

## **PRESIDENT BUHARI SIGNED EXECUTIVE ORDER NO. 5 FOR DEVELOPMENT OF LOCAL CONTENT IN SCIENCE, ENGINEERING AND TECHNOLOGY**

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In a proclamation entitled "**Presidential Executive Order for Planning and Execution of Projects, Promotion of Nigerian Content in Contracts and Science, Engineering and Technology,**" President Muhammadu Buhari, pursuant to the authority vested in him by the Constitution, signed on Friday, February 2, 2018 the **Executive Order No. 5 ("EO5")** by which all Ministries, Departments and Agencies ("**MDAs**") of government were directed to engage indigenous professionals in the planning, design and execution of national security projects and maximise in-country capacity in all contracts and transactions with science, engineering and technology components. The Executive Order took effect immediately.

The thrust of the EO5 is the recognition of the vital role of science, technology and innovation in national economic development, particularly in the area of promoting Made in Nigeria Goods and Services ("**MNGS**"). Strategically, the main objectives of the EO5 are the harnessing of domestic talents and the development of indigenous capacity in science and engineering for the promotion of technological innovation needed to drive national competitiveness, productivity and economic activities which will invariably enhance the achievement of the nation's development goals across all sectors of the economy. These goals have been previously encapsulated in a number of policy documents, such as the Vision 20:2020; National Science, Technology and Innovation Policy (NSTIP) first approved by the Federal Executive Council ("**FEC**") in 2012; Economic Recovery and Growth Plan, (ERGP 2017 – 2020); Science, Technology and Innovation Strategy (STISA) 2024 and 2063; and Nigeria's targets under the United Nation's Sustainable Development Goals, (SDG 2030).

The EO5 makes certain specific directives which include the following:

- **All procuring authorities shall give preference to Nigerian companies and firms in the award of contracts, in line with the Public Procurement Act, 2007;**
- **Where expertise is lacking, procuring entities shall give preference to foreign companies and firms with demonstrable and verifiable plan for indigenous capacity development, prior to the award of such contracts;**
- **MDAs shall engage indigenous professionals in the planning, design and execution of national security projects and consideration shall only be given to a foreign professional, where it is certified by the appropriate authority that such expertise is not available in Nigeria;**
- **Nigerian companies or firms duly registered in accordance with the laws of Nigeria, with current practising licence shall be lead in any consultancy services involving Joint Venture (JV) relationships and agreements, relating to Law, Engineering, ICT, Architecture, Procurement, Quantity Surveying, and etc.;**



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- **MDAs shall ensure that before the award of any contract, Nigerian counterpart staff are engaged from the conception stage to the end of the project and shall also adopt local technology that meet set standards to replace foreign ones;**
- **The Ministry of Interior is prohibited from giving visas to foreign workers whose skills are readily available in Nigeria;**
- **The Federal Government shall introduce Margin of Preference (“MoP”) in National Competitive Bidding, in the evaluation of tenders, from indigenous suppliers of goods manufactured locally over foreign goods (MoP shall be 15% for both international competitive bidding for Goods and domestic contractors for national competitive bidding for Goods. For Works for domestic contractors, the MoP shall be 7.5%);**
- **Foreign companies or firms shall not be engaged in contracts for Works, Goods, and Services in the country in violation of the standard international best practices as provided for under relevant statutes such as the Companies and Allied Matters Act (CAMA), Council for Regulation of Engineering (COREN) Act, Chartered Institute of Purchasing and Supply Management Act, Public Procurement Act, and the National Information Technology Development Agency (NITDA) Act as well as other relevant Nigerian laws and regulations on acquisition of technology and conduct of public procurement;**
- **MDAs shall ensure that all professionals practising in the country are duly registered with the appropriate regulatory bodies in Nigeria, and shall ensure, in collaboration with the Head of the Civil Service of the Federation, that all foreign professional certificates are domesticated with the relevant professional bodies before being considered for any contract award or employment in Nigeria;**
- **Agreements involving any Joint Venture and Public Private Partnership (PPP) between a foreign firm and a Nigerian firm, for technology acquisition or otherwise, shall be registered with the National Office for Technology Acquisition (“NOTAP”) in accordance with the provisions of the NOTAP Act, before such contract are signed by the MDAs;**
- **A Nigerian company or firm shall not be disqualified from an award of contract by any MDA on the basis of the year of incorporation except on the basis of qualification, competence and experience of the management in the execution of similar contracts;**
- **NOTAP shall develop, maintain and regularly update a Data Base of Nigerians with expertise in science, engineering, technology and other fields of expertise while the Ministry of Interior shall take into consideration the NOTAP Data Base together with other similar data from the Nigerian Academy of Engineering; Nigerian Content Development and Monitoring Board; Federal Ministry of Science and Technology and other relevant Ministries; in determining the availability of local skilled manpower in Science, Technology and Innovation (STI) for the grant of Expatriate Quota;**



