

FINAL DRAFT



PUBLIC PROCUREMENT & CONCESSIONS COMMISSION
Monrovia, Liberia



A POLICY OF MARGIN OF PREFERENCE

For Liberian and Domestic Business

IN THE PROCUREMENT OF GOOD, WORKS AND SERVICES

Justice 2007

Ensuring Economic and Efficient use of Public Funds

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A policy for the Margin of Preference (MOP) in the Procurement of Goods, Works and Services in the public Sector Economy of Liberia.

Chapter 1: General Provisions

Section 1.1 Titles

Section 1.2 short titles

Section 1.3 Definitions

Section 1.1 Title: This Regulation or Policy shall be known, styled and called “The Margin of Preference for Liberia.

Section 1.2 Short Title: This Regulation or Policy may be cited as the”MOP”.

Section 1.3 Definitions: For the Purpose of the Margin of Preference (MOP), the following terms or phrases shall have the indicated meaning:

“Liberian Business” is a business or an established Legal Person registered under the Liberian Law whose ownership is 51% or more Liberian, managed technically and financially by Liberians and operating in Liberia.

“Domestic Business” is a Business owned by foreign nationals and registered under Liberian Law, with less than 51% Liberian ownership or without Liberian ownership but operating in Liberia.

“Operating in Liberia means a business entity whether Liberian or not but with office(s) or place of conduct of business and all of its activities/trading are in Liberia.

‘Technically’ means managerial policies and decisions are made by a Liberian.

‘Financially’ means a Liberian must be signatory to the account of the entity and to make all financial decisions.

“Margin of Preference” is defined as an opportunity provided under the PPC Act for Liberian and Domestic Businesses to have preferential treatment/consideration in bidding for works, goods and services **in the public sector economy**, particularly in priority sectors, such as construction, health, consultancy and supply of goods associated with job creation and poverty reduction.

Chapter 2: Introduction

Consistent with the policy of Government to create an enabling environment to attract more foreign direct investments and at the same time empower Liberians to participate actively in the management of the Economy and then partner with foreign businesses, the Government grants Margin of Preference to businesses owned by Liberians to the extent of 51% and above and businesses owned by foreign nationals registered and operating in Liberia. Section 45(1), of the PPC Act, provides that a procuring Entity may grant a Margin of Preference to Domestic Businesses and Liberian Businesses that is businesses owned by foreign nationals registered and operating in Liberia. The Commission shall by Regulation set or adjust the minimum benchmarks for the application of the Margin of Preference as it may deem necessary. This Margin of Preference policy is a joint and cooperative efforts of all stakeholders in Ministries and Agencies of Government as well as Civil Society Groups and Professionals from works, goods and consultancy.

Chapter 3 BACKGROUND

3.1 The Historical Context

A reflection on the past shows lack of participation by Liberians in Liberia's national economic development programming. This has led to psychological and social mindsets of the nation, culminating in poverty and ultimately civil strife. An economy in which foreign nationals dominate the supply of essential goods and services and Liberian nationals are performing only symbolic roles in the provision of essential consumer items (cement, rice, building materials, agricultural implements, etc.) **cannot engender a mindset of pride toward self-sufficiency**. Furthermore, capital flight and vicious cycle of poverty occasioned by the lack of local capital accumulation persists.

3.2 The Liberian Context

Following the conduct of Democratic elections in October 2005, and the inauguration of a new Government and the coming into force of the PPCA, the setting of MOP for Liberians and Domestic Businesses as provided for under the PPC Act is a necessary intervention that would sustain the promotion of economic empowerment of Liberian businesses to participate in the mainstream of the economy and to encourage foreign direct investment, particularly in the areas of manufacturing and concessions. The major goal of the Government of Liberia in this direction is to empower Liberians to become leading partners and the main players in the management of the economy through partnership with foreign businesses. In the development and implementation of policies and programmes for economic recovery, the application of the MOP for Liberian and domestic businesses is essential in facilitating Government's drive to attain a sustainable national socio-economic recovery processes that would underpin durable transition from post-war rehabilitation to sustainable development in the longer term.

The overarching strategy in this endeavor therefore is to establish a symbiotic linkage between sustainable development in the longer term with a localized national economy in which effective significant participation of Liberian and Domestic Businesses supported by foreign direct investment would constitute the foundation.

