are often inadequate as an indication of how much a potential purchaser would be prepared to pay;
- (d) detailing the basis of the valuations for the different types of Assets, providing justification for such basis and for any assumptions underlying the valuations;
- (e) specific references to whether transactions of a similar nature, in terms of extent and use, have taken place in the vicinity of the Assets, in recent times, and other relevant comparisons;
- (g) the valuation report should state whether there are obvious environmental issues or other factors which could positively or negatively affect the value and should refer to the environmental assessment report and the impact of its findings on value (if one has been prepared);
- (h) the valuation report should state the likely sources and extent of purchaser

Doc. E2.4(a)

BID REQUIREMENTS COMPARISON

	Commercial, Technical and Financial Part of Bid	Bidder x	Bidder y	Bidder z	Bidder w	Bidder v
1	Cover Letter written on the letter head of the Bidder and containing the specified wording					
2	Certificate of incorporation of a company					
3	Memorandum and Articles of Association of a company (or equivalent document)					
4	Shareholders' Agreement (if any) or equivalent document			In each box for each bidder State yes no not applicable and reason for not supplied if known		
5	Audited Balance Sheet and Profit and Loss Account for the three most recent financial years					
6	Latest interim financial statements					
7	Certificate of independent chartered accountant of sales and net worth shown in the most recent audited accounts					
8	Annual Report					

⁶Sales defined as: Sales figures net of subsidies and net of any sales related taxes and duties, such as excise duty, sales tax, value added tax etc. if any. The value of any subsidies and sales related taxes / duties should be provided separately.

⁷Net Worth is defined as: Equity Share Capital + Reserves & Surplus (excluding revaluation reserves).

ACKNOWLEDGEMENT OF RECEIPT OF BID

**BUREAU OF PUBLIC ENTERPRISES
(letterhead)**

Acknowledgement of receipt of bid for the sale of xx% equity shares of XXXX held by Federal Government of Nigeria (FGN)

This note acknowledges receipt of Bid for the sale of xxx% equity shares of XXXX held FGN submitted by _____ on behalf of _____ a registered bidder. The Bid has been submitted and received on xx day of xx of 200x at _____. A copy of this note is placed in the Bidder's file at the BPE.

Signed

Signed

Name and Position

Name and position

On behalf of BPE

on behalf of the Bidder

interest in the Assets and whether there is any known prospective purchaser with a special interest; the valuation report should describe prevailing market conditions and likely future demand for Assets of this type in the coming period.

The Adviser should note that [the Assets are not currently in use] / [that while X is operating it does so at an operating loss and X is in financial distress and is not viable so cannot be sold as a going concern] / [it is intended to sell X as a going concern which is viable under current ownership].

The methods and manner of valuation should be carried out according to internationally generally accepted professional techniques and practices taking into account any special factors that may apply in Nigeria or to these Assets.

The Adviser should identify and report any matters relating to the Assets that are likely to influence a purchaser of the Assets or any other matter considered relevant by the valuer bearing in mind the purposes for which the valuation is required. Consideration might be given to including matters such as the advantages and disadvantages of location etc., wear and tear, obsolescence, specialised use and likely demand.

The valuation will be dated.

Administrative arrangements

The Adviser will work closely with BPE and will, if requested, submit written reports on the progress of the assignment.

The Adviser should submit three copies of a draft Valuation Report to BPE within [3] weeks of the date of signing the Agreement under which the Services are provided.

The Adviser should attend a meeting with BPE to present, review and discuss the draft Valuation Report with BPE and revise the draft Valuation Report to take account of changes that are thought necessary and desirable.

The Adviser should submit to BPE six copies of the final Valuation Report within 4 weeks of the date of signing the Agreement under which the Services are provided. A copy of the final report should also be provided in electronic form in MS Word Office 2000 or later Word Office format / Excel format. Photographs should be taken in digital format for inclusion in the Information Memorandum.

Project / property description

- Specify basic information about Enterprise assets (land and buildings, plant and

machinery):

- Enterprise name;
- Location;
- Accurate legal description of the property and the name of owner and contact number;
- Brief history of the Enterprise
- The reason for the valuation (e.g. to help NCP / BPE in the privatisation of the Enterprise)

The valuer should:

- State the extent of the process of collecting, confirming, and reporting data.
- Collect, verify, analyse and reconcile data as are available in support of estimate and conclusions.
- Include and explain all calculations showing how data (e.g. comparables) have been applied. Applicability of comparables, reasons for acceptance or rejection of data and final adjustments must be included.
- Describe the information considered, the procedures followed, and the reasoning that supports the analyses, opinions and conclusions.
- Include an inventory of all assets land, buildings, other facilities e.g. pumps, irrigation equipment, watering points, pipes and improvements (e.g. structures such as tanks); however, note that component values must be included by way of showing influences on the overall value, rather than applied in terms of adding the components;
- Where comparable sales are being used to estimated market value a reasonable number of selected sales should be used. The valuer should indicate of the scope of the deeds search in terms of radius and time frame, include a list of all comparable sales, and not only selected sales with which subject property has been compared, explain why certain sales were excluded from further analysis, indicate how market data were interpreted, adjusted and applied; and provide the date and price of the subject property's most recent sale.

Valuation reports

The valuation report should include the following:

Contents of Valuation Report

- Title of Report Cover Page
- Table of contents
- BPE Stated Purpose of Valuation
- Definition of value used
- Valuation approach
- Information on Title (if available)
- Date of inspection and effective date of valuation
- Statement of limiting conditions
- Certificate of value

Strike out whichever of the two versions of 4(a) does not apply:

- (a) The Proposed Purchaser is 100% owned by the Bidder;
 - (a) The Bidder holds more than 50% of the share capital and voting rights in the Proposed Purchaser and the Bidder has net worth of N / US\$ and annual sales of N / US\$ and the members of the Proposed Purchaser have combined net worth of N / US\$ and combined annual sales of N / US\$.
 - (b) Each member of the Proposed Purchaser agrees that it is jointly and severally liable for the Bid and the payment of the Purchase Price.
5. The purchase price that the Bidder offers for the Sale Shares [on its own behalf] / [on behalf of the Proposed Purchaser] is N / US\$ per share each for xxxx shares being a total purchase price of N / US\$.
 6. The [Bidder] / [Proposed Purchaser] acknowledges that it is bound by the provisions of the Document.
 7. The Bid shall be valid until xxxxxxxx and BPE / NCP may extend the validity of the Bid until xxxxxxxxxxxxxxxx.

Date:

Signed for or on behalf of the Bidder by a duly authorised person: -----

Name and position held

BID FORM PRICE OFFER FOR THE SHARES

xxxxxxx Shares (the "Sale Shares") of xxxxxxxxxxxx Limited

To: BPE

1. This Bid is submitted in response to the Invitation issued by Bureau of Public Enterprises (BPE), the BPE for Bids for the Sale Shares of XXXX in accordance with the provisions of the XXXX Information Memorandum and Bid Document dated xxxx.

2. Full name and the address of Bidder (which must be the same as the Registered Person):

Name:

Address:

Telephone,
Fax,
e mail

STRIKE OUT THE STATEMENTS THAT ARE NOT RELEVANT

2. The Bidder confirms that it is acting as a principal on its own account, and not as agent or trustee and the Bidder and the Proposed Purchaser are the same person.

[Strike out if Bidder and Proposed Person are not the same person]

4. Where the Bidder is not the Proposed Purchaser state the full name and address of the Proposed Purchaser:

Name:

Address:

Telephone
Fax
e mail

Annexes

- Location map of subject property and comparable properties
- Diagram of subject property
- Copy of relevant title deed
- Copies of all the relevant documents
- Photographs in digital format (which can be inserted into Information Memorandum / web-site if necessary)
- Lists of plant and machinery
- BPE Instructions / TOR

Note: it may not be necessary to include all the above. BPE to go through the list and confirm what is needed for a specific valuation exercise.

Issues to be considered include the following where the information is available. Where the information is not available state whether the absence of information is a problem or reasons why the absence of information is not a problem.

Title deed information [if the information is available from the legal report or can be provided by X Enterprise]:

- Title of Enterprise over the Assets
- Title deed
- Full description of property in terms of deed
- Registered owner
- Surveyor diagram of property
- Any restrictive covenants incorporated in the title documents imposing limitations on the use or transfer of the property or any other restrictions.
- Any restrictions pertaining to the use or transferability of the property or other restrictions arising from planning authorities, environmental agencies etc.
- Area of property used in present use
- Area of surplus property
- Area required for purpose of valuation
- Date of acquisition by present owner and
- Purchase price
- Charges on property
- Easements (e.g. pipelines in the vicinity which are laid on land not owned by X)
- Mineral rights (if applicable)
- Terms and conditions of the proposed new lease agreements to be entered into with the lessor for the purpose of disinvestment.

Physical description

- Situation

- Nature of surrounding neighbourhood / area
- Distances from important points
- Availability of services and amenities
- Historical background, applicable
- Features of property, incl. dimensions, frontage contours, soil types, surface drainage, etc.
- Climatic conditions and water supply, if applicable
- Buildings and other improvements
- Water supply and water rights
- The state of maintenance and depreciation of the property, and evaluation of expenditure, if any, required to repair and renovate the property to suit the intended use.

Comparisons

- Market identification of property - potential and highest and best use
- Market conditions assessment of demand and supply of comparable properties at given locations
- Comparable factors
- Comparable properties

Application of comparisons

- Method of valuation
- Effective valuation together with motivation - include all calculations showing how comparables have been applied. Asking prices, applicability of comparable, acceptance of data, capitalization rates, final adjustments
- The values at which transaction have taken place in the recent past for properties of comparable nature, in terms of use, size, location and other parameters.
- Valuation for determination of stamp duty and other transfer taxes.

Conclusion and Certificate of Value

The conclusion consists of the valuer's final judgement as to the value of the subject property. The Certificate of Value (or Valuer's Certificate, Valuation Certificate, etc.) is a statement to the effect that the valuer has reached a conclusion on the basis of considering all relevant factors, subject to stated assumptions and limiting conditions, and without prejudice due to any present or contemplated interest in the properties or the outcome of the valuation.

Doc. D6.2(b)

TERMS OF REFERENCE FOR BUSINESS VALUATION REPORT

110	Briefly describe Bidder's / Proposed Purchaser's internal business ethics policy		
111	Briefly describe Bidder's / Proposed Purchaser's track record of achievements in business		
112	Briefly describe market knowledge relevant to XXXX		
113	Briefly describe future risk factors for XXXX		
114	Briefly describe ability and experience in raising capital funds for investment and plans in this regard for XXXX		

103	Performance record in fertilisers and related sectors in terms of financial performance		
104	Performance record in other sectors.		
105	General Plans for expansion of XXXX		
106	Details of Shareholders Loans or Guarantees or other commitments on behalf of the Bidder / Proposed Purchaser		
107	Briefly describe the Bidder's / Proposed Purchaser's length of involvement and depth of experience in business and in particular in fertilisers and chemicals		
108	Give specific examples of dealing with environmental standards and plans in this matter at XXXX		
109	Give specific examples of dealing with social responsibility standards in business and plans in this matter at XXXX		

These Terms of Reference to be finalised after examining existing terms of reference and business valuation reports provided to BPE by advisers.

Sample terms of reference for business valuation of two business of a PE.

Background

The BPE intends to appoint an Adviser to carry out business valuations of two business units of X Limited. These terms of reference specify the work to be carried out by the Adviser.

The purpose is to provide BPE with an independent business valuation of (i) each of the units operating independently and (ii) the two units operating as parts of a single entity.

The Services

Task 1: Familiarisation

The Adviser will familiarise itself with the two units. The Adviser is expected to include in the team a person knowledgeable and experienced in xxx manufacturing and yyy activity. The Adviser should obtain from the two units and from the Head Office of X such relevant information as is available including:

- ? details of the regulatory environment;
- ? details of suppliers and factors relevant to supplies of raw materials and inputs to the two units;
- ? monthly management accounts and annual totals for each unit;
- ? maintenance reports;
- ? sales by product at the two units;
- ? unit budgets.

All measurements should be expressed in metric terms.

Task 2: Undertake investigations

The Adviser will carry out all investigations and gather all information as is necessary and / or appropriate for the report including, but not necessarily limited to the following:

- 4.1 The projected cash flow analysis for each unit for a minimum of [5] / [10] years, unless a shorter period is justified, with detailed explanations for the assumptions made, particularly relating to factors influencing performance at the mill and distillery including:

- ? Raw material supplies for activities at the two units;
 - ? the regulatory environment;
 - ? issues relating to achieving capacity utilisation;
 - ? factory efficiency and productivity
 - ? cost savings;
 - ? market assumptions for products of the units;
 - ? other relevant material.
- 4.2 State and justify assumptions about key variables affecting performance of the units.
- 4.3 Set out the basis on which the discount rate and residual value of the mill and the distillery have been derived.
- 4.4 Explain changes in fixed assets and working capital.
- 4.5 Conduct sensitivity analysis to variations in inputs, outputs and changes in the regulatory environment and provide a range of values under various assumptions.
- 4.6 Provide Discounted Cash Flow (DCF) valuations for the two units operating independently and for the two units operating as parts of a single entity.

Doc. D6.2(c)

TERMS OF REFERENCE FOR SHARE VALUATION REPORT

97	If the Proposed Purchaser is an individual list the business assets owned, including shares in other companies with current market value of the shares, or cash from other businesses.		
98	Proposed Purchaser's experience in fertilisers or related sector with listings of the enterprises in which it has been gained.		
99	State precisely and accurately whether experience and management capability of the Proposed Purchaser in the [] and related sector has been through ownership, participation, control or direct management decision-making.		
100	In the absence of experience in the [] sectors Bidders should state how it is proposed to bring experience.		
101	Technical skills in the day to day management and board of the Proposed Purchaser to optimise plant operations.		
102	Who will provide the experience for strategic, commercial and financial, marketing decisions in the business?		

92	Details of charges over / pledges, hypothecation / other encumbrances over fixed assets, current assets, investments etc.		
93	Details of guarantees by the Proposed Purchaser on behalf of others or by others on behalf of the Proposed Purchaser		
94	Details of off balance sheet liabilities		
95	Please provide details of all contingent liabilities that, if materialised, that have or would reasonably be expected to have a material adverse affect on the business, operations (or results of operations), assets, liabilities and/or financial condition of the Bidder.		
96	Ratio of current assets: current liabilities?		

Terms of Reference

[This TOR is only to be used where the FGN shareholding is in a viable or potentially viable enterprise and the value of the shareholding is likely to be reasonably large. If the enterprise is highly financially distressed or insolvent this terms of reference is not necessary. The TOR should be adapted to the particular circumstances of the shareholding and enterprise. Here the example of a promoters' agreement with rights of first refusal is inserted to show variations that may be required.]

