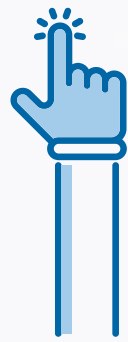




SIMPLIFIED LEGAL *And* REGULATORY GUIDE:

**Nigerian Electricity Regulatory Commission
(NERC) Regulations for the Procurement of
Generation Capacity, 2014**





CONTENTS

[Overview](#)

[Enabling Law](#)

[Objective\(s\)](#)

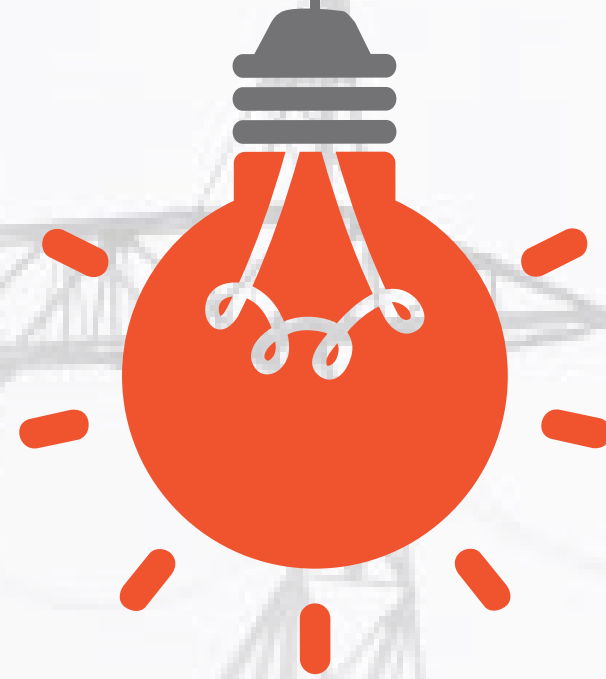
[Key Provisions](#)

[Key Stakeholders](#)

[Pricing and Tariffs](#)

[Incentives and Investment Opportunities](#)

[Sanctions and Penalties](#)



OVERVIEW

**Nigerian Electricity Regulatory Commission
(NERC) Regulations for the Procurement of
Generation Capacity, 2014**



The Nigerian Electricity Regulatory Commission (NERC) Regulations for the Procurement of Generation Capacity ('the Regulations') provides guidelines for participants in the electricity industry intending to procure additional generation capacity. In its two (2) chapters and fourteen (14) sections, the Regulations provides guidelines on solicitation, bids, proposals, communication, offers, audits, and petitions, etc.

The Glossary of Terms used in the Regulation and referenced in this guide can be found in the main Regulation¹ and in our [Glossary of Industry Terms](#).




ENABLING LAW

The Regulation was created by the Commission in accordance with the exercise of its legislative powers conferred by the Electric Power Sector Reform Act of 2005.² [Please refer to EL's guide on the Electricity Act.](#)



OBJECTIVE

**Nigerian Electricity Regulatory Commission (NERC)
Regulations for the Procurement of Generation
Capacity, 2014**

A decorative graphic on the left side of the page consists of several concentric, semi-circular bands in shades of gray and blue, resembling a stylized eye or a target.

The Regulations seeks to establish the following by virtue of its provisions³ –

- The provision of guidelines to be used by Buyers in the process of procuring additional electric generation capacity.
- A systematic, transparent, and competitive process which if followed, provides assurance to buyers that they can procure additional electric generation capacity at least cost to consumers, and is consistent with generation expansion plans approved by the Commission.
- The capacity of firms contracted to provide additional electric generation capacity possess the necessary technical, financial and industry expertise to carry defined generation projects to a successful completion.
- The drastic reduction of avenues in the electricity industry for financial manipulation and fraud during the resource acquisition process; and
- The increased involvement of the private sector in the provision of generation capacity to a Buyer in line with laid down processes.



KEY PROVISIONS

**Nigerian Electricity Regulatory Commission (NERC)
Regulations for the Procurement of Generation
Capacity, 2014**

KEY PROVISIONS



The following are the key provisions which must be noted by persons looking to participate in the electricity industry and engage in the procurement of additional electric generation capacity.