As Liberians emerge from war to social re-integration and physical re-construction, the Government recognizes the deficiencies inherent in the plight of the Liberian Businesses and therefore seeks to provide the necessary capacitating support, in the quest to mobilize development resources and ensure economic sustainability. A key component of this support is to introduce the policy of MOP in procurement and concessions for Liberian and Domestic Businesses operating in the country. For domestic businesses, the wider objective of the MOP is to encourage foreign businesses to partner, invest and operate in Liberia and to complement Government's economic recovery program through the creation of employment opportunities.

3.3 Margin of Preference: A Conceptual Framework for Liberia

MOP eases the conditions for Liberian and Domestic Businesses to provide goods, works or services in Government procurement. MOP could also be applied in admission to learning institutions for equity or access to opportunity. The MOP shall provide for the physically impelled/ disabled population and on the basis of gender inequality.

The MOP as a policy is underpinned by an implementation strategy that is focused on attaining sustainable social and economic development in the post-war era, based on forming and galvanizing optimized local and foreign resources in an operational framework of genuine partnership. In doing so, it is intended to primarily engender equity in participation in the delivery of goods, works and services; encourage opportunities for participation and in so doing broaden the participatory base; mutually build and sustain capacities; restore confidence in the economy; facilitate the emergence of homegrown entrepreneurship; and cultivate positive local role modeling for aspiring youths.

Chapter 4: Objectives of the MOP

4.1 **General Objective**:: The general objective of the MOP is to provide an opportunity for Liberian and Domestic Businesses to have competitive edge in procurement (works, services, and goods), investment loan and other business activities.

4.2 Specific objectives

The specific objectives are:

- (1) To ensure greater and enhanced participation of Liberian Businesses in the national economy;
- (2) To facilitate a sustained process of capacitating by encouraging the development of genuine partnerships between local and foreign businesses;

- (3) To encourage Domestic and Liberian businesses to engage in manufacturing and production of essential goods locally, thereby reducing procurement/importation of foreign manufactured goods;
- (4) To encourage Liberians to engage in works, services or consultancy in Liberia
- (5) To encourage foreign direct investment; and
- (6) To promote the generation of international partnership.

4.3 MOP Application and Policy Implication

The MOP requires a multi-faceted commitment involving Government and investors.

Chapter 5: Areas of MOP Application

5.1 Pre-Qualification Level (including Expression of Interest)

The MOP shall consider pre-qualification evaluation criteria. In this regard, where a Liberian firm meets minimum pre-qualification requirements, the MOP shall apply with consideration to the following:

- Liberian Businesses managed technically and financially by Liberian just returning, resettling and reintegrating into the society, and engaging in business activities;
- The minimum pre-qualification requirements and the evaluation method/criteria shall be clearly spelt out, and where Liberian and Domestic Businesses meet the minimum criteria, the MOP shall apply.

5.2 International competitive bidding (ICB) for goods, works and Services

Liberian and Domestic businesses must satisfy at least 80% of all ICB financial requirements to be qualified for MOP consideration, while international businesses must meet 100% of financial requirements. However, all businesses are required to meet 100% of non-cash requirements.

5.3. For consulting services foreign consulting firms must always partner with Liberian Consulting firms of comparable experience in subject areas.

5.4. MOP for Investment loan

Where applicable and subject to the requirements of lending institutions, Liberian Businesses should be provided up to 100% Government negotiated and/or guaranteed investment loan opportunity. However, in the case of export oriented manufacturing

activities, Domestic and Liberian businesses should be given preference up to 100% of such loan.

5.5 MOP for procuring businesses under National Competitive Bidding (NCB) and International Competitive Bidding (ICB)

- a. That for the procurement of similar goods manufactured and /or produced locally with minimum quantity of about 30% of its inputs imported, Liberian businesses shall be granted 50% preference.
- b. For the procurement of similar goods of which 50% of its raw materials are Liberian, Liberian and Domestic businesses shall be granted 40% preference;
- c. For procurement of similar goods assembled in Liberia, all other things equal, Liberian and Domestic businesses shall be granted 30% preference;
- d. To stimulate local entrepreneurship, 40% of central Government purchases shall be reserved exclusively for local manufacturing companies. To qualify for MOP, the manufacturing companies must meet 50% of the following conditions:
 - 1. Employment between 10 to 200 people;
 - 2. Achieve local contents specified in 5.5(a) (b) and (c) above;
 - 3. Have an annual turnover ranging between US\$50,000.00 and US\$100,000.00;
 - 4. Located within at least 50 miles radius of Monrovia;
 - 5. Liberian citizen's participation in the company's management;
 - 6. Amount of equity held by Liberians in the company;
 - 7. The company's localization plan of non-citizen positions; and
 - 8. The company's impact on stimulation of other economic activities.