Background Report and Valuation Estimates

Background

- ✍ The BPE is seeking a professional, experienced firm to prepare a report in accordance with these terms of reference.
- ✍ The purpose is to provide the BPE with an independent report that will assist the BPE implement the FGN decision to dispose of the xx% shareholding it owns in XXXX. In particular the report should help BPE understand XXXX and the context in which XXXX exists and operates. It should also provide an insight into the factors that influence the value of the FGN shareholding and an estimate of the amount that could be expected to be obtained in a sale under different circumstances. The report should be objective and it should not be assumed that the report will be used for negotiation purposes.
- ✍ It is expected that the adviser will carry out all investigations and gather all information as is necessary or appropriate to prepare a report for the above purpose. The members of the adviser's team should include experts on the [e.g. fertiliser] sector and markets as well as financial and other specialists.
- ✍ The Report should set out the following:
- ✍ Trends and characteristics of the Nigerian and relevant international markets for XXX product taking into account the impact of WTO or other trade agreements and factors relevant to the purpose of the report. Among matters that should be considered are the current and likely future regulatory and policy environment in Nigeria, including details of existing and likely future Government subsidies available to XXXX. Material should be provided on competition facing XXXX from existing sources and through international trade now and in the immediate future as well as information on the company's market share in Nigeria and West Africa.

✍ A description and analysis of XXXX to include ownership, operations (e.g. state of technology, sources of supplies of raw materials, production and sales performance, productivity, competitiveness), financial performance, employment, human resources and management. Latest available audited financial statements for five years and underlying records of account, management accounts, budgets, capital investment plans, corporate plans and long-term forecasts.

✍ Valuation of XXXX and its business including the core business of the company, brand name, non-core assets (including XXXX rights or interest in port facilities), significant contractual rights and obligations and any other relevant factors.

The adviser is expected to carry out the valuation using at least the following methods:

✍ Open market sale of shares through the Stock Exchange

✍ Price / Earnings (if appropriate)

✍ Present value of future cash flows

✍ Adjusted net worth

✍ Valuation estimates for the values of core assets, non-core assets and brand name are also required with any adjustments to be incorporated into the adjusted net worth valuation.

✍ Any other method that the adviser thinks appropriate

✍ Preparation of valuations of XXXX shares in the following scenarios;

✍ 100% shareholding in the company (100%);

✍ FGN's xx% shareholding to be sold to Y under the terms of the Promoters' Agreement providing for Y right (a) of first refusal or (b) right to nominate a third party on the basis of an agreed price;

✍ FGN's xx% shareholding to be sold to Y under the terms of the Promoters' Agreement using the two formulae set out there termed as "break-up value", but effectively adjusted net worth, and "yield value";

✍ FGN's xx% shareholding to be sold on an unrestricted basis where Y has waived

82	Proposed Purchaser's auditors		
83	Proposed Purchaser's Lawyers		
84	Proposed Purchaser's Bankers with name and contact points		
85	Number of employees	Management Employees Permanent Temporary Full Time Part-Time	
86	Sales		
87	Profit		
88	Net Worth based on estimated market values of assets and liabilities		
89	Details of borrowings, with terms, security and interest rates and debt service ratios and coverage.		
90	Issued preference share capital		
91	Details of debentures issued by Proposed Purchaser		

76	If the Proposed Purchaser is not a company provide names, father's name, addresses of (a) owners (b) controllers in accordance with whose wishes the Proposed Purchaser acts.		
77	Have any shareholders, directors or controllers or connected parties been subject to court proceedings / investigations or inspections by bodies such as SEBI / Stock Exchanges etc		
78	Are any proceedings / investigations / inspections of the type mentioned in 76 and 77 pending		
79	If there are matters arising from 76, 77 and 78 provide full details		
80	Details of directors of the Proposed Purchaser if it is a company.		
81	Details of Proposed Purchaser's management team		

its rights of first refusal to purchase the shareholding or to nominate a person to acquire the shares;

✍ Combined sale of xx% shareholding comprising FGN x% and Y y% shareholdings, where the right of first refusal of each party has been waived.

✍ The choice of valuation methods applied should be clearly stated as should the strengths and weaknesses of the different methods and the sensitivity of estimates to changes in key variables. An estimate of the premium for control should be given where Y gains control through the purchase of FGN shareholding and where both Y and FGN sell their shareholdings to a single purchaser.

The basis on which significant factors that affect valuation are chosen should be stated e.g. the choice of discount rate or residual value in a discounted cash flow valuation.

The valuation estimates should be supported by a statement and justification of assumptions concerning key variables affecting performance of the company.

The valuation estimates should be compared with valuations of similar business and recent transactions of a similar nature to that contemplated here.

✍ Any other matters the adviser considers relevant in a report of this nature bearing in mind the purposes for which the report is intended.

Administrative arrangements

✍ The Adviser will work closely with the BPE and will, if requested, report on the progress of the assignment.

✍ Within 4 weeks of the date of signing the Agreement under which the services are provided, the Adviser should submit three copies of a Draft report to the BPE for review together with a version in MS Word / Excel on a virus free disk.

✍ The Adviser should attend a meeting with the BPE to present, review and discuss the draft report with the BPE and should revise the draft Report incorporating any suggestions made.

✍ The Adviser should submit to the BPE, three copies of the final Report within 4 weeks of the date of signing the Agreement under which the Services are provided. A copy of the final Report should also be provided on a virus free disk capable of being read in MS Word.

✍ Time is the essence of this assignment and the BPE reserves the right to [levy liquidated damages legal position in Nigeria with respect to damages to be taken into account] without prejudice to its other options for the loss and inconveniences suffered for any delay in submission of the final report beyond the agreed date.

✍ The Report is to be in the English language and all measurements are to be given in metric terms.

Doc. D6.2(d)

TERMS OF REFERENCE FOR FINANCIAL ADVISER

For the basic form of PE the Financial Adviser is mainly advising on accounting

68	State place of incorporation / registration		
69	Company Number and Registered Office or if not a company other registration details		
70	Details of authorised and issued equity share capital		
71	If the Proposed Purchaser is a company list name, father's name and addresses of individual shareholders or the name and registered offices of companies holding more than 5% share capital and shareholding.		
72	State whether the registered shareholders in the Proposed Purchaser are legal owners holding the shares on their own behalf or on behalf of others (beneficial owners).		
73	State which (if any) of the registered shareholders are legal owners holding the shares on their own behalf or on behalf of others who are the beneficial owners.		
74	Provide name, father's name and address of individual beneficial owners of shares in Proposed Purchaser and name, registered offices and Company numbers of company beneficial owners.		
75	If there are controllers (as defined in Part II) of the Proposed Purchaser provide the name, father's name and address of such persons.		

59	Describe previous experience of buying shares in a company and building stable relationships with other shareholders and a consistent business policy		
60	If the Proposed Purchaser and the Bidder are the same person Q's 61 to - 97 can be omitted so move to Q.98-114.		
61	If the Bidder is different from the Proposed Purchaser, show how the Bidder holds more than 50% of the share capital and voting rights in the Proposed Purchaser and has N / US\$ annual sales and N / US\$ net worth and the Proposed Purchaser has combined annual sales of N / US\$ and net worth of N / US\$.		
62	Name of Proposed Purchaser		
63	Business address		
64	Telephone		
65	Fax number		
66	e-mail address		
67	Legal status of Proposed Purchaser (is it a private company, public company, deemed public company, partnership, individual etc.)		

issues by reviewing the financial accounting reporting and planning systems and analysing the balance sheet of the company, its assets and liabilities and contingent liabilities.

The Financial Adviser may be required to restate the final Accounts of the PE according to accounting standards that provide a more realistic view of the financial position. The accounting treatment of the following items in particular should be examined:


- Extraordinary and exceptional items
- Amortisation and depreciation
- Capitalisation of expenditure
- Recognition and turning of revenue and expenditure items
- Basis of consolidation of subsidiaries, if any
- Deferred taxation, and
- Revaluation of assets.

The task may include:


Strategic evaluation of operations finances and post-privatisation prospects of the PE.
 Evaluation of capital structure.
 A calculation of the impact of taxation on the privatised enterprise.

Sample Terms of reference for Restatement of Accounts

Background

 The BPE intends to appoint an Adviser to prepare revised annual financial statements for A and B two business units of X Limited. These terms of reference specify the work to be carried out by the Adviser.

X produces timely monthly management accounts for each of its business units. These accounts are summarised to produce annual accounts for each unit and ultimately are consolidated to produce X annual accounts for audit. The recent X audit qualification notes that the accounting policies followed by X do not, in every respect, comply with Nigerian and international accounting standards.

 The Adviser should produce revised annual financial statements, along with a summary of operations and financial summary for each of the two business units. The purpose is to provide potential purchasers with a reliable picture of the financial performance of the units.

The services

Task 1: Familiarisation

- ✍ The Adviser will familiarise itself with the operations of the two units and, among other things, obtain from the Head Office of X, and the two units, such relevant information as is available. This data should include the annual financial statements for each of the units for the last three years.

Task 2: Undertake investigations

- ✍ The Adviser will carry out all such investigations and gather all such information as is necessary and / or appropriate including, but not necessarily limited to, the following:

4.1 Review the monthly management accounts for reliability and produce restated annual balance sheets for the most recent past two years and profit and loss accounts for the most recent past three years available for each of the units. The Advisers should identify, fixed assets, long term loans, current assets and current liabilities relating to the units, but need not substantiate accumulated losses or arrears.

4.2 Adjustments to the annual accounts for the units that formed part of X audited statements should be stated and may include (for example):

- ✍ adjustments for ...;
- ✍ provision for doubtful debts;
- ✍ stock and spares write down (if needed) etc.

You are not required to produce audited statements and disclaimers can be included by the Adviser in this regard.

4.3 The Adviser will be expected to express opinions and make any necessary estimates.

Doc. D6.2(e)

TERMS OF REFERENCE FOR FINANCIAL ADVISER REPORT (UTILITY)

1. Background

54	Briefly describe market knowledge relevant to XXXX		
55	Briefly describe key risk factors for XXXX		
56	Briefly describe ability and experience in raising capital funds for investment and plans in this regard for XXXX		
57	Sources of funds and evidence of availability to finance purchase of Sale Shares and future investment in XXXX		
58	Does (a) the Bidder (b) a Connected Person of the Bidder (c) a member of a consortium, contractual joint venture or special purpose vehicle or a person that would fall within the meaning of the definition of a "person acting in concert" in [Nigeria Securities Law] hold shares in XXXX at present [if listed shares]		

48	If the Bidder is an individual list the business assets owned, including shares in other companies with current market value of the shares, or cash from other businesses.		
49	Briefly describe the Bidder's length of involvement and depth of experience in business and in particular in the fertilisers and chemicals business		
50	Give brief specific examples of dealing with environmental standards and plans in this matter at XXXX		
51	Give brief specific examples of dealing with social responsibility standards in business and plans in this matter at XXXX		
52	Briefly describe Bidder's internal business ethics policy		
53	Briefly describe track record of achievements in business		

Describe the background to x Enterprise, the proposed privatisation transaction, the regulatory framework (where relevant) and FGN / NCP privatisation transaction objectives.

2. Objective

The financial advisers will provide financial advice to NCP / BPE and shall deliver the reports specified below on all financial matters arising in the privatisation of x. The financial advisers shall carry out these tasks:

[Regulatory and institutional issues where there is an element competition absent before or after privatisation]

Review the legal advisers' report the legal and regulatory framework and comment on the financial implications of any existing or proposed laws, regulations, and institutional structures.

Evaluate the impact of any existing or proposed laws on the ability of FGN to attract private sector purchasers for X Enterprise. Recommend changes to the proposed or existing legislation, if appropriate.

3. Financial Assessment of Policy

[where regulation is necessary] Develop a financial model with inputs from the legal, economic, and technical advisers to assess the financial viability of alternative privatisation options. Use the model to prepare a financial policies paper and develop financial parameters for the transaction, including sensitivity analyses required for the information memorandum. The model will include the following inputs:

- (i). Demand forecasts and tariff structure provided by the economic advisers:
- (ii). Cost inputs construction, operating, and maintenance costs, and schedules provided by the technical consultants.
- (iii). Capital structure debt and equity sources of funds, domestic and foreign.
- (iv). Government financial support the types of financial support the government will provide for the transaction.

Evaluate the outputs of the financial model and, with assistance from the economic, legal, and technical advisers, prepare a financial policy paper that recommends:

The type and extent of FGN financial support for alternative forms of private sector participation.

- Tariff structure, rates, and subsidies.
- Tax allowances (sales, income, value added, and so on) for private sector project sponsors.
- Allocation of government funds for restructuring X Enterprise (if applicable), including redundancies and pension liabilities.
- The financial feasibility of alternative options for private sector participation.
- Financial basis of award for the contract (cost of service, rate of return, or price control).

4. Financial Aspects of Information Memorandum

Prepare financial aspects of the information memorandum from information provided by X Enterprise, the legal advisers' due diligence report, the economic advisers' tariff report, the engineers' report, and the financial advisers' review of X Enterprise's financial statements. The financial advisers will evaluate the information from other advisers to assess its impact on the financial feasibility of the proposed transaction.

The draft input by the financial adviser to the information memorandum will contain the following items:

Description of X Enterprise, including:

- A brief history of the organisation and current management;
- The services delivered by X Enterprise, service area, customer profile, and demand forecast;
- Capital improvement plans;
- Regulatory issues that may affect current operations and future investments.

The financial condition of X Enterprise based on a review of the financial statements, with an emphasis on:

- Outstanding debt structure;
- Operating results and debt service coverage;
- Liabilities to other FGN and State Government entities;

42	Details of debentures issued by Bidder		
43	Details of charges over / pledges, hypothecation / other encumbrances over fixed assets, current assets, investments etc.		
44	Details of guarantees by the Bidder on behalf of others or by others on behalf of the Bidder		
45	Details of off balance sheet liabilities		
46	Details of all contingent liabilities that, if materialised, have or would reasonably be expected to have a material adverse affect on the business, operations (or results of operations), assets, liabilities and/or financial condition of the Bidder.		
47	Ratio of current assets:current liabilities		

38	Has the Bidder or any promoters / significant shareholders (above 5% shareholding), directors or controllers or connected persons been subject to criminal court proceedings / engaged in grave professional misconduct / engaged in corruption including the offering or receipt of inducements of any kind / subject to investigations or inspections by bodies such as Securities Exchange Board of Nigeria / Stock Exchanges / equivalent bodies elsewhere		
39	Has the Bidder or any promoters / significant shareholders (above 5% shareholding), directors or controllers or connected persons failed to fulfil obligations relating to the payment of taxes or social security contributions, provident fund contributions in Nigeria or equivalent obligations in another jurisdiction.		
40	Are any proceedings / investigations / inspections of the type mentioned at 37 - 39 pending?		
41	If there are matters arising from 37 -39 please provide full details with an explanation. BPE shall be free to make whatever enquiries are necessary to establish if the Bidder is a fit and proper person eligible to participate in the Bid Process		

- Dependence on operating transfers from other FGN and State Government entities;
- Tariff revenue history, major users, and payment shortfalls;
- Significant accounting policies: depreciation, tax issues, asset valuation, construction in progress, and accrued pension liabilities and other benefits;
- Regulatory issues and outstanding litigation;
- FGN financial support for operations and future capital expansion;
- Tariffs, rate setting, and adjustment process.