Application of the Regulations

It is important to note that the provisions contained in the Regulations are applicable to the purchase by a Buyer of any generation capacity which is to be connected to a Transmission Grid System, or a Distribution Network (as an Embedded Generator).

Flowing from this, except in cases where NERC approves for 'good cause', Buyers are not permitted to solicit bids or proposals for the provision of generation capacity outside the scope of the Regulations; and are also not permitted to enter into contracts for the purchase of electrical output from any generation facilities outside the scope of the Regulations.

In the Nigerian power sector, the Nigeria Bulk Electricity Trading (NBET) plc is the 'Buyer'. This is because the NBET serves as the sole credible off-taker of electricity produced within and outside the national grid.

The following transactions are exempt from the above limitations:

- Small Scale power plants generating 10MW or less.
- Purchase of occasional electricity supply from a self-scheduling generator.
- Any procurement agreements entered into by a Buyers before the promulgation of the Regulations; and
- Any procurement initiated by a Buyer under any option or other right to acquire generating capacity subject to the approval of NERC, where such option or other right had been granted prior to the promulgation of the Regulations, irrespective of the option exercise date or other right.



Solicitation of New Generating Capacity

The System Operator of the electricity industry is responsible for the preparation of annual reports on the capacity needs and constraints of the electrical system for a five-year period ahead analyzing the historic and current demand profiles and providing an outlook covering at least five years ahead on issues relating to:

NERC defines good cause in the following ways:

- 1. Renewable and Alternative Power** – These are Renewable energy-based projects such as solar, wind, biomass or small hydro which do not require fuel supply agreements and have feed-in-tariffs approved in line with the Feed-In Tariff Regulation of 2015.
- 2. Environment-related projects** – Where a guaranteed fuel source for the generation of power may be a solution to waste disposal challenges. E.g., a landfill generating power from landfill gas.
- 3. Grid Stability** – This would be recognized in cases where project construction is done in strategic locations supporting the stability of the electricity grid. However, the System Operator must be involved in the process and stability studies must be undertaken.
- 4. Excess Generation** – This includes companies with Captive Power Generation Permits looking to sell their excess power to the national grid.
- 5. Available Fuel Source** – This includes companies with available fuel; however, such companies must undertake competitive procurement and take efficient price.
- 6. Government Funded Projects** – These will be considered on a case-by-case basis.



- (i) Projected gross MW demand of the system;
- (ii) Name plate and available capacity of generating units;
- (iii) Anticipated generating capacity of units;
- (iv) Recommended injection points on the transmission grid for additional generation capacity;
- (v) Planned generation plant retirements;
- (vi) Projected transmission grid system capabilities and constraints;
- (vii) Current and projected natural gas and other fuel supply capabilities;
- (viii) Requirements for new black start generation;
- (ix) Available free capacity in international interconnector;
- (x) Forecast energy consumption of each distributor;
- (xi) Forecast system peak load and energy consumption for each month of the year, and
- (xii) Such other operational and regulatory information as required by Buyers and current/potential owners of generating and transmission assets as part of their current, continued participation or planned retirement from the Nigerian Electricity Supply Industry (NESI).

If upon the preparation of an annual report, there is an indicated requirement for the procurement of additional generating capacity over a period of 12 months, Buyers approved by NERC can begin the procurement processes in the following ways –



- Announce intention to request proposals for the provision of the required capacity;
- Invite potential bidders to submit Expressions of Interest (EOI) to be considered in the solicitation process; and
- Announce the dates anticipated for making available Requests for Proposals relating to such additional capacity.

Expressions of Interest

A Buyer will always determine, subject to approval by the Commission, the information that must be provided by interested potential bidders before such bidders can become considered to be involved in the solicitation process.

Expressions of Interest (EOIs) are formal declarations by potential bidders of their interests in participating in the bidding for additional generation capacity.

Also, invitations for the submission of EOIs published by the Buyer must showcase:

1. The nature of the generation capacity sought to be procured;
2. The information which must be submitted for an EOI to be considered;
3. The selection criteria and process which will be used to determine whether a person will be granted Qualified Bidder Status for the purpose of the solicitation process; and
4. The date and time at which these EOIs are to be submitted if they are going to be considered.

