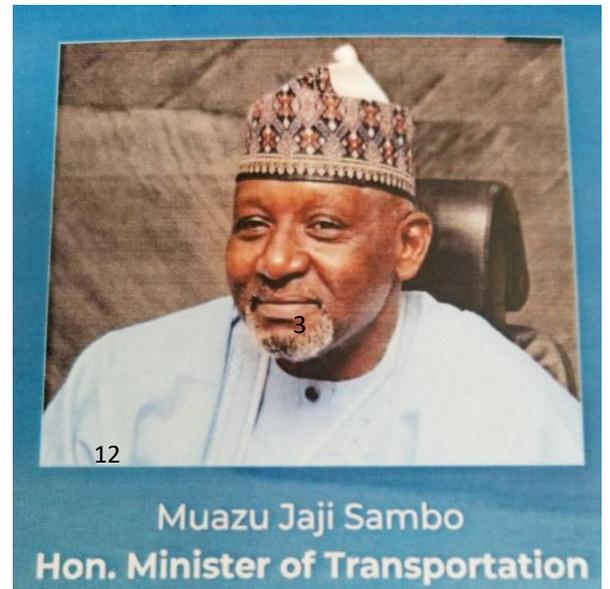


PAPER PRESENTATION

HOW TO STREAMLINE THE QUALIFICATION PROCESS TO ENCOURAGE THE CONSTRUCTION OF NEW PORTS BY STATES FOR A SUSTAINABLE NIGERIAN BLUE ECONOMY

DELIVERED BY - ENGINEER MU'AZU JAJI, HONOURABLE MINISTER OF TRANSPORTATION

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1.0 INTRODUCTION

1.1 Background

The World Bank defines blue economy as the sustainable use and conservation of marine, inland aquatic and coastal resources for food security, job creation and economic growth.

On 17th January, 2022, The Vice President of the Federal Republic of Nigeria, His Excellency Prof. Yemi Osinbajo launched the expanded Committee on Sustainable Blue Economy, saddled with the responsibility of strengthening the governance framework and infrastructure of the maritime sector in Nigeria. This was targeted at boosting trade and addressing the challenges of poverty and unemployment in the Country.

In Nigeria, the Administrator and Regulator of ports is the Nigerian Ports Authority (NPA). The Authority is required to undertake studies, identify capacity gaps, plan the development of new ports, prioritize and develop bankable studies for public solicitation for port development in line with existing legislations. The developments are tailored on the landlord model requirement with government providing land, common user facilities and regulation.

1.2 Why Ports?

A port lies at the heart of the logistics supply chain linking a country with its trading partners. This is especially the case for Africa, which relies on maritime shipping as its principal mode of transportation for both primary and manufactured goods.

Empirical studies have shown that approximately 80 percent of world merchandise trade are carried by ships. Maritime transport remains by far the most common mode of international freight transport.

It is the backbone towards facilitating international trade, offering the most economical and reliable way to move goods over long distances. This explains why ports are necessary and an essential element of overall trade costs in Nigeria.

2.0 CATALYSTS FOR PORT DEVELOPMENT IN NIGERIA

2.1 Factors of Port Development in Nigeria

First was the development in maritime science which saw the invention and deployment of the sailing ship fitted with compass which replaced the oared ship

Secondly, the discovery of the resources and produce in West Africa that were badly needed in Europe for economic and industrial revolution, e.g. pepper, spices, gold, tin, columbite, iron ore and ivory

The third factor is the traffic in Africans, which ushered in the slave trade that many European and North American countries joined in, to take advantage of one of the most profitable ventures then, which was facilitated by the invention of the steam engine

2.2 Sequence of Port/Jetty Facility Developments in Nigeria

Phase	Period	Leading Port / Jetty Facilities
I	1500 - 1670	Gwata, Bonny, Old Warri
II	1670 - 1750	Old Calabar, New Calabar, Bonny, Brass
III	1750 - 1860	Bonny, Lagos
IV	1860 - 1910	Lagos, Akassa, Old Calabar, Sapele Warri, Degema
V	1910 - 1950	Lagos, Port Harcourt

VI	1950 - Date	Lagos, Port Harcourt, Onne, Bonny, Okrika; Lekki I Badagry Deep Sea Port – just approved by FEC on 3
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2.3 Legal Framework

2.3.1 Federal Government

The Federal Government possesses certain powers and functions relating to port development under our laws:

In the Exclusive Legislative List contained in Part 1 of the Second Schedule of the 1999 Constitution, the items on which ONLY the Federal Government can legislate (to the exclusion of all other tiers of Government) were specified.