Describe the proposed privatisation transaction / private sector participation option.

Describe corporate restructuring of X Enterprise (if appropriate), including the relationship between the restructured units and privatisation / private sector participation.

Financial Feasibility Analysis

Financial feasibility analysis using the financial model, prepare cash flow analysis indicating the financial feasibility of the project. Assess the capital structure, financial covenants, debt service coverage ratios, price elasticity of demand, and sensitivity analyses for the proposed private sector participation option.

Financial Adviser Input to Marketing Strategy

With the legal adviser and other advisers agree a marketing strategy for the transaction with BPE. This work includes the following tasks:

- Identify domestic and foreign companies that may be interested in the Transaction.
- Evaluate the status of current and future private sector projects in the region, the country, and other countries.
- Assess the competitive position of the proposed option and restructure the transaction based on the market evaluation.
- Contribute to the marketing strategy report.
- Recommend the criteria by which bidders can be assessed.
- Recommend the timing for the placing of advertisements.
- Prepare the tasks, responsibilities, and schedule of activities for a promotional road show or pre-bid conference (if there is to be one).

Financial Aspects of Proposed Transaction and Information Memorandum

With the legal advisers the financial adviser should:

- Review the economic advisers' recommended method of rate setting for the transaction and comment on its financial implications for the transaction.
- Recommend the proposal's financial requirements, such as:
- Format and content of financial pro formas, for example, cash flow, income statement, and balance sheets that indicate the financial viability of the project.
- Amount of equity required for the project, timing of equity contributions, and evidence of access to credit or collateral for the equity contribution.
- Financial commitments from banks and other investors for the required debt.
- Ability to obtain the required insurance coverage.
- Ability to obtain the required performance bonds, and other financial assurances for construction and operations.
- With legal adviser prepare related appendices and attachments by coordinating the inputs from the economic advisers, the engineers' report, and X Enterprise.
- Review the concession and other legal agreements and advise on financial issues raised in the document.
- Prepare the final information memorandum.
- Clarify any financial issues presented in the bidding consortia proposals and confirm their financial feasibility using the financial model. Prepare the bid evaluation report, which recommends the winning bid to the evaluation committee.
- Verify the commitment letters from the financial institutions supporting the bids, including the reasonableness of the terms and conditions of any proposed loans, including interest rates, terms, security, amounts, and capacity of underwriters to support the transactions.
- Review the capital structure and shareholders agreement, and ensure that the bidders can provide any scheduled equity payments (from existing resources, bank credits, or other sources).
- Participate in the contract negotiations with the selected bidding consortium, providing financial advice on the major contract documents, such as the concession contract, shareholders agreement, articles of association, share purchase agreement (if applicable), and other documents that may be required for the transaction.
- Provide sensitivity analyses during contract negotiations for changes in project assumptions, using the financial model.
- Assess the marketability of the proposed debt instruments, based on the terms and conditions of the financing documents and the concession contract.
- Ensure that the concession contract is bankable, especially with regard to such terms and conditions as lenders' rights and security for lenders' market, political, and construction risks.
- Evaluate the private partner's marketing plan for loan obligations required to finance the project.
- Prepare the schedule of events for the transaction's closing and coordinate the

32	Number of employees full time / part time / permanent / seasonal		
33	Sales in N (if financial statements are in a currency other than N state the amount in that currency and convert to N at an exchange rate of N = USD 1). Sales are defined as sales excluding subsidies and net of any taxes and duties levied, such as excise duty, sales tax, etc if any. Subsidies, taxes and duties should be shown separately.		
34	Profit		
35	Net Worth based on estimated market values of assets and liabilities. Net Worth is defined as equity share capital + free reserves and surplus (excluding revaluation reserves)		
36	Details of borrowings, with terms, security and interest rates and debt service ratios and coverage.		
37	Is or has the Bidder or any of its promoters / significant shareholders (above 5% shareholding) / directors or controllers or connected persons been insolvent or bankrupt or in the course of winding up or subject of proceedings for declaration of insolvency or bankruptcy, or entered into an arrangement with creditors or any other similar proceedings		

25	Details of management team		
26	Auditors name and contact point		
27	Lawyers name and contact point		
28	Bankers name and contact point		
29	List names and addresses of advisers to the Bidder on this transaction	Financial: Legal: Other:	
30	Brief History of Bidder		
31	Details of main business activities, nature of business, locations		

work of the legal, economic, and technical advisers to finalize the transaction.

5. Deliverables

- Financial model;
- Draft inputs to final information memorandum;
- Inputs to marketing strategy memorandum;
- Schedule of activities and responsibilities for preparation, evaluation, and negotiation of bids; and financial closing;
- Bid evaluation report.

Doc. D6.2(f)

TERMS OF REFERENCE FOR LEGAL ADVISER

This section needs to be discussed with BPE and Nigerian lawyers and related to the legal aspects of the Due Diligence Investigation Checklist to identify the essential elements in a basic PE privatisation most likely being sold by way of a sale of assets.

At minimum the Legal Adviser examines the following subjects and advises BPE:

- Title deeds to ensure that there are no defects of title or onerous conditions (to be related to land registration and transfer in Nigeria).
- Material contracts and agreements.
- Loan and lease agreements to ensure that there are no unduly onerous conditions.
- Adequacy of insurance cover.
- Compliance with any legal or other requirement.

**Sample terms of reference to scrutinise title
(to be revised after discussions)**

Background

1. The BPE intends to appoint an Adviser to scrutinise title to Property at XXXX. These terms of reference specify the work to be carried out by the Adviser.
2. The purpose of the assignment is to:
 - (i) clearly identify Property occupied, possessed or used by X Limited;
 - (ii) establish the right, title and interest of X Limited in the Property;
 - (lii) certify whether there is clear and marketable title to the Property and ownership capable of being transferred to a purchaser and any actions required to make out clear and marketable title.

Property means Land and Other Immovable Assets:

- A. Land: premises (including any part of the premises and / or any building, structure and / or works on the premises) of X Limited that are occupied, possessed or used in the course of its operations.
- B. Other Immovable Assets: all fixtures and fittings and other fixed plant, machinery, equipment and hardware physically attached to the land at xxx.

18	Details of corporate debentures		
19	If a company list the name, father's name and addresses of individual shareholders and name, registered offices and Company numbers of companies holding more than 5% of the issued share capital and shareholding.		
20	State which (if any) of the registered shareholders are legal owners holding the shares on their own behalf or on behalf of others who the beneficial owners are.		
21	Provide name, father's name and address of individual beneficial owners of shares in Bidder and name, registered offices and Company numbers of company beneficial owners.		
22	If there are controllers of the Bidder (a controller is a person in accordance with whose wishes the Bidder / directors / shareholders is accustomed to act) provide the name, father's name and address of such persons.		
23	If the Bidder is not a company provide names, father's name, addresses of (a) owners (b) controllers in accordance with whose wishes the Bidder acts.		
24	Details of directors of the Bidder if it is a company.		

5	Fax number		
6	E-mail address		
7	Name of person authorised to act in respect of the Bid		
8	Relationship / position of authorised person with Bidder		
10	Mobile phone number and address for the authorised person		
11	E mail address for authorised person		
12	Land line phone number, fax and address of authorised person		
	Legal status of Bidder (is it a private company, public company, partnership, individual person etc.)		
13	State place of incorporation / registration of Bidder / jurisdiction and laws under which registered / incorporated		
14	Company Number and Registered Office and address or if not a company other registration details		
15	If Bidder is a foreign registered person specify if statutory approvals that have been applied for / obtained or pending from FGN / NIPB or other bodies.		
16	Details of authorised, issued and paid up equity share capital		
17	Details of issued preference share capital		

The Services

Task 1: Familiarisation

3. The Adviser will gain familiarity with X Limited and Property and obtain from X and other sources such relevant documents and information as is available.

Task 2: Undertake investigations

4. The Adviser will carry out all searches and investigations to gather the documents and information as is necessary and appropriate for the Reports.

Task 3: Scrutinise title and prepare separate Reports for Property at the facility and the distillery

5. The Reports should show the results of the scrutiny of title to Property and should include:
 - (a) Full description of the land giving the area stated in the title documents, Plot no., Survey no., situation etc.
 - (b) Whether X holds the land as [freehold or leasehold appropriate terms for Nigeria to be inserted].
 - (i) If leasehold, give details of the lease viz. Date of lease deed, land subject to the lease, parties, rent, date of commencement, term (period) of lease, transfer, renewal and termination of the lease and other main terms.
 - (ii) If freehold, whether land was purchased from FGN or State Government or otherwise. If the land was purchased from a person other than FGN or State Government, give details regarding the name of transferor, date of transfer, particulars relating to the deed of conveyance / transfer etc.
 - (c) If X purchased the land from FGN or State Government, state whether it is originally Government land or land acquired under [compulsory purchase: relevant Nigerian legislation] and the mode of transfer (i.e. whether by means of a deed of transfer, deed of assignment or Government order). If it is acquired land, state whether all the requirements under the compulsory purchase legislation has been duly complied with and are there any restrictions against transfer of the land by X .
 - (d) If the land is occupied by license obtain a copy of the license and summarise the main terms
 - (e) Are there any benefits or burdens relating to the land such as easements, covenants, restrictions, rights of way etc.
 - (f) Whether any of the land is leased or sub-let by X Limited to another party or to

- a separate unit of X Limited and obtain copies of the legal documentation and summarise the main terms.
- (g) Whether the land is zoned agricultural, industrial, commercial, residential or other use and has the requisite permission for its current use been obtained from the competent authority.
 - (h) Whether the land is affected by any special enactment such as....
 - (i) Whether the land is in the possession and enjoyment of X Limited and whether the name of X Limited has been noted in the [registration / revenue / municipal use appropriate Nigerian term] records in respect of the same if so, produce documentary evidence.
 - (j) Whether there are any mortgages, charges, attachments, hypothecations, liens, pledges or other encumbrances affecting the Property (including immovable assets other than land), if so, give details.
 - (k) Whether X Limited received any notice for the acquisition or requisition of the land from FGN or State Government or any other public body, if so, give details.
 - (l) Whether the land or any part thereof is included in or affected by any schemes of improvement or any alignment, widening or construction of road under any scheme of FGN or State Government or local authority etc.
 - (m) Whether any suit or other legal proceeding is pending in any court, tribunal or other authority in respect of the Property, if so, give details.
 - (n) Whether there are any disputes with adjoining property owners.
 - (o) Whether the transfer or sale of the land by X Limited requires any approval, permission or consent from FGN, Governor, statutory body or other authority.
 - (p) Whether all taxes, rents, rates, revenues and other public dues in respect of the Property have been paid up to date to the authorities concerned.
 - (q) Whether original documents of title in respect of the Property are available with X Limited and where originals are not available, whether certified copies of the documents have been obtained from the land registry.
 - (r) Furnish copies of all documents of title including mortgages, hypothecations and other documents.
6. The Adviser should identify and report any matters relating to the Property that are likely to influence a purchaser or any other relevant matter bearing in mind the purposes for which the title scrutiny is required.
7. The report will be dated.

Doc. D6.2(g)

Doc E2.1(c)

BID FORM COMMERCIAL, TECHNICAL AND FINANCIAL PART OF BID

- (a) All the following information must be submitted, in verifiable form and supported, where possible, by independent evidence.
- (b) To facilitate the evaluation process a Bidder is required to submit the Bid Forms for Commercial, Technical and Financial Evaluation in the format listed below and contained on the disk supplied by BPE along with the Information Memorandum and Bid Document.
- (c) Information on the Price being offered for the Sale Shares should **not** be included or referred to in direct or indirect manner and to so do in the Bid Form Commercial, Technical and Financial Part of the Bid will cause elimination.
- (d) The same headings and numbering system as shown on the disk should be used.
- (e) No question should be deleted from the list of questions.
- (f) There should be no blank answers. If a question is not relevant there should be a statement saying why the question is not answered.
- (g) It is essential that the responses be stated in a clear and concise manner. Failure to provide complete information as requested will be to the disadvantage of the Registered Person.
- (h) It is the responsibility of the Registered Person to seek clarification of the bid requirements prior to submission of the Bid.

1	Name of Bidder		
2	Date of Registration of Interest with BPE		
3	Business address		
4	Telephone Numbers		

particular we agree to immediately report to BPE any direct or indirect approaches to us by Bidders or connected persons which could influence the Bid Process and outcome.

12. We acknowledge that the Bidder or Proposed Purchaser may not purport to assign its role or position to any person, or otherwise attempt to substitute another party for itself, at any stage in the Bid Process or for two years thereafter without the prior written approval of BPE which shall not unreasonably be withheld.
13. We agree that the Bid submitted by us shall be valid and binding until ---- and the period of validity of the Bid may be extended by BPE / NCP until ----.
14. We have read and understood the Cover Letter prior to signing it and we understand its contents and will abide by them.
15. We agree that BPE may directly and without reference to us seek information and make enquiries from our bankers and other sources. We hereby authorise BPE to make enquiries and authorise our bankers and other sources to provide the required information and agree that no liability to us shall attach to BPE or the providers of information in this matter. If necessary we shall instruct our bankers and other sources to provide information in response to BPE requests.
16. Where the bid is submitted by or on behalf of a consortium, contractual joint venture or special purpose vehicle each of the members agree joint and several liability for the Bid.
17. We recognise that BPE shall have sole and absolute discretion to decide on possible breaches of the undertakings given here and that where BPE decides that a Bidder has breached an undertaking the Bidder will be eliminated and BPE / NCP may at its sole discretion forfeit the Bid Bond in accordance with its terms to compensate for loss and damage.