Bidders in submitting EOIs must showcase the following:

1. The Technical Expertise of the bidder;
2. The Financial Capability of the bidder; and
3. The Operating experience of the bidder.



Furthermore, it is worthy of note that invitations for the submission of EOIs must be published by the Buyer in English and in the Federal Government Tenders Journal, the World Bank procurement website and at least two newspapers circulating generally throughout Nigeria. Invitations can also be requested for submission through international publications or trade journals, or any other media which may be appropriate, e.g. the Buyer's website.

Following the submission of EOIs, the Buyer would consider all bids submitted within the time frame specified in its invitation and in accordance with the selection criteria published in its invitation. Once the Buyer determines the qualified bidders, NERC is to be notified alongside the bidders including bidders that were unsuccessful which will be done in writing indicating the reasons for rejection. Qualified bidders would subsequently receive requests for Proposals (RFPs) for the procurement of additional generation capacity.

The identities of these qualified bidders, with respect to such RFPs, must be published by the Buyer.

Confidentiality

Notably, the Buyer may require a Qualified Bidder to enter into a confidentiality agreement before the former releases any documents relating to the RFP. All documents submitted by the Qualified Bidder such as EOIs or final transaction documents, are also to remain confidential unless otherwise ordered by NERC.

Requests for Proposals

The Buyer will prepare the RFP document for the purpose of inviting proposals from Qualified bidders for the procurement of additional electric generation capacity. These RFPs will be issued to each qualified bidder who enters into a confidentiality undertaking with the Buyer.



- Copies of the most recent Annual Report prepared by the System Operator;
- An explanation of the basis on which the bids will be evaluated;
- An explanation of the process by which a shortlist of bidders will be established;
- Details of the length of time set for each stage from the issuance of the RFP to contract execution;
- Drafts of the principal contracts which the Buyer recommends to be entered into by the Successful Bidder;
- A timeline for the undertaking and concluding of contract negotiations;
- Standard form bid bond or other security which a Buyer may require to be posted by bidders;
- Details of the technical, operational, and financial requirements ;
- The language in which bids should be submitted;
- The manner and form in which bids should be submitted;
- The type(s) of project(s) for which proposals are requested, including any requirements with respect to;
 - Fuel type and availability;
 - Set and plant size;
 - Location;
 - Anticipated operational characteristics;
 - Requirements for system interconnection; and
 - Statement of extent of willingness to undertake necessary system interconnection if so required
- Other information which the Buyer deems appropriate.



The RFPs will contain or be accompanied by the following information:

If the information stated above are not provided by the bidder, the RFP shall be disqualified as being 'non-responsive'.

Indicative Bids

The Buyer may use indicative bids for the procurement process; however, this must be identified in the RFP document issued to a Qualified Bidders. The RFP must also state the interval between the submission and evaluation of Indicative Bids, the publication of the shortlist and the invitation to lodge Final Bids.

Indicative Bids are used by the Buyer to ascertain the best initial proposals from Qualified Bidders submitted as preliminary indications of the Final Bids. It helps the Buyer to limit the number of Qualified Bidders who would be shortlisted and invited to submit Final Bids.

Qualified bidders, when submitting Indicative Bids, must have such bids contain the following information:⁴



- Corporate details of the bidder;
- The bidder's response to the technical requirements stated within the RFP;
- The bidder's indicative technical proposal;
- Indicative price proposed by the bidder as the Power Purchase Agreement price divided into capacity (fixed) and energy charges
- The finance plan of the bidder with details of indicative debt and equity capital available for the project;
- Any issues of concern to the bidder regarding the terms of the project agreements released by the Buyer at the time;
- Details of relevant experiences of the bidder regarding ownership and operation of generation plants in Nigeria and elsewhere;
- Details of all internal and external authorizations which will be required by the bidder and the steps which have been taken to obtain the required authorizations; and
- Any other indicative information which to the bidder, is representative of its qualifications to execute the RFP.

