DIRECT NEGOTIATION

THE PRESIDENCY

Federal Government of Nigeria | Infrastructure Concession Regulatory Commission

1.0 Introduction

Direct Negotiation is a procurement method under which a public agency negotiates exclusively with a private proponent of a Public-Private Partnership (PPP) project, in lieu of a competitive bidding process based on specific conditions prescribed in the ICRC (Est. Etc.) Act 2005, PPP Regulations, and other applicable PPP Guidelines issued by the ICRC.

2.0 Conditions for Direct Negotiation

The ICRC may recommend the use of direct negotiation in a PPP process when any of the following conditions are substantially satisfied, among others, provided that no conflict of interest exists on the part of the MDA or any external consultants involved in the assessment or negotiation process.

2.1 Uniqueness of the Proposal and Intellectual Property

The PPP project originates from an unsolicited proposal that demonstrates originality of concept, proprietary technology, or intellectual property developed independently by the proponent. The concept or innovation is not otherwise available in the market and cannot be readily replicated without infringing applicable intellectual property rights.

2.2 Sole Interested and Qualified Party

A sole project proponent has submitted a proposal or responded to a Request for Qualification (RfQ) and satisfies the prequalification requirements.

2.3 Public Interest and Urgency

The project addresses urgent or high-priority national needs, where the conduct of an open competitive bidding process would adversely impact timely project delivery. Also, the project is directly aligned with national development plans or fills a critical infrastructure gap.

2.4 Overall Feasibility

The proposal has undergone a comprehensive feasibility analysis, demonstrating technical soundness, legal permissibility, financial sustainability, affordability, and compliance with applicable environmental & social standards.

2.5 Continuation of an Existing Project or Contract

The project is a logical extension, expansion, or integration of an ongoing project being executed satisfactorily by the same private party, where competitive tendering would result in inefficiencies or increased costs.

2.6 Financing Exclusivity

The private proponent has secured unique financing arrangements, guarantees, or investor commitments that are not reasonably replicable by other market participants.

2.7 Market Testing and Justification

The ICRC determines, based on sufficient evidence exists, through market sounding or feasibility analysis, that direct negotiation is likely to deliver equal or greater value for money compared to competitive procurement.

3.0 Step-by-Step Process

Step 1: In accordance with the Unsolicited Proposal Guide, the ICRC shall lead and coordinate due diligence on the Private Proponent and its partner(s), and the MDA shall proceed with direct negotiation where so recommended by the ICRC.

Step 2: Negotiation Parameters

- Negotiation is undertaken to finalize the contractual terms and conditions of the project, guided by the following key negotiation parameters:
  - Clear output specifications
  - Performance standards
  - Payment mechanisms
  - Concession Period
  - Contract clauses
  - Risk allocation
  - Dispute resolution mechanisms

Step 3: Next steps are as contained in the PPP Process Guide.