Signed by -----

Authorised signatory on behalf of the Bidder

Authorised signatory on behalf of each member of the Bidder or Proposed Purchaser which is a consortium, contractual joint venture or special purpose vehicle.

Date

TERMS OF REFERENCE FOR LEGAL ADVISER UTILITY PRIVATISATION

1. Background

This section provides background on the reform process, briefly describes X Utility and regulatory framework, and sets out Federal Government of Nigeria (FGN) and National Council on Privatisation (NCP) privatisation / commercialisation objectives for X Utility.

2. Objective

The Legal Adviser will provide all legal advice to the Bureau of Public Enterprises (BPE) and shall deliver to BPE the reports specified below on all legal and regulatory matters arising as part of the reform / privatisation / commercialisation of X Utility [the "Services"].

3. Scope of work

The Legal Adviser shall coordinate closely with BPE (named staff members if necessary) to efficiently perform the Services. If more than one Legal Adviser is engaged, whether from the same firm or not, the Legal Advisers shall coordinate with each other as well as with BPE.

4. Deliverables

All reports and transaction documents will be prepared in English and shall be supplied to BPE in hard copy and in electronic form (MS Word 2002 or later).

BPE shall assist the Legal Adviser in obtaining full and prompt cooperation from X Utility, FGN, Ministries in carrying out the Services.

Task	Responsibility and Action	
	Name of Legal Adviser 1	Name of Legal Adviser 2 [if more than one lawyer involved]
	If more than one Legal Adviser is engaged work can be allocated according to experience of the Legal Advisers	
Preparation Stage (should not take more than 1 week in total and BPE should be able to supply most if not all of this material)	Ensure that all relevant laws, significant Court decisions, Constitution, Acts, Regulations, rules, bye laws and relevant FGN and State Government policy statements and decisions resolutions relating to the sector e.g. sector laws, the laws establishing utilities, laws and regulations relating to tariffs, environmental laws, health and safety laws, employment etc. are available to the Legal Adviser with copies at BPE [BPE should have own copies and copies may be required for Data Room during the transaction].	
Legislation and regulatory reform	Comment and advise on the legal implications under Federal and State law of different methods of private sector participation in the activity now carried out by the public enterprise utility (sale of shares, sale of assets, concession, lease, management agreement, and so on). Relate the advice to different transaction structures. Coordinate with BPE Transaction Team	
	Review legal provisions e.g. Public Enterprises (Privatisation and Commercialisation) Act any Private Sector Participation / PPP laws and institutions, Environmental law and regulations, institutional arrangements, Government policy, Court decisions and identify key legal and regulatory issues to address for best practicable standards of privatisation and regulation. Take into account issues such as changes to status of staff from public service to private sector or from within Ministry to an independent regulator, sale and transfer taxes, duties and fees etc. Legal and social impact of changes to illegal connections, arrears etc to be taken into account.	
	List key points and issues from the review and address through draft legislation / amendments. The institutional framework as well as the legal framework needs to be addressed.	
	Deliverable	Interim Report on legal and regulatory framework with draft legislation / amendments / revised institutional arrangements for both privatisation and regulation.

(a) The Bidder is submitting the Bid as a principal on its own behalf and the Bidder and Prospective Purchaser is one and the same person;

OR

(b) The Bidder is submitting the Bid on behalf of a Proposed Purchaser in which the Bidder directly holds more than 50% of the share capital and voting rights and has annual sales of at least N / US\$ and net worth of at least N / US\$ and the combined net worth and sales of the members of the Proposed Purchaser is at least N / US\$ and N / US\$ respectively.

9. The Bidder confirms that it or any person acting on its behalf has not, and will not do, at any time, any of the following:

- (i) communicate to a person, other than BPE through the Bid, the amount or approximate amount of payment offered for the Sale Shares or other essential parts of the Bid;
- (ii) enter into any oral or written agreement or arrangement or understanding, with any other person, by which that person agrees to refrain from submitting a Bid, or agrees as to the amount of any price or other terms to be offered;
- (iii) offer or agree to pay or give any valuable consideration, directly or indirectly, to any person to do or cause to be done, any act or omission in relation to any Bid;
- (iv) directly or indirectly, canvass any member or officials or representatives of FGN, NCP, BPE or XXXX or any of their advisers concerning the Sale Shares of XXXX;
- (v) breach the Confidentiality and Non-Interference Agreement;
- (vi) seek directly, or indirectly, to influence the outcome of the Bid Process by any means, other than the submission of the Bid, including, without limitation, efforts to lobby support or exert pressure through the media, or by initiating or making contact with FGN, NCP, BPE or XXXX or any of their advisers during the evaluation process or any others who may be party to decision-making, unless BPE has first sought to make contact or by any other means;
- (vii) seek directly, or indirectly, to influence the outcome of the Bid Process by any means, other than the submission of the Bid, including, without limitation, efforts to entice or exert pressure on other Bidders or potential Bidders, or by initiating or making contact directly or through others at any stage in the process;
- (viii) will not withdraw from the Bid Process at any time to facilitate other Bidders, whether for reward or not and whether asked or not.

10. We agree that a Bidder who does any of the things mentioned at (i) to (viii) shall be subject to disqualification.

11. We agree that we are obliged to immediately report to BPE any matters of which we are aware that could hinder the operation of a fair process and in

3. Specified Wording of Cover Letter to be Included with the Commercial, Technical and Financial Part of Bid

The Cover Letter is to be written on the Letterhead of the Bidder.

The letter should state the full registered and trading name, registered and trading office address, and in the case of a company the place of incorporation and registered number.

The precise wording set out here must be used. Amendments by way of deletion or addition unless specified in the Cover Letter as being permitted will mean a bid is not responsive or compliant.

The letter should be dated as of the date it is signed by an authorised person and should be addressed to:

BPE address etc

TEXT OF LETTER TO BE INCLUDED WITH BID

1. We enclose the specified materials to be submitted in the Bid.
2. We acknowledge that we have read and understood the Procedures, Terms and Conditions and the Requirements for Bids in Parts II and III of the Information Memorandum and Bid Document and agree that they are reasonable.
3. We agree that submission of the Bid is a full and unqualified acceptance of the Procedures, Terms and Conditions and the Requirements for Bids in Parts II and III Information Memorandum and Bid Documents.
4. We declare that we continue to meet the eligibility criteria for submitting a Bid set out in the Declaration of Eligibility signed at the time of registration of interest.
5. We acknowledge the right of FGN, NCP or BPE to deal now or in future with the Sale Shares of XXXX in whatever manner the FGN, NCP or BPE deems fit.
6. We agree that we have no right, title or interest in or claim over the Sale Shares of XXXX and that participation in the Bid Process does not give us any such right, title, interest or claim.
7. We agree that participation in the Bid Process and its outcome is not a contract or part of a contract and that all matters relating to the Sale Shares of XXXX are subject to a contract being signed.
8. Insert only one of these statements and delete the other:

Task	Responsibility and Action	
Implementing Regulatory Reform	Advise BPE taking into laws and practices on benefits and problems of practical implementation of different policy options and implementing regulatory reform including altering institutional structures and arrangements.	
Regulator	Issues to be addressed if an independent regulator is necessary e.g. legislation, regulations and procedures.	
	Deliverable	Final Report combining legal changes, institutional changes, policy issues and practical implications of change.
White Paper / Policy Statement on Utility Reform	Assist BPE should a policy statement be necessary setting out the legal and regulatory reforms.	
Changes in Legislation	Finalise draft legislative changes taking into account the issues addressed above and provide supporting explanatory memoranda.	
		Draft privatisation and regulation legislation and explanatory memoranda
Due Diligence Investigations	Derive from Due Diligence Checklist e.g. contracts, title to assets, liabilities, long term debt and commitments, and how these are to be handled in the course of privatisation / commercialisation to ensure certainty and smooth transfer of assets, liabilities, property and other rights and obligations. Labour issues including pay arrears, pensions, redundancy payments etc. Legal dispute exposure. Environment issues and liabilities. Recommend how the various issues identified in due diligence are to be handled in the transaction and how to minimise exposure and limit warranties and indemnities.	
	Deliverable	Due Diligence report and recommendations
Transaction Documents	Recommend and draft legal documents to implement the selected transaction structure e.g. share sale and purchase agreement, shareholders' agreement, memorandum and articles of association, major contracts, concession agreement, licenses, performance agreements and bonds to ensure standards of delivery, bid bonds etc (as necessary), transfer instruments including tax and duty aspects etc. Examine all supporting agreements e.g. shared facilities and on-going contracts.	
	Deliverable	Comprehensive Set of Transaction Documents

Implementation of Transaction		
Task	Responsibility and Action	
Information Memorandum and Bid Documents	Assist BPE and other advisers e.g. financial advisers in preparation of the Information Memorandum and Bid Documents and review all documentation to be provided to bidders including evaluation criteria and supporting documents. Take into account the due diligence findings and recommendations, the regulatory structure and framework and the transaction structure and ensure that the material supplied to bidders enables them to be adequately informed.	
	Deliverable	Report on the Draft Information Memorandum and Bid Documents with recommendations for change to ensure bid process and transaction can proceed with certainty and credibility. Revise any materials e.g. transaction documents as necessary.
	Advise and assist BPE in dealing with bidders' enquiries particularly with respect to transaction documentation and amend documents if necessary to ensure clarity and certainty.	
Communications	Assist BPE communications marketing and advertising effort with relevant information of a legal nature, assist in dealing with queries of a legal nature and ensure that BPE communications does not interfere with the Bid Process or confidentiality requirements.	
Finalisation of Agreements	Advise and assist in finalising agreements with the NCP approved bidder.	
	Deliverable	Ensure no legal impediment to completion of transaction
Signing of Agreements, Receipt of payment and Transfer of Shares / Assets etc.	Advise and assist on smooth closing, signing and hand-over.	
Completion	Advise on completion and how post-closing issues are to be handled.	
Completion Report	Deliverable	Provide a report on the work carried out in the transaction and the issues that arose and how these were handled together with insights and recommendations for improving future transactions.

Six (6) copies of the Commercial, Technical and Financial Bid Proposal Forms		No reason will be accepted for not being enclosed
One of the copies must be marked "Original" and there should be no reference to the Financial Bid or references, direct or indirect to the price being offered for the Sale Shares.		
Disk containing all the information set out in printed form above. If there is a conflict between the disk material and the printed version, the printed version shall prevail.		No reason will be accepted for not being enclosed
A banker's certificate of credit worthiness and financial standing showing capacity to undertake the expenditure required for the purchase of the Sale Shares and the investment plan.		No reason will be accepted for not being enclosed
Comments on Draft Sale and Purchase Agreement and the Specimen Bid Bond showing why changes are being suggested and a draft of alternative wording. These comments may be different from those submitted on or before ---. There is no obligation on BPE / NCP to take account of these comments and BPE / NCP reserves the right to make changes to the sale and purchase agreement including additional indemnities, warranties, representations, guarantees etc. The Bid must not be conditional on the Bidder's comments on the Sale and Purchase Agreement or the Specimen Bid Bond being accepted by BPE.		

13	<p>If a contractual joint venture, consortium or specific purpose vehicle is formed as the Proposed Purchaser and it is different from the Bidder supply an agreement signed by each member agreeing that</p> <p>(a) the Bidder has more than 50% of the share capital or voting rights and how this is achieved;</p> <p>(b) the Bidder has annual sales of N / US\$ and net worth of N / US\$;</p> <p>(c) the combined net worth of the members of the Proposed Purchaser is more than N xxx/ US \$ and combined annual sales are more than N / US\$</p> <p>(d) agreeing that each member accepts joint and several liability for the Bid.</p>		
14	<p>Bid Bond in the form shown in the Specimen Bid Bond for N / US\$ given by a reputable bank that is acceptable to BPE. The Bid Bond shall be promptly returned to unsuccessful bidders that have complied with the Bid Process.</p>		<p>No reason will be accepted for not being enclosed</p>
15	<p>Signed Parts II and III of Information Memorandum and Bid Documents</p> <p>The Bidder must sign and include a copy of</p> <p>(a) Part II of Information Memorandum and Bid Document: Procedures, Terms and Conditions; and;</p> <p>(b) Part III of Information Memorandum and Bid Document Information Memorandum and Bid Document: Requirements of the Commercial, Technical and Financial Part of the Bid and the Financial Bid;</p>		

Doc. D6.2(i)**TERMS OF REFERENCE FOR ENGINEERING REPORT**

In exceptional cases there may be a need for an economic, sector, regulatory or engineering report. This is a sample Terms of reference for an Engineering Report.

Background

1. The BPE intends to appoint an Adviser to carry out an engineering survey of X Limited facility at xxx. BPE is privatising the facility and desires to have reliable information on which to base informed discussions with potential purchasers. These terms of reference specify the work to be carried out by the Adviser.
2. The purpose of the survey is to report to the BPE on the facility giving an independent assessment of the performance of the facility with reasons why the facility has not achieved designed capacity utilisation and has experienced substantial downtime as well as indicating what is required to improve performance and the likely costs involved.

The Services

Task 1: Familiarisation

3. The Adviser will familiarise itself with the facility and, among other things, obtain from the facility and from the Head Office of X Limited such relevant information as is available. This data should include:
 - the name of the plant manufacturer, year of manufacture and year of installation at the facility;
 - installation records;
 - commissioning certificates showing capacity utilisation at installation;
 - breakdown reports;
 - maintenance routines and reports.

Task 2: Undertake investigations

- 4 The Adviser will carry out all such investigations and gather all such information as is necessary and / or appropriate for the report including, but not necessarily limited to, the following:
 - 4.1 Review and assess the adequacy of preventive maintenance routines and compare with plant manufacturer's recommendations.

- 4.2 Assess the adequacy of qualifications and experience of the maintenance team and operatives at the plant.
- 4.3 Identify key changes made since the facility was commissioned and assess if these are adequate to achieve designed capacity utilisation.
- 4.4 Review of technical performance of the plant in term of efficiency of production and propose measures for optimal utilization;
- 4.5 Review status of technology in use as compared to the state of art in the industry (or relevance to market, as the case may be) to identify the possibility and potential for necessary upgrade.
- 4.6 Assess the appropriateness of existing technical agreements and their extent of coverage (R&D, plant maintenance, technology transfer, etc - if any) and recommend ways of availing the enterprise of such partnership opportunities.