Local firms can still tender for the remaining 60% with international companies.

- e. For NCB, all things being equal, Liberian Businesses should be given preference of not more than 15% to 20% difference in cost/price bidding for works, goods and services, quality and capacity to perform being non-negotiable.
- f. In bidding for works/construction in the amount of US\$100,000.00 or less, Liberian businesses with comparable qualification, ability and experience shall **be given preferential treatment in the award of such contract.**

- g. For ICB for works above the value in (f), Liberian or Domestic Businesses with 40% Liberian participation should be given preference of not more than 12% percent difference in **cost/price** bidding cost for works, goods and services.
- h. For ICB for Works Liberian Business or Domestic Businesses with at least 40% Liberian participation must partner with foreign businesses to qualify in their submission.
- I. For ICB, Domestic Businesses with 25% Liberian participations should be given preference of not more than 8% difference in **cost/price** bidding for works, goods and services.

5.6 MOP for employment creation / generation & return of Liberians in the Diaspora

- Liberian and domestic businesses that can assure emphasis on or clear actions for employment creation / generation shall have MOP consideration for investment incentive.

5.7 **MOP for fully Government funded projects:** For the purpose of the MOP, Liberian and domestic business shall be given preference for the award of contracts for projects fully funded (100%) by Government. However, as it is been practised in other countries of the World, preference shall be given to Liberian Businesses with demonstrable comparable ability.

Chapter 6: Prioritizing Application of the MOP

The MOP shall be applied on the basis of cost / price of goods / services to be provided, based on the following prioritized sequence, all other requirements considered:

- 6.1 Liberian Businesses
- 6.2 Domestic Businesses without Liberian’s participation may partner with Liberian Businesses to qualify in their submission for at least up to 30% preference.

Chapter 7: Policy Guidance and Results-Based MOP

The setting of an MOP must be guided by Government’s Commitment to implement the Act, including results-based policies, procedures, standards, compliances and monitoring, in order to appropriately respond to the how, by whom and when the policy shall be applied. For instance, applying an MOP for particular goods, works or services could reduce the quality and standards if the MOP does not consider comparable quality, qualification, and future capacity and sustainability issues of the preferred institution/organization.

Therefore, thematic implementation issues like capacity assessment to examine management and financial expertise, legal and administrative status, and structural framework implementation strategies must be made an integral part of the monitoring process.

In other words, high productivity and sustainability required in a given area, from institutions/ organizations awarded the MOP (in procurement, works and investment) must not only be able to meet the demand of the population, but should also be able to provide quality goods and services. In the granting of MOP opportunity, the capacity level of the grantee must be assessed for **maximum output** in compliance with the objectives or policies of grantor (Government). In essence, compliance and monitoring issues of the MOP cannot be underestimated if the policy is to achieve its desired objectives of expanding the economy and, benefiting and empowering the citizens.

Rigorous monitoring and evaluation by PPCC Monitoring and Compliance Division should include the review of documents (banking records, minutes/ resolutions of the board, financial, technical and legal registration) of both Domestic and Liberian Businesses on an annual basis and to conduct capacity assessments to determine the functional status of these businesses as paramount requirements for ensuring successful application of the MOP.

7.1 Basic strategies to ensure compliance

For a Liberian Business to qualify for MOP, Liberian should be the principal head with the rights/authority and privilege to make policy decisions on managerial (financial/technical) matters affecting the operation of the business, including being a signatory to the account. However, this does not preclude Liberian Businesses from recruiting foreign experts/managers in their businesses. For both Liberian and Domestic Businesses to benefit from the MOP, they must show proof of ownership.

Compliance monitoring to be carried out to ensure the above, shall be for the ultimate purpose of avoiding fraud, fronting and other unwholesome practices that could sabotage or misuse the incentives / opportunities provided by the MOP.