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- Where qualifications and competence of Nigerians are either unavailable or unascertainable, the Ministry of Interior shall ensure that Expatriate Quota for projects, contracts and programme are granted in line with the provisions of the Immigration Act and other relevant laws, and may create special immigration classification to encourage foreign expatriates (particularly from African countries) to reside and work in Nigeria for the purpose of sharing knowledge with Nigerian professionals; and
- The Federal Inland Revenue Service (FIRS) and the Ministry of Finance shall ensure that tax incentives are granted to existing machine tools companies (including foundry, machine shop, forge shop, and indigenous artisans) to boost local production of their products while tax incentives may be granted to Small & Medium Enterprises and foreign firms for the utilisation of local raw materials that are authenticated by the Raw Materials Research and Development Council (RMRDC).

### HISTORY OF NIGERIA'S PRESIDENTIAL EXECUTIVE ORDERS

The history of Presidential Executive Orders started in the country with the resolve of the current administration to reform the administrative and regulatory environment for both private and public sector players, leading to the establishment in 2016 of the Presidential Enabling Business Environment Council (“PEBEC”) with its ancillary Enabling Business Environment Secretariat (“EBES”) to drive the process for the ultimate goal of improving the country’s economic productivity, diversification, competitiveness and global rankings on the World Bank’s ease of doing business index.

Pursuant to this, the Vice President, Professor Yemi Osinbajo SAN GCON, in his capacity as the Acting President at the relevant time, signed the initial three (3) EOs (EO1, EO2 & EO3) on Thursday, May 18, 2017 with focus on:

1. *The promotion of transparency and efficiency in the business environment designed to facilitate the ease of doing business in the country,*
2. *Support for local content in public procurement by the Federal Government, and*
3. *Timely submission of annual budgetary estimates by all statutory and non-statutory agencies, including companies owned by the Federal Government.*

Also on Thursday, June 29, 2017, the then Acting President signed the EO4 on the *Voluntary Assets and Income Declaration Scheme (VAIDS)*, which offers tax amnesty (until March 31, 2018) to tax payers who have defaulted in their tax obligations in the past. The new Executive Order 5 is the first to be signed by His Excellency, President Muhammadu Buhari GCFR and it is expected that it will complement the earlier four (4) Executive Orders in effectively placing the country on the path to its envisioned place in the global community of advanced economies.

### COMMENTS ON THE NEWLY ISSUED EXECUTIVE ORDER 5

As a way of ensuring successful implementation of its provisions, the EO5: (i) strategically emphasises the importance of competence and approved codes & standards for the indigenous professionals being



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encouraged by its directives; (ii) prescribes collaboration between MDAs and the Standard Organisation of Nigeria (SON); (iii) states that punishment for any violation of its provisions shall be as stipulated in the Public Service Rules and other relevant laws, including those governing public procurement and professional practice in Nigeria; as well as (iv) establishes the Presidential Monitoring and Evaluation Council (PMEC) – with the President as Chairman and the Vice President as Alternate Chairman – to monitor progress of the implementation of the Executive Order.

Without doubt, the EO5 has laid foundation for the gradual take-off of the envisioned industrial, diversified and self-sustaining economy with 100 percent in-country capacity utilisation and development. The EO5 borrows essentially from the jurisprudential underpinning of the Nigerian Oil and Gas Industry Content Development Act, 2010 (otherwise known as the "**Local Content Act**") but while the Local Content Act applies only to the oil and gas industry, the EO5 covers all science, engineering, technology and innovation-based works and projects. However, like the Local Content Act, we observed that there may be need to give statutory flavour to the EO5 in the near future in order to achieve maximum impact. This could be done by incorporating provisions of the EO5 in an Executive Bill to be enacted into law by the National Assembly.

*The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo*

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