9	If not a company supply documents showing evidence of legal status and how formed e.g. partnership agreement, or if a consortium or joint venture formed by contract a copy of the signed agreement		
10	Supply a table certified by an independent chartered accountant showing for the last five years details of the Bidder's / members of the Bidder <ul style="list-style-type: none"> o Share Capital, o Reserve & Surplus, o Capital Reserve, o Profit & Loss, o Loans & Current Liabilities, o Gross Assets, o Net Assets, o Investments, o Bank & Cash Balances, o Working Capital Other relevant financial information		
11	Appropriate company or board resolutions (or equivalent for unincorporated body) authorising: <ul style="list-style-type: none"> (a) submission of the Bid, (b) named individuals to act with respect to the Bid; (c) signing of the Share Sale and Purchase Agreement on the terms contained in the draft Agreement and at the purchase price stated in the Price Part of Bid which price is not to be stated here. 		
12	If a contractual joint venture, consortium or special purpose vehicle is formed as the Bidder or Proposed Purchaser supply an agreement signed by each member agreeing that: <ul style="list-style-type: none"> (a) Each has read and understood the Information Memorandum and Bid Documents, the Commercial, Technical and Financial Part of Bid and Price Part of Bid being submitted and that each accepts joint and several liability for the Bid and for the obligations in the Share Sale and Purchase Agreement (b) The ownership, participation and role of each person in the Bidder; (c) Authorisation of a person to sign and submit the Bid on behalf of each member; (d) Authorisation of named individuals to act with respect to the Bid; (e) Authorisation of a person to sign the Share Sale and Purchase Agreement binding on each member on the terms contained in the draft Agreement and at the purchase price stated in the Price Part of Bid which price is not to be stated here. 		

	Commercial, Technical and Financial Part of Bid	If Enclosed State "Yes" in this column	Where applicable if document is Not Enclosed Briefly State Reason
1	Cover Letter written on the letter head of the Bidder and containing the wording specified below		No reason will be accepted for not being enclosed
2	Certificate of incorporation of a company		
3	Memorandum and Articles of Association of a company (or equivalent document)		
4	Shareholders' Agreement (if any) or equivalent document		
5	Audited Balance Sheet and Profit and Loss Account for the three most recent financial years		
6	Latest interim financial statements		
7	Certificate of independent chartered accountant of sales and net worth shown in the most recent audited accounts		
8	Annual Report		

² Where documents are required to be submitted and the language of the document of a Bidder is other than English and / or the document is not available in the format sought here an independent professional familiar with the document and language concerned should sign a statement stating that the Registered Person is eligible to submit a Bid based on the eligibility criteria set out in the Declaration of Eligibility. \

³ Sales defined as: Sales figures net of subsidies and net of any sales related taxes and duties, such as excise duty, sales tax, value added tax etc. if any. The value of any subsidies and sales related taxes / duties should be provided separately.

⁴ Net Worth is defined as: Equity Share Capital + Reserves & Surplus (excluding revaluation reserves).

Doc. E1.1(a)

DRAFT ADVERTISEMENT

INVITATION TO BID FOR FEDERAL GOVERNMENT OF NIGERIA SHARES IN XXXXXXXXX

✍ This notice is not a prospectus or an offer or invitation for sale to the public of securities. The notice is aimed at persons knowledgeable and experienced in the [xxxxx] sector and is not directed towards the general public.

✍ XXXX is a leading [xxxx] manufacturer and supplier in [state] in Nigeria with annual sales of over Nxxxxx (approx US\$xxm) (website of XXXX). [It is listed on Nigeria Stock Exchange listing reference].

✍ FGN desires to sell through a competitive bid process, and in a single transaction, xxxx (number) XXXX shares (the "Shares"), being xx% of issued and paid up XXXX share capital. The balance of XXXX shares is held by yyyy (yy%) and other investors (ww%).

✍ The National Council on Privatisation (NCP) is the decision-making body and Bureau of Public Enterprises (BPE) (www.bpeng.org) is the implementation body in privatisation in Nigeria.

✍ A person interested in the Shares is invited to register with BPE by paying N xxx (US\$1000 if outside Nigeria) registration fee and signing the XXXX Confidentiality and Non-Interference Agreement and the XXXX Declaration of Eligibility. The registration eligibility criteria are set out in the Declaration and include net worth of at least N (approx US\$xxm) and annual sales of at least N (approx US\$xxm). Registration materials and details of payment of the registration fee may be obtained from the BPE contact person named below.

✍ After registration BPE provides the XXXX Information Memorandum and Bid Documents and other materials which have information on XXXX and the bid process for the Shares.

✍ Only a registered person may submit a bid which includes a Bid Bond for N (approx US\$xx).

✍ The closing date for receipt of bids is 20 October 2005 and the expected date for concluding the transaction is 1 December 2006.

Contact Person at BPE

Xxxxx
BPE

Tel
Mobile
Fax :
e-mail:

Doc. E1.1(b)

1. REGISTRATION FORM

Prior to registration the eligibility requirements in the Declaration of Eligibility should be examined to ensure compliance.

Please insert information in right hand column only

1	Name of Person to be Registered (the "Registered Person")	
2	Legal Status (company, partnership, contractual joint venture etc)	
3	Date of Incorporation	
4	Place of incorporation / company registration	
5	Certificate of incorporation / Company Registration number	
6	Address of Registered Office of Registered Person	
7	Head Office Address of Registered Person	

Do Not Open Before xx hours (xx pm) GMT On xxxxxxxx Date Of Closure

- (i) Name and Address of Bidder:
- (ii) Name, address, telephone, fax and e-mail address of Contact Person for the Bidder. (This information is required in case the Bid is received after the deadline and needs to be returned unopened.)

- (b) The sealed envelope with the Financial Bid shall be marked clearly on the top right hand corner of the envelope:

"Price Part of Bid for the Sale Shares of XXXX"

Do Not Open Before xxxx hours (xx pm) GMT on xxx

- (i) Name and address of the Bidder
- (ii) Name, address, telephone, fax and e-mail address of Contact Person for the Bidder.

- (c) For convenience in dispatch and delivery the two sealed envelopes may be included in a single sealed package marked clearly on the cover:

"Bid for Sale Shares of XXXX"

DO NOT OPEN BEFORE xxx hours (xx pm) GMT on xxxx Date of Closure

Name and address of Bidder

Name and telephone number of Contact Person for the Bidder

Contents And Format Of Commercial, Technical and Financial Part Of The Bid

The following materials should be included in the sealed envelope containing the Commercial, Technical and Financial Part of the Bid for each of:

- (a) Bidder;
- (b) Proposed Purchaser, if Bidder is not the Proposed Purchaser;
- (c) If Bidder or Proposed Purchaser (where Bidder is not the Proposed Purchaser) is a newly formed person for the purpose of the Bid or Proposed Purchase supply the materials listed here for each member of (a) Bidder, (b) Proposed Purchaser.

Please complete in typed form the following table for (a) (b) and (c) above where applicable.

Doc. E2.1(b)

6. REQUIREMENTS FOR BID

This Part of the Document sets out all matters relating to the Commercial, Technical and Financial aspect of Technical Bid and the Financial Bid. It describes the manner and method of submission, the contents to be included and presentation format.

A Bid must strictly comply with these obligatory requirements and failing to do so may result in elimination.

1. Manner of Bid Submission

Delivery

A Bid containing a complete set of information in the required format must be delivered to the BPE on or before the deadline on the Date of Closure being xx hours (xx pm GMT) on xxxx.

Address for Delivery

The address to which the Bid is to be delivered is:

**BPE
Abuja
Nigeria**

Bid to be submitted, at the same time, in two parts in separate sealed envelopes:

- (i) 6 copies of the Commercial, Technical and Financial Part of Bid in one envelope with one marked "Original"
- (ii) 1 copy of Price Part of Bid in a second envelope

Packaging and Sealing of Envelope

Each Part of the Bid should be in a sealed, non-transparent envelope. The envelope should be suited to the contents. No part of the contents should be capable of being removed or read, without breaking or tearing the envelope, or forcing two adhering surfaces apart, or breaking the seal. The form of the seal may be of wax or other material that will make obvious any attempt to tamper with the envelope, or interfere with the contents.

Markings on Envelope

- (a) The sealed envelope with the Commercial, Technical and Financial Part of the Bid shall be marked clearly on the top right corner of the envelope:

"Commercial, Technical and Financial Part of the Bid for the Sale Shares of XXXX"

Please insert information in right hand column only

8	Telephone number of Registered Person	
9	Fax number of Registered Person	
10	E mail address of Registered Person	
11	Main Business Activities and Locations of Activities of Registered Person	
12	Name of Contact Person at Registered Person	
13	Position held by Contact Person	
14	Address of Contact Person	
15	Telephone Number of Contact Person (include cell phone number)	

16	Fax number of Contact Person		
17	E mail address of Contact Person		
18	Names and addresses of Advisers to Registered Person in connection with the privatisation of XXXX	Financial	
		Legal	
		Other Advisers	
Answer Yes or No to each of 19A, B or C and supply further information in case of 19B or 19C			
19	A. Registered Person intends to submit a Bid solely on its own behalf	Yes	No
	B. Registered Person is the lead member of a consortium / contractual joint venture / special purpose vehicle intending to submit a Bid on behalf of the following list of members	Yes	No
		List of Members	

Costs, Expenses, Fees, Transfer Charges, Stamp Duty

BPE / NCP is responsible for its own costs and expenses in designing and implementing the Bid Process. A Registered Person is responsible for its own costs and expenses from participating in the Bid Process.

Costs associated with the transfer and sale of the Sale Shares, including stamp duty and registration charges, will be borne by the Registered Persons. It should be noted that stamp duty is not payable on share transfers where the shares are dematerialised. It is intended that the Sale Shares will be dematerialised during the Bid Process.

In the event that the Sale Shares are withdrawn from sale, or that the Bid Process is terminated, the BPE, XXXX, ASI or their advisers shall not be liable for any costs or expenses incurred by Registered Persons, or Prospective Purchasers, in the preparation and submission of Bids, or for anything in any way related to the Bid Process. In registering interest and submitting a Bid, a Bidder disclaims and voluntarily and knowingly waives any and all rights or claims with respect to costs.

Bid Materials

All materials submitted as part of the Bid become the property of BPE.

- (a) are for illustration and information purposes only, and are not taken as matters of fact;
- (b) shall not constitute a representation, inducing a person to submit a Bid, or to enter into the sale and purchase of the Sale Shares, or a warranty which may form part of an agreement.

Reasonableness of Exclusion of Warranties and Representations

The Bidder warrants that the exclusion of warranties and representations as provided here is reasonable.

Additional Requirements

BPE reserves the right to seek additional information, indemnities, warranties, representations or performance obligations from one or more participants in the Bid Process at any time during the Bid Process.

Governing Law

[Arbitration Clause / international forum for FDI?]

The Bid Process and all matters pertaining to the privatisation shall be subject to the law of Nigeria and the courts in Nigeria shall have jurisdiction to entertain any matter concerning this transaction.

Language

The language of the Bid and all communications and documents in connection with the Bid shall be the English language. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the English language, in which case, for the purposes of interpretation of the Bid, the English translation shall govern.

Public Announcements

A public announcement of the outcome of the Bid Process will be placed in at least two newspapers circulating widely in Nigeria at the end of the quarter during which completion of the transaction of selling the Sale Shares occurs and will include:

- (a) the name of the Purchaser;
- (b) the price paid by the Purchaser for XXXX;
- (c) the date the transaction was completed;
- (d) any other appropriate information to ensure transparency of the process.

	C. Registered Person is a consortium / contractual joint venture / special purpose vehicle intending to submit a Bid on behalf of the following list of members and identify the lead member	Yes	No
		List of Members	
20	Is registration payment of Nxxxx (US\$xxx enclosed?	Yes	No
21	Is Confidentiality and Non-Interference Agreement signed by or on behalf of Registered Person enclosed?	Yes	No

Please insert information in right hand column only

22	Is Declaration of Eligibility Signed by or on behalf of Registered Person enclosed?	Yes	No
23	If Registered Person is a consortium / contractual joint venture / special purpose vehicle or a lead member of a consortium / contractual joint venture / special purpose vehicle is there an authorised, signed letter from each member in the terms and wording of the Letter of Members of a Registered Person supplied by BPE.	Yes	No

NOTE: The approval of BPE must be sought on or before xxx for any change by way of admission or omission of a member of a Registered Person / Proposed Purchaser after registration and prior to submission of the Bid. If approval is given by BPE then members must submit a new letter stating agreement with the revised registration materials submitted by or on behalf of the Registered Person / Proposed Purchaser. No change in the composition of a Proposed Purchaser is permitted after submission of Bids.

DATE

SIGNED BY AUTHORISED PERSON ON BEHALF OF REGISTERED PERSON

NAME OF AUTHORISED PERSON

POSITION HELD BY AUTHORISED PERSON

RECEIVED AND SIGNED BY BUREAU OF PUBLIC ENTERPRISES STAFF MEMBER

DECLARATION OF ELIGIBILITY

This Declaration of Eligibility to participate in the Bid Process for FGN's xx% shareholding in XXXX is made by who is authorised to make it on behalf of , a person registering with BPE for the purpose of submitting a Bid ("Registered Person").

IT BE DECLARED THAT:

The Registered Person is submitting a Bid on its own behalf and encloses a statement signed by an independent chartered accountant certifying that based on the most recent audited accounts the Registered Person had annual sales* of at least Nxxx (approx US\$xx) and net worth** of at least N xx (approx US\$xx m).

OR

The Registered Person is a lead member of a (consortium), (contractual joint venture) or (special purpose vehicle) that is the Proposed Purchaser and holds over 50% of the share capital and voting rights in the Proposed Purchaser. The Registered Person encloses a statement signed by an independent chartered accountant certifying that based on the most recent audited accounts:

- (a) the Registered Person has annual sales* of at least Nxxx (approx US\$xxm) and net worth** of at least Nxx (approx US\$xx); and
- (b) that the members of the Proposed Purchaser have combined annual sales of at least Nxx (approx US\$xx) and combined net worth of at least Nxx (approx US\$xx).

OR

The Registered Person is a (consortium), (contractual joint venture) or (special purpose vehicle) that will be the Proposed Purchaser in which the lead member holds over 50% of the share capital and voting rights. The Registered Person encloses a statement signed by an independent chartered accountant certifying that:

- (a) based on the most recent audited accounts of the members of the Proposed Purchaser that the members have combined annual sales* of at least Nxxx (approx US\$XX) and combined net worth** of at least Nxx (approx US\$xx); and
- (b) the lead member has annual sales of at least Nxx (approx US\$xx) and net worth** of at least Nxx (approx US\$XX).