Following the submission of an Indicative Bid, the Buyer will be expected to evaluate the bids in line with the evaluation criteria specified in the RFPs issued to the Bidders in the first place. The outcome of the evaluation of the Indicative Bid process will be made known to all Qualified Bidders, indicating their success or failure to qualify for the Final Bid competition. Successful Bidders – also known as Shortlisted Bidders – will have their names published by the Buyer and will then be invited to make Final Bids.



Final Bids

Qualified Bidders who are invited by the Buyer to make Final Bids, will be required to put forward a bid security in the form of a bid bond or other forms which may be determined by the Buyer as appropriate towards safeguarding the integrity of the solicitation process.

Final Bids submitted must contain the following information:

- All information required during the indicative bid submission stage (highlighting any changes to the information provided as at the indicative bid stage);
- The bidder's final and detailed technical proposal;
- The bidder's price proposal with supporting statements in the form required in the RFP document;
- The bidder's financial plan as regards funding the project, including evidence of financial commitments from third parties, in the form required in the RFP document;
- Any matters of material concern to the bidder as regards the terms of the project agreement released by the Buyer which was not previously discussed during the bid process;
- Information regarding the internal and external authorizations obtained by the bidder, information authorizations yet to be obtained, and a schedule showing the timeline in which such authorizations will be obtained; and
- Any other information a bidder chooses to submit in support of its bid.

Following the submission of such Final Bids, the Buyer will evaluate the bids in line with the evaluation criteria established in the RFPs. Each evaluation will be conducted in the presence of two observers from NERC, and all necessary negotiations will be conducted in the presence of at least two of the observers from NERC.



Tender Audit Reports and Publication

Following the determination of the successful bidder, a Tender Audit Report must be submitted by the Buyer to NERC for the confirmation of the successful Bidder by the Commission who will appoint a tender Auditor to conduct an audit and produce a report regarding the conduct and results of the procurement process. Following approval, a Buyer may announce its readiness to execute a Power Purchase Agreement (PPA) with the Qualified Bidder that submitted the bid achieving the highest ranking during the bid evaluation ('Successful Bidder'). The Buyer will also enter into contracts for the construction, operation, maintenance and supply of wholesale generation capacity.

After obtaining the Commission's certificate of approval, the Buyer will publish in the same publication as was done with its request for EOIs, the completion of the process, the issuance of the certificate, the name(s) of the relevant IPP needed for additional generation capacity, the capacities to be constructed, the sites where the IPP is to be located and the timeframe in which the IPP is to deliver commercial capacity.

Unsolicited Offers

Unsolicited bids for additional generation capacity are not to be considered by Buyers regarding any RFP process or under any circumstances whatsoever.

Petitions

Bidders can make petitions to NERC regarding the bidding process within 21 days after the result of the bidding process has been published by the Buyer. Such petitions must showcase the deviation of the Buyer from the rules, procedures or guidelines specified by the Buyer in the Request for EOIs or RFPs, or a contravention of the provisions in the Regulations. Petitions must not be based on the decision of the Buyer as regards whether an entity emerges a Qualified Bidder or its bid not getting declared as the preferred bid by the Buyer.

NERC will subsequently decide on the petition within 20 working days from the date of the submission of the petition.

PROCESS OF PROCUREMENT FOR ELECTRICITY GENERATION CAPACITY



Initiation



The System Operator prepares an Annual Report assessing capacity needs and system constraints of the NESI for a five-year period.



Approval



Once the Annual indicates a requirement of additional generating capacity within the next 12 months, the procurement process will be started by a Buyer subject to the approval of NERC.



Expression of interest



The Buyer will make domestic and international publications inviting potential bidders to qualify for consideration in the solicitation-of-bids process by submitting an Expression of Interest.



Due Diligence Review



The Buyer will consider all EOIs submitted on or before the closing date and time stated in the invitation.
The Buyer will subsequently notify NERC of its conclusions regarding the qualification of potential bidders who have submitted EOIs and notify all potential bidders of its determination.



