

Bidding for Business Opportunities in Uganda's Oil and Gas Sector

Are you compliant with the local content requirements?



Source: Total

1. Introduction

As Uganda draws closer to the long awaited final investment decision (“FID”) for developing the country’s crude oil discoveries, there should be heightened focus on the subject of local content especially for enterprises positioning for the forthcoming business opportunities. Local or national content is not only an evaluation parameter for scoring the best bidders. Integrating locals and host communities in the oil and gas value chain also wins over their support and acceptance which is essential for the seamless implementation of the oil projects. Unless the underlying bid proposals conform to the country’s oil and gas local content requirements, the sector regulator (“**Petroleum Authority of Uganda or PAU**”) would not sanction the final award of these contracts. It may also set the stage for the losing bidders to challenge the tendering process which can be disruptive to the project implementation schedules as has been the case with some recent procurements in other sectors.

2. Timing of FID

FID is expected in the first half of 2021 or sooner. It will set off a flurry of economic activities as the oil companies embark on investing in the requisite infrastructure for crude oil production. Up to \$ 20 billion is projected to be incurred on building the crude oil gathering and production facilities, refinery and crude oil pipeline. Oil companies are presently evaluating or inviting proposals from potential contractors that will supply inputs and services to the project activities. The contracts are expected to be firmed up and awarded after FID.

3. Local content

A dominant theme of Uganda’s local content requirements deriving from specific legislation and contractual undertakings is the overarching objective to localize oil and gas business opportunities. Many developing countries indeed have little of enduring value to show from oil production. While they have earned direct revenues from the sale of crude oil and collected the supplementary fiscal levies, there has been minimal if any trickle down impact on their domestic economies. By harnessing well oil and gas production, Uganda will create forward and backward linkages in the economy. The country’s oil and gas local content requirements aim at ensuring that there is the optimal participation of Ugandans in the sector value chain through the recruitment, employment and capacity development of locals, procurement of goods and services obtainable in Uganda, fostering local supplier development and achieving technology transfer.

4. Regulatory oversight

Prior to the award of major project services and supplies contracts, there will be a comprehensive review of the proposed offer terms by the Petroleum Authority of Uganda. Amongst other considerations, PAU must approve every contractor’s national content plan before their intended contract is approved to be awarded by the oil companies. Even where local capacity may be lacking, contractors must have express commitments to accelerate local supplier development. In the absence of this, PAU will decline to approve the award of contracts.

Even when supplies and services contracts are awarded, PAU would continue to monitor the implementation of the local content. PAU is empowered to enforce the observance of local content requirements premising on the agreed upon performance indicators in the approved national content plans.

5. Intended bidding vehicle

Some business opportunities are reserved exclusively for Ugandan companies and locals. Ugandan companies are those entities established in Uganda, employ majority of locals, use locally available raw materials but have also been approved by the regulator. It is therefore important that entities intending to bid for these ring-fenced opportunities have in place the right bidding vehicle.

While other opportunities may not be ring-fenced, it is the requirement of the law that these can be supplied by foreign companies only when they are in joint venture with Ugandan companies or with the approval of the PAU. This is intended to incrementally improve the capacity of Ugandan companies to eventually garner capacity to source all project inputs from Uganda.

6. Local content plans

Intending bidders must have in place elaborate national or local content plans. In the request for proposals, the oil companies in Uganda namely Total and CNOOC would outline the minimum basic local content issues that the intending bidders must consider to comply with Uganda's law.

Local content plans in general contain information spelling out elaborate strategies for the promotion of the employment and training of Ugandans, transfer of knowledge and technology and the utilisation of goods and services by locals. There are stringent rules already in place guiding the deployment of expatriate workers in the sector. Contractors must commit to have quarterly supplier forums and also maintain a tender information office. Host communities near the project sites should be given chance to supply manpower and other inputs to the extent possible. Community content that gives employment priority and supply of goods and services to communities near work sites is also a key consideration.

7. Conclusion

It is worth noting that the oil laws only set out minimum local or national content standards to comply with. The oil companies and their contractors can go over and above the basic standards. So significant is local content in the contracts award process that by law when the gap between the best evaluated bidder and second best is less than 5%, the vendor that scores higher on local content takes first priority for the tender award. Oil companies and their contractors are also increasingly aware of the need to earn the trust of the local communities to secure the social license to operate. Local content plans integrating the participation of locals in the oil and gas value chain demonstrate the goodwill to secure the much needed support of the locals and project host communities.

For support with structuring commercially viable tax and legal investment structures compliant with Uganda's oil local content requirements, please contact your usual Cristal Advisor.

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At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's chief of staff for the Energy and Resources Industry Group seeing him play a lead advisory role in Uganda, Kenya, Tanzania, Mozambique, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

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Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

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John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

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Dickens leads the oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

He is a certified project control specialist (IFP) and holds a Master of Laws Degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■



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