Default

If the Preferred Bidder fails or refuses to agree or execute a sale and purchase agreement, without sufficient and reasonable cause, as adjudged by the BPE or in the event of any attempt by a Preferred Bidder(s) to make material changes by negotiation to the Bid, and in particular to change the offer made in the Financial Bid, or does not take the necessary steps to make the necessary payments and to conclude the sale and purchase agreement, within a period of 12 days from notice of acceptance of the Bid, then BPE will be free to pursue whatever course of action it decides with respect to XXXX including:

- (a) re-advertisement in a similar manner or otherwise;
- (b) pursue negotiations with another Bidder on the basis of the next highest evaluated Bid;
- (c) the Sale Shares may be withdrawn from being offered for sale;
- (d) forfeiture of the sum of N / US \$ guaranteed under the Bid Bond.

No Obligation on FGN / NCP / BPE

- (a) FGN, NCP or BPE is not obliged to enter a contract to sell the Sale Shares.
- (b) FGN, NCP or BPE is not bound to accept the highest price or any Bid, in respect of the Sale Shares.
- (c) FGN, NCP or BPE reserve the right to reject any or all Bids in whole or in part.

Exclusion of Liability for Contents of Bid Documents

FGN, NCP, XXXX, BPE or any of their advisers do not accept any liability for the accuracy or completeness of the contents of the Information Memorandum and Bid Document or other material relating to this transaction.

Exclusion of Warranties and Representations

No warranty or representation is given by FGN, NCP, BPE, XXXX, or their advisers in connection with the transaction proposed here or the Bid Process and it is a condition of submitting a Bid that any such warranty or representation is expressly excluded.

The Bidder agrees and accepts, that a statement, measurement, calculation, account or description contained in the Information Memorandum and Bid Documents, any media, web site, advertisement or document of any type or other form of oral or written communication from the FGN, NCP, BPE, XXXX, or their advisers or others, in respect of XXXX or the Sale Shares:

Responsiveness of Price Part of Bid

Each Financial Bid will be examined to ensure that it is substantially responsive and compliant with the Information Memorandum and Bid Documents and in particular with the Procedures, Terms and Conditions and the Requirements for Bids. Bids that are not substantially responsive and compliant will be eliminated from evaluation. Examples of matters that will lead to elimination prior to evaluation are:

- (a) Altering the wording in the Form of Bid.
- (b) Attaching conditions to the offer.
- (c) Proposing deferred payments or non-cash consideration or other payment method which is not permitted.

Evaluation of the Financial Bid

Eligible bids that are substantially responsive and compliant will be evaluated and the Bidder that submits the highest price offer per share for all the Sale Shares shall be identified as the Preferred Bidder.

Identification of Preferred Bidder

The Bid Process is designed to try and ensure that the Bid from the Preferred Bidder fulfils the aims of the transaction set out in Section I through:

- (a) being substantially responsive and compliant in all respects;
- (b) being commercially, technically and financially qualified;
- (c) obtaining for BPE the highest and most attractive price and value for the Sale Shares that meets the reserved price.

NCP Decision on Acceptability of Bid

NCP shall consider the Bid of the Preferred Bidder. It shall be for NCP to decide if the Bid is acceptable. If NCP accepts the Bid notice shall be given to the Preferred Bidder that NCP has accepted its offer.

Finalisation and Signing of Agreement

BPE and the Proposed Purchaser shall finalise the Sale and Purchase Agreement within twelve days of the NCP decision. Immediately prior to signing the Agreement the Purchaser shall pay in full and in cash for the Sale Shares.

* Sales defined as: Sales figures net of subsidies and net of any sales related taxes and duties, such as excise duty, sales tax, value added tax etc. if any. The value of any subsidies and sales related taxes / duties should be provided separately.

** Net Worth defined as: Equity Share Capital + Reserves & Surplus (excluding revaluation reserves).

The Registered Person, a Connected Person, a member of the Board of Directors, a manager or employee of either the Registered Person or a Connected Person:

Delete by striking through the statement 3 (a) or 3 (b) that does NOT apply

(a) is in good standing and is not the subject of a surviving investigation by a Government agency or regulatory authority in any jurisdiction;

OR

(b) is the subject of a surviving investigation by a Government agency or regulatory authority (in any jurisdiction) and full details of the investigation are attached.

The Registered Person, a Connected Person, a member of the Board of Directors, a manager or employee of either the Registered Person or a Connected Person, is not bankrupt or facing extended business interruption for whatever reason.

If there is a change in facts or circumstances, during the Bid Process, that would make untrue any of the declarations shown here, the Registered Person will immediately inform BPE and provide full details relating to the change.

To ensure the continuing validity of the declarations made here the Registered Person undertakes that where the members or extent of participation of members in the Registered Person or Proposed Purchaser is to be different from that submitted at registration the prior approval of BPE shall be sought for the change no later than [] being seven days before the Date of Closure. If approval is obtained, the Registered Person undertakes to provide BPE with a new set of registration documents, including Registration Form and supporting materials, Declaration of Eligibility and XXXX Confidentiality and Non-Interference Agreement in respect of the Registered Person / Proposed Purchaser.

The Registered Person acknowledges that breach of this Declaration, inability to satisfy one or more of the eligibility criteria, making a false statement, or failure to inform BPE of a change in facts or circumstances making untrue a statement in the

Declaration, will lead to disqualification from the Bid Process with the forfeit of the sum subject of the Bid Bond [Earnest Money Deposit].

Where the Registered Person is a consortium / contractual joint venture / special purpose vehicle or a lead member of consortium / contractual joint venture / special purpose vehicle the Registered Person has provided all other members with this Declaration and requested a letter from the members in the terms set out in the registration materials supplied by BPE.

Signed this day of _____ by _____ who is authorised to sign for and on behalf of _____ the Registered Person

¹ Connected Person: examples include

- (a) A person which directly or indirectly controls, is controlled by, or is under common control of: (i) The Registered Person, or (ii) The Proposed Purchaser or member of the Proposed Purchaser, where the Proposed Purchaser is different from the Registered Person; or (iii) a person in which a person described in (i) or (ii) has a direct or indirect interest;
- (b) Two persons are connected if not less than one third of the share capital is held or one third of the voting power at board or general meeting is capable of being exercised by or on behalf of a third person.

A decision by BPE with regard to whether persons are connected will be taken based on relevant facts and after examination of the relationship between the persons

will be communicated to all Bidders who shall be informed of the outcome of the Commercial, Technical and Financial evaluation.

A person that is connected with a Bid, that has been evaluated as qualified to have the Financial Bid opened, shall be entitled to attend, or send authorised representatives, to the opening of the Financial Bids. The BPE may in its absolute discretion invite media coverage of the event.

The sealed envelope containing all the envelopes with the Price Parts of the Bids will be examined by BPE and representatives of Bidders to verify that the envelope is intact and to rule out the possibility of tampering before being opened.

Each envelope containing the Financial Bid is in turn examined to ensure that it is intact and to rule out the possibility of tampering. The envelopes are then opened and the name of each Bidder and the price offered per share for the Sale Shares as set out on the Form of Bid shall be announced and recorded.

The Bid recorded as highest at the opening of the Financial Bid need not necessarily be evaluated as the highest bid. The Bids have yet to be examined for responsiveness and compliance or evaluated and the ranking of bids can change due to elimination or disqualification of a Bid.

Statement on Conduct of Bid Process to Date

After the opening of all the Price Parts of the Bids each Bidder should sign a statement regarding the opening of the Bids and the conduct of the Bid Process up to the date of the Price Part Bid Opening.

The Statement shall state:

Bid for XXXX: Price Part of Bid

“It is acknowledged that the Financial Bids opened are those submitted. The conduct of the Bid Process to date including the opening of the Financial Bids has been conducted properly”

Name of Bidder

The Statement should be signed by, or on behalf of, each of the Bidders who are present as well as by a representative of the BPE.

- The Commercial, Technical and Financial Part of the Bid will be evaluated in accordance with the criteria and weightings set out here.
- The BPE reserves the right, in its sole and absolute discretion, to evaluate and determine which Bidders and Proposed Purchasers are commercially and technically qualified.
- A Bid must achieve at least 75 points in the evaluation of the Commercial, Technical and Financial Part of the Bid to be eligible to have the Financial Bid opened.
- In evaluating a Bid the criteria will be applied and marked so that the maximum or near maximum points will be awarded to a Bid that clearly meet the desired criteria.
- Zero or near zero points will be awarded to a Bid that does not meet the desired criteria.
- The purpose is to obtain clear and decisive results from the evaluation and avoid clustering of qualitatively different bids in mid-range.
- A deficiency or other irregularity in a Bid may be waived during evaluation, if the substance of the Bid is not affected, or the matter is subsidiary or ancillary to the main aims of the Bid Process or the object to be achieved by the Procedures, Terms and Conditions or Requirements concerned.
- During evaluation (which is distinct from examination for responsiveness and compliance) the BPE reserves the right, but is not obliged, to make a written request to Bidders to clarify arithmetic errors, typographical errors, ambiguities or inconsistencies in the Bid. No change in the scope of the Bid shall be sought or accepted. The responses from Bidders shall be in writing. Correction will not be permitted where it unfairly affects the competitive position of other Bids eligible for evaluation.
- Each Bidder or person named as a member of a consortium in the Cover Letter that is submitted with the Bid authorises BPE to collect and use information about the Bid and Bidder or a member of consortium from any source for the purpose of evaluation and where necessary to seek clarification.

Opening of Price Part of Bid

The envelopes containing the eligible Financial Bids will be opened at the BPE at xxx hours (xx pm) GMT on xxxx. Confirmation of the date and time of opening of the Bids

Doc. E1.1(d)

LETTER OF MEMBER OF A REGISTERED PERSON

Where a Registered Person is a consortium / contractual joint venture / special purpose vehicle the Registered Person must submit a letter from the members of the Registered Person to BPE at time of registration. The letter must contain the wording stated here.

A letter must also be submitted to BPE after registration and prior to the Date of Closure [date] if BPE approves a change in the composition of the Registered Person / Bidder / Proposed Purchaser.

The letter should be printed on the letterhead of the member and addressed to BPE stating as follows.

LETTERHEAD OF MEMBER

DATE:

For the attention of: Contact Person BPE

1. We are a member of the Registered Person.
2. We have seen or been made aware of the contents of the Registration Form, Confidentiality and Non-Interference Agreement and Declaration of Eligibility being submitted by and on behalf of the Registered Person and agree that the contents are true in all respects.
3. We agree that we may be required to be jointly and severally liable for the Bid and the Sale and Purchase Agreement and that we may be required to guarantee the fulfilment of the obligations of the Proposed Purchaser.”

The Letter must be signed and dated by an authorised person on behalf of the member and submitted along with the other registration materials.

Doc. E1.1(e)

CONFIDENTIALITY AND NON-INTERFERENCE AGREEMENT

This Agreement is in connection with the proposed sale of Federal Government of Nigeria xx% shareholding in XXXX (the "Shares") and is signed for and on behalf of the "Registered Person".

(addressed to)
Contact Person (see advertisement)
BPE

Private and Confidential

To: Bureau of Public Enterprises ("BPE")
National Council on Privatisation ("NCP")
Federal Government of Nigeria ("FGN")

In consideration of BPE providing access to the XXXX Information Memorandum and Bid Document (the "Document") and related material (together the Document and related material are the Documents") it is agreed and accepted by the Registered Person (the "Registered Person") signing this Agreement that:

18. The information on XXXX and related matters in the Documents are to assist the Registered Person to prepare a Bid by describing XXXX and the Bid Process. As the Registered Person is expected to carry out its own investigations and make evaluations and decisions based solely on investigations, information and advice available to the Registered Person, the Documents are not to be relied upon for these purposes.
19. A Purchaser of the Shares is required to acknowledge in the share sale and purchase agreement for the Shares that it has not relied on any representation or warranty whether of fact, opinion or otherwise from BPE, NCP, FGN or XXXX (which terms in this Agreement include their respective advisers or any employees, officers, agents or other bodies under their ownership or control), except where expressly set out in the agreement.
20. BPE, NCP, FGN, XXXX (i) make no representation or warranty as to the accuracy and completeness of the information provided (ii) expressly disclaim and will not be subject to any claim or liability for statements, opinions, information or matters arising out of, contained in or derived from, or for any omission from, the Documents, or any other written or oral communications,

- Process are not fulfilled;
- (b) introduces inconsistency with the Information Memorandum and Bid Document;
 - (c) limits BPE rights or the Bidder's obligations under the Bid Process and the proposed transaction;
 - (d) seeks to unfairly gain advantage.

A Bid that is not substantially responsive or compliant, will be rejected by the BPE and no opportunity will be given to make the Bid responsive or compliant by correction or withdrawal of the identified deviation or reservation.

Only those Bids determined to be substantially responsive and compliant shall be eligible to be evaluated.

Evaluation Commercial, Technical and Financial Part of Bid

Bidders should refer to the Requirements of the Bid for the information to be supplied for the purposes of evaluation. Bidders should know that it is only the information that is submitted that forms the basis of the evaluation. A Bidder's general reputation or information presumed by the Bidder to be in the public domain cannot be assumed to be available to the evaluation. It is the sole responsibility of the Bidder to ensure that adequate information is available to assist an accurate evaluation.

Criteria	Total Points
Bidder's and Proposed Purchaser's general credibility, commercial capability, technical know-how, financial strength and management experience to complete the purchase and successfully contribute to the operation of XXXX. Commercial track record in business. Skills and experience in xxxxxx sector or how such skills and experience will be available. Sources of funds to pay for purchase of Sale Shares and contribute to needed investment.	60
Quality and credibility of future plans for XXXX including financial and investment Employee issues plans.	40
Total Commercial, Technical and Financial Evaluation Maximum Points	100

A Bid may fail to be responsive to the aims of the Bid Process or to comply with the Procedures, Terms and Conditions of the Bid Process or the requirements for submission of Bids.

Following the Bid Opening, BPE shall examine the Commercial, Technical and Financial Parts of the Bids:

The BPE shall determine whether the Commercial, Technical and Financial Part of the Bid is responsive and compliant in matters that include, but are not limited to the following:

- (a) Is it compliance with the specified requirements for the contents of the Bid, the format of presentation, and the manner and method of submission;
- (b) Is it authorised, signed and submitted in the required manner, with the appropriate powers of attorney and letters of authority;
- (c) Is it accompanied by the required enclosures that have been authenticated including the Bid Bond for the sum and in the form required;
- (d) Is it responsive to the aims of the Bid Process and complies with the procedures, terms and conditions and requirements of the Bid.

Failure to be responsive or compliant may be due to statements or actions that generally seek to gain unfair advantage in the Bid.