Request for Proposal



The Buyer will issue a Request for Proposal Document to Qualified Bidders for the procurement of additional capacity



Final Bids



Qualified Bidders would submit detailed and final proposals in response to the RFP



Evaluation of Proposals



The Buyer will conduct an evaluation of the final bids in the presence of two of the Commission's observers; and all negotiations shall be conducted with at least two of the Commission's observers present

Technical, financial and other specifications stated as evaluation criteria within the RFP shall serve as the basis for evaluation.



Power Purchase Agreement



The Successful Bidder will execute a Power Purchase Agreement with the Buyer based on the outcome of satisfactory negotiations

Before this occurs, however, the Buyer must submit a Tender Audit Report to NERC



KEY STAKEHOLDERS

**Nigerian Electricity Regulatory Commission (NERC)
Regulations for the Procurement of Generation
Capacity, 2014**



Nigerian Electricity Regulatory Commission (NERC)

The key stakeholder for the implementation of the provisions contained in the Regulations is the Nigerian Electricity Regulatory Commission (NERC). NERC supervises the process of procurement for additional generation capacity, ensuring that the procedures used in practice conform with the provisions in the Regulations.

The background of the slide features a faint, dark silhouette of a high-voltage power transmission tower, also known as a pylon, which is a lattice structure. It is positioned centrally and extends from the bottom towards the top of the frame, serving as a thematic backdrop for the electricity-related document.

PRICING **AND TARIFFS**

**Nigerian Electricity Regulatory Commission (NERC)
Regulations for the Procurement of Generation
Capacity, 2014**

PRICING AND TARIFFS



The Regulations does not provide specifically for pricing and tariffs other than reference to the PPA price which will form the subject of negotiation between the Buyer and the Successful Bidder in line with the Regulations.

INCENTIVES AND INVESTMENT OPPORTUNITIES

Nigerian Electricity Regulatory Commission (NERC)
Regulations for the Procurement of Generation
Capacity, 2014



INCENTIVES AND INVESTMENT OPPORTUNITIES



The Regulations spell out the processes to be used by a Buyer in procuring additional generation capacity from the private sector (existing and/or new generation companies, including the holder of a bulk trading licence and the holder of a distribution licence) via a bid solicitation procurement process as detailed in the Regulations.



SANCTIONS AND PENALTIES

**Nigerian Electricity Regulatory Commission (NERC)
Regulations for the Procurement of Generation
Capacity, 2014**



Unsolicited bids will not be considered by the Buyer.⁵ Also, if the Commission determines that the procedure followed by the 'Successful Bidder' does not conform with the provisions in the Regulations, such Bidder will be disapproved by NERC, thus preventing any contracts being entered into between the Bidder and the Buyer.⁶

Referenced Statutory Instruments

- Electric Power Sector Reform Act (EPSRA), 2005

Endnotes

1 NERC, Regulation for the Procurement of Generation Capacity, 2014. Available at <https://nerc.gov.ng/index.php/component/remository/Regulations/Regulation-for-the-Procurement-of-Generation-Capacity-2014/?Itemid=591>
2 Sections 96(1) & (2) (c) & (d) NERC, Electric Power Sector Reform Act (EPSR), 2005. Available at [https://nerc.gov.ng/index.php/component/remository/Regulations/Electric-Power-Sector-Reform-Act-\(EPSR\)-2005/?Itemid=591](https://nerc.gov.ng/index.php/component/remository/Regulations/Electric-Power-Sector-Reform-Act-(EPSR)-2005/?Itemid=591)
3 S.4
4 S.9.2; See Second Schedule to the Regulations
5 S.12
6 Supra. Note 21

DISCLAIMER

This document titled the “Simplified Legal and Regulatory Guide” of the referenced country is not expected to form the basis of, or be construed as standard legal advice; nor should any of its contents and representations be strictly relied upon for any activities. Electricity Lawyer (EL) will not be liable for decisions whatsoever that are made based on the contents of the document.

For Enquiries and/or Advisory Services, kindly reach out to us at our e-mail address: ask@electricitylawyer.com

For Research and Insights, kindly reach out to us at our email address: insights@electricitylawyer.com

For Training and Capacity Building, kindly reach out to us at our email address: trainings@electricitylawyer.com



ELECTRICITY
LAWYER