Matters that could be viewed as seeking to gain unfair advantage are wide-ranging and examples include but are not limited to the following:

- (a) explicitly or implicitly omitting to include, or substantially qualifying, matters that are required; or
- (b) introducing assumptions, conditions or extraneous matters that have not been provided for or sought; or
- (c) quibbling over words or phrases, or adopting disingenuous interpretations of the Information Memorandum and Bid Document; or
- (d) artificially seeking to manufacture a submission to suit the evaluation criteria; or
- (e) generally providing or omitting to provide statements in a manner calculated to mislead, create ambiguity or contradictions.

Examples of material deviations or reservations that can make a Bid not responsive or compliant include matters that by inclusion or omission:

- (a) affects the Bid and the proposed transaction so that the aims of the Bid

that are transmitted, at any time, to the Registered Person, in relation to XXXX, whether referred to here or not.

21. No announcement or disclosure of our registration with BPE for submitting a Bid for the Shares will be made, by or on behalf of the Registered Person, without the prior written consent of BPE.
22. We, the Registered Person and its employees, agents and advisers, will not discuss our Bid or our approach to the Bid with any person other than professional advisers. In particular, we will not do so with any person that is or is potentially interested in XXXX, at any time during the Bid Process until the completion of the privatisation of XXXX.
23. If it is necessary to hold discussions with another Registered Person, or a person potentially interested in XXXX, for any reason, we shall notify BPE in writing in advance of the discussions.
24. We agree that we shall not seek to influence others to submit, or not to submit Bids, or to influence the content of the Bids of others, or seek to have others enter or withdraw from the Bid Process, and acknowledge that other Registered Persons have an obligation to BPE to report any approach made by us.
25. We accept that we have a duty to immediately report to BPE any approach made to us, by any person, regarding the Bid Process for XXXX and acknowledge that suspected failure to report an approach may lead to disqualification from the process or other consequences arising from breach of this agreement.
26. We will hold and keep strictly confidential all information, statements, opinions, projections, forecasts and other matters contained in the Documents or otherwise provided to us, in respect of the privatisation of XXXX, except in so far as the same may be or becomes information in the public domain, and we will only use the contents and other information as necessary for the intended purposes.
27. We shall not issue any statements or seek to publicise our involvement in the Bid Process and in particular, shall not seek to influence the outcome of the Bid Process in any way, except through the submission of our Bid.
28. We shall not interfere with the Bid Process in any way, including the encouragement of others to make statements in support of our Bid, or through

interference with any person interested, or potentially interested, in XXXX.

29. If it is necessary to make any disclosure to any of our employees, representatives or other connected persons or a third party, we will prior to making such disclosure procure that the employee or third party unconditionally agrees to be bound by the terms of this Agreement.
30. We agree that we are, and will be, responsible for all the acts and omissions of these persons, in so far as they relate to, or affect, any matter with which this Agreement or the Documents are concerned.
31. On completion of the privatisation process, we may be requested to promptly return to you all copies of the Documents, or of any parts of them, and any papers containing extracts or based upon the contents within our possession or control.
32. We acknowledge that we will not be entitled to a refund of the registration fee.
33. The termination of our interest in the privatisation, or the termination of the Bid Process, or the return by us of information under paragraph 14, shall not release us from obligations under this Agreement.
34. We confirm that our interest in the privatisation of XXXX is as a principal acting on our own behalf, and not as trustee, or agent, or broker for any other person, and not on account of, or with a view to, re-sale to any other person.
35. We accept that we cannot give authority to any other person to submit a Bid on our behalf or to substitute for us in the Bid Process.
36. If we participate in a Bid with others, we will hold over 50% of the share capital and voting rights directly in the Proposed Purchaser. We will enclose in the Bid the entire agreement signed by all the owners, setting out the details of ownership and other information relating to sources of funds and the contribution to the purchase price by each of the members. We will provide BPE at the time of registration with all materials required from all participants in the Proposed Purchaser. If, after registration, a new person desires to be a member of the Proposed Purchaser we shall notify BPE in advance and seek approval for the change. If BPE approves the change, we agree that, prior to the Date of Closure for receipt of Bids, we shall provide BPE with the required materials already provided to BPE in respect of other members at the time of registration.
37. We accept that vague or non-transparent ownership or control of a Bidder or

completion of opening the Commercial, Technical and Financial Parts of the Bid.

- Each envelope containing the Commercial, Technical and Financial Part of the Bid is opened and an initial scrutiny is made of the Bid marked "Original" by BPE to identify whether all the required material has been enclosed.
- A finding that the required material has been enclosed is not final or conclusive at this stage. This is an initial scrutiny only and a final decision on responsiveness and compliance will only be reached after careful deliberation in the examination by the Commercial, Technical and Financial Evaluation Committee.
- Should a Bidder fail to mark a Bid as "Original", one of the copies shall be deemed to be the Original Bid by a representative of BPE at the time of the opening the Bids.
- Should there be a difference between any of the copies submitted, the contents of the counterpart marked as "Original" or deemed as "Original" shall prevail.
- All Originals and copies of the Commercial, Technical and Financial Parts of Bids are then secured in safe keeping by BPE with access only for BPE authorised persons engaged in examination and evaluation of the Bids.

Sealing of Price Part of Bid

After the opening of the Commercial, Technical and Financial Parts of the Bid, each sealed envelope containing the Price Part of a Bid is examined by BPE and Bidders to verify that the sealed envelopes are intact and to rule out the possibility of tampering. A representative of BPE and of each Bidder that is present sign their names on the cover of the envelopes.

All the sealed envelopes containing the Price Parts of Bids are placed in a single envelope which is itself sealed and signed on its cover by a representative of BPE and a representative of each Bidder that is present.

The sealed envelope (holding the sealed envelopes containing the Price Parts of the Bids) is secured in safe keeping by BPE until the time of opening of the Financial Bid.

Responsiveness and Compliance

- (ii) the Bid for any other entity; or
- (iii) any business, assets, claims of liability, agreement or condition, whether to do with FGN, NCP, BPE, XXXX or otherwise, including sums owed to FGN for taxes, dues or any other reason may be disqualified.

Person May only Participate in One Bid

A Bidder may submit only one Bid and any person may participate in only one Bid. Where a person submits, participates in or is associated with more than one Bid, either directly or indirectly, by itself or through a Connected Person, it will cause all connected Bids to be eliminated or disqualified.

A Bid that contains alternatives, particularly with respect to Purchase Price of the Sale Shares, shall be treated as the submission of more than one Bid and the Bid with all alternatives shall be eliminated as not responsive or compliant.

Opening Commercial, Technical and Financial Part of Bids

Opening of the Commercial, Technical and Financial Part of the Bid will take place immediately after the closure of submission [] (xx pm) GMT on xxx.

A Bidder (a Registered Person that has submitted a Bid) is entitled to attend or send authorised representatives to the opening of the Financial Parts of the Bids.

BPE may in its absolute discretion invite media coverage of the event.

If a Bid has been revoked the names of the Registered Bidder that revoked a Bid will be read from the Bid Register and the envelope containing the revoked Bid will be identified and set aside unopened.

Of the remaining Bids, the envelopes containing the Commercial, Technical and Financial Part of the Bids (including those from substituted Bids), will be identified and opened.

- Each sealed envelope containing a Bid is examined by BPE and the Bidders to verify that the sealed envelopes are intact and to rule out the possibility of tampering. The sealed envelopes containing the Commercial, Technical and Financial Part of the Bid and the Financial Bid are separated.
- The names of Bidders are read out to the attendance.
- The envelope containing the Financial Bid is temporarily set aside until the

the Proposed Purchaser will be grounds for elimination, or disqualification, without any opportunity being given to remedy the deficiency.

38. We accept that no new members of a Proposed Purchaser may be introduced after the Date of Closure for submission of Bids.
39. We will be responsible for any costs incurred by us in pursuing this matter.
40. No right or license is granted to us in relation to any of the information being provided to us.
41. The furnishing of Documents or information will not constitute an offer by BPE, NCP, FGN or XXXX or the basis of any contract, or a representation that may be relied upon by us.
42. Damages may not be an adequate remedy for a breach of this Agreement, and as a result we unconditionally agree to waive any rights we may have to oppose the granting of equitable or injunctive or other relief in a court of law, including specific performance, mandatory injunctions, prohibitory injunctions and the like that may be sought by BPE, NCP, FGN or XXXX in relation to any breach or suspected breach of the agreements and undertakings contained in this Agreement.
43. No failure or delay by BPE, NCP, FGN or XXXX in exercising any of powers, rights or remedies under this Agreement shall operate as a waiver of those powers, rights or remedies, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them.
44. We will do and take all lawful things and actions as BPE may request to procure that the undertakings set out in this Agreement are fully and properly complied with and performed at all times.
45. We agree that the undertakings set out here will continue in full force and effect notwithstanding any omission, event or matter.
46. We accept that if we act by commission or omission, or if we encourage others to behave in a way that can reasonably be construed as collusion or acting disingenuously or in a way contrary to the spirit of the Bid Process, that apart from seeking damages or other relief, BPE in its sole discretion, may disqualify us from the Bid Process for XXXX.
47. This Agreement shall be construed and take effect in all respects in

accordance with the laws of Nigeria.

48. As a separate and independent undertaking we hereby indemnify BPE, NCP, FGN or XXXX against any loss, cost, claim, damage, expense, liability, proceeding or demand which they may incur or suffer in consequence of any breach on our part, or on the part of any persons for whom we are responsible, of the undertakings contained here, and that we unconditionally consent to submit to the non-exclusive jurisdiction of the courts of Nigeria.
49. Where the Registered Person is a consortium / contractual joint venture / special purpose vehicle or a lead member a consortium / contractual joint venture / special purpose vehicle the Registered Person has provided all other members with this Agreement and requested a letter from the members in the terms set out in the registration materials supplied by BPE.

Yours faithfully,

Name of Registered Person / Lead Member and address:

Signed this day of 200X for and on behalf of Registered Person by:

being duly authorised to act in this matter on behalf of the Registered Person

Documents

XXXX Information Memorandum and Bid Document [date xx 200x]
Other documents made available to the Registered Person.

the aims, procedures, terms and conditions and requirements of the Bid.

False or Misleading Statements or Material

The Registered Person agrees that at any time during the Bid Process, if BPE discovers or has reasonable grounds for suspecting a Bid contains a statement or document or that a Registered Person or member of a Proposed Purchaser makes a statement that:

- (i) is not authentic; or
- (ii) may have an un-authorised signature; or
- (iii) has been altered without the authority or permission of the issuing body; or
- (iv) has been forged, obtained by fraud or false representations or under false pretences; or
- (v) is submitted in a manner calculated to deceive or mislead; or
- (vi) purports to change a previously submitted statement without justification; or
- (vii) contains false or inaccurate statements or information or material misrepresentation;

BPE may in its absolute discretion disqualify the Bid, and the Registered Person and Connected Persons may be refused participation in any other bid process of any type operated by, or on behalf NCP / BPE.

Where There is No Bid or a Single Bid

Where no Bid is received or where only one Bid is received, the Bid Process can continue to be implemented.

Act as Principal

No Bid shall be accepted where a person submits the Bid "in trust", as "trustee", as "agent" or as "consultant" or with any similar qualification or description.

Bid must stand alone

A Bid which is made only by reference to, related to, or dependent upon

- (i) the Bid of any other person, or

envelopes should also have the other requirements specified in Part III Requirements for Submission of Bid.

The receipt of a substitute Bid shall be entered in the Bid Register giving the date and time of receipt of the substitute Bid and the name of the person delivering the Bid. A duplicate note of verification of receipt of the substitute Bid shall be issued to the Bidder.

Amended Bid

An amendment, by way of deletion or insertion in the text of a Bid, made prior to submission shall be initialled and dated by the Bidder in all copies of the Bid to avoid suggestions that changes may have been made after the Bid was opened. Failure to initial and date an amendment may lead to exclusion of the amendment from the examination of responsiveness and compliance or evaluation of the Bid.

Period of Validity of Bids and Duration of Bid Process

All Bids must remain valid in the first instance until **[180 days]**. No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids on the Date of Closure and the expiration of the period of Bid validity or any extension of the Bid validity.

In exceptional circumstances, BPE reserves the right to extend the time for identifying a Preferred Bidder or for Government to make a decision on accepting a Bid and the Bid validity shall be extended until [].

BPE reserves the right to terminate the Bid Process at any time.

Due Diligence on the Bidders

The Bidder agrees that BPE may, without seeking the permission of the Bidder, contact any person, make enquiries, seek confirmation, or verify any inclusion in or omission from a Bid or any matter related to a Bid, a Bidder or a member of a consortium.

Incomplete Bids

Each of the items listed in Part III. Requirements for Submission of Commercial, Technical and Financial Part of Bid and Price Part of Bid constitute an integral part of a complete Bid.

An incomplete Bid shall be regarded as not being responsive or in compliance with

Doc. E1.1(f)

ACKNOWLEDGEMENT OF RECEIPT OF REGISTRATION

BUREAU OF PUBLIC ENTERPRISES (Letterhead)

Acknowledgement of receipt of registration materials for purchase of Federal Government of Nigeria xx% equity shares in XXXX

This note acknowledges receipt of the following materials from [NAME OF REGISTERED PERSON]

1. Registration Form
2. Declaration of Eligibility
3. Confidentiality & Non-Interference Agreement
4. Letter of member of Registered Person (if applicable)
5. Registration fee of N by way of [Demand Draft / Bank Draft No. dated for N drawn on in favour of Bureau of Public Enterprises (BPE)

Acknowledgement of receipt of these materials is not an acceptance by BPE of the contents of the materials.

Signed for and on behalf of BPE

Date:

Name and Position:

LETTER OF AUTHORITY FOR REGISTERED PERSON TO INSPECT PUBLIC ENTERPRISE (PE) AND DOCUMENTS

Addressed to each registered person that has signed Confidentiality and Non Interference Agreement and obtained Information Memorandum and Bid Documents and copied to TLT, PE and Ministry

Letter head of BPE

Date

Dear --

Letter of Authority To Visit X

You have registered with BPE as a person interested in the privatisation of X PE. This letter authorises you or persons acting on your behalf to visit X to inspect the facility, books and records at a suitable and reasonable time to be arranged with the Managing Director of X and confirmed by you in advance. The Managing Director of X is Mr-- and he may be contacted at --

The inspection is to enable you to prepare and submit a bid for the purchase of the Assets of X that are the subject of the privatisation transaction. Every effort will be made to facilitate the inspection and to meet all reasonable requests associated with it.

You are bound by the terms of the Confidentiality and Non-Interference Agreement entered into when first registering your interest in the privatisation of X. You are reminded that the bid process is subject to the disclaimer and limit on liability on the part of BPE, NCP, FGN and X set out in the Confidentiality and Non-Interference Agreement and the Information Memorandum and Bid Documents.

Yours faithfully,

Bureau of Public Enterprises

Copied to Transaction Liaison Team, Chairman and MD of X and parent Ministry

BPE reserves the right to change the Date of Closure, but shall only exercise this right where exceptional or unusual circumstances demand. A change shall apply to Registered Persons who shall be notified of the change, at the same time and as soon as practicable.

Bid Register

The receipt of a Bid will be entered in a Bid Register maintained by BPE, giving the date and time of receipt of the Bid and the name of the Registered Person. If the Bid is hand delivered, the name of the person delivering the Bid on behalf of the Registered Person, is also recorded. A duplicate note of verification of receipt shall be issued to the Registered Person.

Secure Storage of Bids

BPE shall ensure that each Bid is held securely from the time of receipt until after the deadline for receipt of Bids on the Date of Closure. BPE shall ensure that the Financial Bid shall be held securely until the opening of the Financial Bid.

Only individuals authorised by BPE to examine and evaluate the Bids shall have access to the Bids throughout the Bid Process.

Revocation of Bid Before Time and Date of Closure

A Bidder that has submitted a Bid and is included in the Bid Register may revoke a Bid by giving notice in writing to BPE. The notice must be delivered and received before the time and Date of Closure. A notice of revocation shall be deemed to revoke both the Commercial, Technical and Financial Part of the Bid and the Financial Bid.

The notice of revocation and the time and date of delivery and receipt of the notice shall be noted in the Bid Register and filed at BPE. A duplicate note of verification of receipt for the notice of revocation shall be issued to the Bidder. The time and date of revocation shall be the time and date in the Bid Register. A revoked Bid will be retained by BPE, but shall not be opened at the opening of Bids.

Bid Substituted for a Revoked Bid

A Bidder may substitute a Bid prior to the time and Date of Closure. A substitute Bid may be submitted only after revoking a submitted Bid in the manner set out in the previous paragraph. A substitute Bid shall have written on each of the envelopes containing the Bid "Bid to Replace Revoked Bid of [Name of Bidder]". The

No Obligation on BPE / NCP to Respond

BPE / NCP reserve the right, in their sole discretion, not to respond to any enquiries raised if it is considered inappropriate to do so and nothing in paragraphs 10 or 11 shall be taken or read as compelling or requiring BPE / NCP to respond to any enquiry or to provide any clarification.

A Registered Person shall not be granted an extension of time or other concession on the basis that BPE / NCP has not responded to an enquiry.

No Attempts to Wrongfully Influence the Bid Process

Any attempt to directly or indirectly influence the Bid Process at any time will lead to disqualification. After the Date of Closure, direct or indirect attempts to hold meetings, make oral requests, issue or submit material or comments relating to Bids or the Bid Process to any person will be grounds for disqualification.

Date of Closure for Receipt of Bid

A Bid, complete in all respects, shall reach the office of BPE at [] before xxxx hours (xx p.m. local time in Abuja) on [] (the "Date of Closure").

A Bid submitted after the deadline for submission of Bids on the Date of Closure shall be declared late, rejected and returned unopened to the Registered Person. No special pleadings will be entertained.

A Registered Person is responsible for the timely delivery and receipt of Bids prior to the time and Date of Closure and no liability shall attach to the NCP in this matter.

Hard (paper) versions of the Bid should be submitted along with the diskette containing a soft copy of the Commercial, Technical and Financial Part of the Bid.

Electronic transmission of the Bid to BPE or to any other person by fax or e-mail at any time during the Bid Process may lead to the Bid being disqualified.

Bid Should Only Be Submitted to BPE in the Manner Provided Here

A Bid should only be submitted to BPE. A copy of a Bid or information relating to a Bid should not be provided to any other person. Should BPE have reasonable grounds to suspect that a copy of a Bid or sensitive information from a Bid is available to a person other than the Bidder or BPE the Bid may be disqualified.

Extension of Time

Doc. E2.1(a)

PROCEDURES TERMS AND CONDITIONS OF BID PROCESS

These Procedures, Terms and Conditions apply to the Bid Process by which the Bureau of Public Enterprises ("BPE") acting on behalf of the National Council on Privatisation ("NCP") is seeking to identify a Preferred Bidder for [] shares (the "Sale Shares") of XXXX, registered in the name of [].

During the course of the Bid Process, where exceptional or unusual circumstances demand, the BPE and / or NCP ("BPE / NCP") may modify the procedures, terms and conditions and the requirements for Bids, with full and timely disclosure to Bidders of the modifications and the reasons for them.

The Procedures, Terms and Conditions are designed to ensure that Bids are given equal opportunity.

It is essential that the Bid is submitted in the English language and in the required format.

1. Construction and Interpretation

These Procedures, Terms and Conditions, together with all other documents, in the Information Memorandum and Bid Document (the "Document"), shall be read as one document. Any word or expression defined or given a particular meaning, in these Procedures, Terms and Conditions shall have the same meaning in all other parts of the Document and other materials, unless the interpretation should be inconsistent with the context or expressly or implicitly excluded.

2. Definitions

In this Document, unless the context otherwise requires, the following expressions shall mean:

"Beneficial Owner" The person on whose behalf property, including shares, is held by a legal owner, who is a nominee or trustee on behalf of the beneficial owner. The legal owner usually acts in accordance with the instructions of the beneficial owner.

"Bid" A submission for the purchase of Shares, made by a Registered Person, in compliance with the process set out in the Document.

"Bidder"	A Registered Person that submits a Bid.
"Bid Process"	The process that includes: advertisement inviting registration of interest in the Sale of Shares, invitation of Bids for the purchase of Shares, Bid submission, examination of Bids for compliance and responsiveness, evaluation of Bids, identification of Preferred Bidder, decision on whether the price offer is acceptable, agreement for completion of the sale and transfer of the Shares, completion of formalities.
"BPE"	Bureau of Public Enterprises established by Public Enterprises (Privatisation and Commercialisation) Act 1999.
"Connected Person"	Examples include, but are not limited to: (a) A person which directly or indirectly controls, is controlled by, or is under common control of: (i) The Registered Person, or (ii) The Proposed Purchaser or member of the Proposed Purchaser, where the Proposed Purchaser is different from the Registered Person; or (iii) a person in which a person described in (i) or (ii) has a direct or indirect interest; (b) Two persons are connected if not less than one third of the share capital is held or one third of the voting power at board or general meeting is capable of being exercised by or on behalf of a third person. A decision by BPE / NCP with regard to whether persons are connected will be taken based on relevant facts and after examination of the relationship between the persons.
"Controller"	A person in accordance with whose wishes or instructions another person (including a company, shareholder or a director) is accustomed to act and "control" is understood accordingly
"Date of Closure"	[hours] (x p.m.) GMT on [] the latest date and time by which Bids are to be received by BPE on behalf of NCP.
"NCP"	National Council on Privatisation established by Public Enterprises (Privatisation and Commercialisation) Act 1999.
"Legal Owner"	Person registered as the owner of property, including shares, who may hold the property on its

Enquiries and Clarification of Issues During Bid Process

There will be no scope for adjusting bids or submitting additional information after the Date of Closure so that a Registered Person must ensure that it has a full understanding of the matters set out in the Document.

Enquiries should be made as early as possible in the Bid Process. Enquiries must be received by BPE / NCP on or before [] to allow time to provide a considered response. Enquiries received after that time may not be answered. Responses to significant enquiries will be provided to all Registered Persons to ensure consistency of information but the source of the enquiry will not be revealed.

Enquiries relating to the privatisation should be addressed to:

Tel :
Cell :
Fax :
e-mail:

Comments on Draft Sale and Purchase Agreement / Specimen Bid Bond

A Registered Person should take professional advice and study the Draft Sale and Purchase Agreement and the Specimen Bid Bond in the Information Memorandum and Bid Document.

A Registered Person may submit comments in writing on the Draft Sale and Purchase Agreement and the Specimen Bid Bond to BPE / NCP on or before []. Comments and proposed changes should be sent by e mail to BPE / NCP with the proposed changes "tracked" on the electronic form of the Agreement and Bid Bond. There is no obligation on BPE / NCP to respond to the comments or to change the Agreement or Specimen Bid Bond. If BPE / NCP decide to revise the Draft Sale and Purchase Agreement or the Specimen Bid Bond BPE / NCP will e-mail Registered Persons with the revised versions by [].

BPE / NCP reserves the right to alter the Sale and Purchase Agreement after the Date of Closure or to seek additional indemnities, warranties, representations, guarantees or performance obligations from a Proposed Purchaser or members of a proposed purchaser.

participation and acceptance that each member is jointly and severally liable for Proposed Purchaser's obligations.

(d) The prior consent of BPE / NCP is required to alter, by way of addition or reduction, the composition of a Registered Person / Proposed Purchaser after registration and prior to submission of a Bid. If there is a new member then all members must submit to BPE / NCP new registration materials that reflect the changed membership.

* Sales defined as: Sales figures net of subsidies and net of any sales related taxes and duties, such as excise duty, sales tax, value added tax etc. if any. The value of any subsidies and sales related taxes / duties should be provided separately.

** Net Worth is defined as: Equity Share Capital + Free Reserves & Surplus (excluding revaluation reserves)

Signatures on Documents

At any time where a document of any type is required to be signed as part of the Bid Process details of each signatory shall be provided in print below each signature.

Confidentiality and Non-Interference Agreement

Throughout the Bid Process, a Registered Person is bound by the terms of the Confidentiality and Non - Interference Agreement, signed at the time of registering interest and paying the registration fee.

Declaration of Eligibility

A Registered Person should immediately notify BPE / NCP in writing of any circumstances that mean that the Registered Person no longer meets the eligibility criteria set out in the signed Declaration of Eligibility.

Due Diligence Investigation and Inspection

A Registered Person will have an opportunity to perform a due diligence investigation and inspection of XXXX. At registration, the BPE / NCP will provide a letter of authority to a Registered Person to meet the Board and management of XXXX and to visit XXXX facilities.

own behalf, or as a nominee or trustee for the benefit of another.

"XXXX"

[] (certificate of incorporation Co No xxxx)

"Participant"

A participant in the Bid Process is a term that includes a Registered Person, Bidder, Proposed Purchaser or a member of any of these.

"Person"

An individual, a company, a partnership, corporation, a trust, an unincorporated organisation, a consortium of persons, a joint venture whether incorporated as a legal entity or formed by contractual agreement, a State, Government, or Government authority or any other entity.

"Preferred Bidder"

The Bidder identified through the Bid Process as having submitted a responsive and compliant Bid that offers the highest price and who is in good standing and not disqualified.

"Proposed Purchaser"

Person proposed in a Bid as the purchaser of the Sale Shares. The Proposed Purchaser must itself have legal capacity to contract for the purchase of the Sale Shares or in the case of an unincorporated body or contractual joint venture all members must sign the sale and purchase agreement and accept joint and several liability for the agreement.

"Purchaser"

Person to whom NCP agrees to sell the Sale Shares, with whom a binding agreement is signed, from whom payment is received and to whom the Sale Shares are transferred

"Registered Person"

Person registered with BPE / NCP as interested in the Bid Process who has paid the non-returnable registration fee and signed the Confidentiality and Non-Interference Agreement and Declaration of Eligibility.

Participant / Registered Person / Bidder / Preferred Bidder / Proposed Purchaser / Purchaser

The meanings of these terms should be noted:

Registered Person: a person registered with BPE that is eligible to submit a Bid. Where a Registered Person is unincorporated, and is formed by way of a contractual agreement between the members, the Registration Form and other documents shall be signed by each member who shall agree to be jointly and severally liable for the Bid.

Bidder: a Registered Person that submits a Bid.

Proposed Purchaser: a person proposed by a Bidder in a Bid as the purchaser of the Sale Shares.

Preferred Bidder: a person identified through the Bid Process as having submitted a responsive and compliant Bid, where the Bid achieves a rating of 75 points or more on Commercial, Technical and Financial evaluation and where the Bid contains an offer on behalf of the Proposed Purchaser to pay the highest price per share for all the Sale Shares

Purchaser: a person with whom NCP enters a binding agreement for the sale and purchase of the Sale Shares by which agreement full payment of the purchase price for the Sale Shares is received and the Sale Shares are transferred.

Where a number of persons make up a Purchaser, the Sale Shares must be purchased by a single legal entity that is the Purchaser and may not be purchased by individual members of the Purchaser. Parent company guarantees may be required in some circumstances.

Participant: Includes each of the foregoing and a member of the each of the foregoing.

Disqualification

Disqualification may take place at any time in the Bid Process from registration through to completion of the Bid Process.

Disqualification may take place before or after a Bid has been examined to see if it is substantially responsive and compliant or has been evaluated.

Disqualification may take place for reasons of breach of the statements in the Registration Form, Confidentiality and Non-Interference Agreement, Declaration of Eligibility or the procedures, terms and conditions and requirements set out in the Information Memorandum and Bid Documents or any of the obligations of Registered Persons and Bidders in the Document. Other grounds for disqualification are set out in the Document including those set out in paragraphs 13, 14, 15 and 25.

A Registered Person, Bidder, Proposed Purchaser or a member of a consortium making up one of these persons may be disqualified and the Bid will be excluded from the Bid Process.

Disqualification is without prejudice to any other rights or remedies available to NCP / BPE.

Conditions Where Proposed Purchaser is Different from Bidder

A Registered Person cannot take part in the Bid Process as an agent, adviser, consultant, nominee or trustee of another person, including another Registered Person or a person connected with a Registered Person. In all cases the Proposed Purchaser must fulfil the requirement of annual sales of at least N xxx and net worth of at least N xxx. Where the Proposed Purchaser is different from the Bidder additional conditions apply.

- (a) Where the Proposed Purchaser is a company the Bid must include verifiable documentary evidence that the Bidder either directly wholly owns the company or holds more than 50% or more of the shares and voting rights and that the Bidder has annual sales* of N xxx or more and net worth** of N xxx or more and that the Proposed Purchaser has annual sales of N xxx or more and net worth of N xxx or more;
- (b) Where the Bidder is not the sole owner of shares in a Proposed Purchaser company, then verifiable documentary evidence of the other persons that are shareholders and their shareholdings must be provided, together with authorised letters from each shareholder confirming that it is a shareholder and the number of shares held;
- (c) Where the Proposed Purchaser is an unincorporated association, joint venture or consortium formed other than by way of incorporation such as by contract, or a partnership the Bid must include verifiable documentary evidence that the Bidder holds more than 50% of the voting rights, has N xxx annual sales* and N xxx net worth**. There must be evidence from each member, confirming that it is a member, the nature and extent of its