Item 36 was emphatic on maritime shipping and navigation, including among others, shipping and navigation on tidal waters

Such ports as may be declared by the National Assembly to be Federal ports

All Nigerian Ports are Federal Ports

No provision for private ownership of ports in Nigeria

2.3.2 Federal Ministry of Transportation

2.3.2 Honorable Minister of Transport

Section 30 (1) grants the Honourable Minister of Transportation the power to:

Declare any place in Nigeria and any navigable channel leading into that place to be a port

Specify the limits of any place declared as a port

Declare any navigable channel leading into a port to an approach to that port

Subsection (2) declared the limits of the ports to include:

- All ocean beaches within 100 metres of the level;

- The water ways, creeks and swamp-land below the highest astronomical tide level and all beacons, piers, jetties, slipways, quays and other works extending beyond the natural line of the high water level.

2.3.3 Nigerian Ports Authority

The Nigerian Ports Authority Act also provides functions and powers to be performed by the Federal Government through NPA

Section 7 (a) and (b):

- Provide and operate in the ports such facilities as it appears to it best calculated to serve the interest of Nigeria

- Maintain, improve and regulate the use of ports

Section 8:

- Construct, execute, carry out, equip, improve, work and develop ports, docks, harbours, piers, wharves, water courses, embankments and jetties.

Section 9:

- Is an omnibus provision empowering NPA if it deems it fit, to perform or exercise any of its functions or powers under the foregoing sections, other than the power to regulate, through an officer or agent or any other person authorized in that behalf.

By section 124 the Honourable Minister issues Policy directives to the Authority with regard to the exercise by the Authority of its functions

The essence of having to list the legal framework is to stress the role of the Federal Government in the development of Ports through the Nigerian Ports Authority

These policies are either specifically conceived through the National Transport Policy or periodically made to update current situations and modernize particular developments

2.3.4 Federal Agencies and Regulation

Federal Government Agencies involved in the process of port development include:

Nigerian Ports Authority

Infrastructure Concession Regulatory Commission (ICRC)

Debt Management Office (DMO)

PPP Units of relevant Federal Ministries

Port development is currently guided by:

National Economic Imperatives on need basis

Requirements of the ICRC Act and Regulations as may be amended from time to time

The provisions of the NP4 (National Policy on Public Private Partnership)

3.0 PORT DEVELOPMENT PROCESSES

3.1 In view of the fact that no private ownership is contemplated by our laws, current port development processes in Nigeria involve:

Submitting a proposal for development (solicited or unsolicited)

Development of an Outline Business Case and Final Business Case containing technical and financial details and obtaining all necessary approvals to proceed

Granting of Concession for port development and operations by the Federal Government

Executing a Concession Agreement containing details of the concessions – performance parameters, financial provisions, technical standards, concession period (which takes into account the recoupment period, construction period and actual port operations period, reversionary rights and other relevant provisions)

4.0 ROLES OF PARTIES IN PORT DEVELOPMENT

4.1 Federal Ministry of Transportation

Policy formulation and planning of basic marine infrastructure

Legislation

International relations

4.2 NPA

Ownership and administration of land and water within port limits

Planning and development of port operational infrastructure

Leasing and concession of port infrastructure and setting bench marks for tariff structure

Nautical/harbour operations and hydrographic survey

Marine incidents and pollution

Maintenance of safety and security at the common user areas

Enacting port regulations and bye-laws as well as monitoring and enforcing them
Day to day monitoring of operations and enforcement of relevant sections of respective Agreements.

4.3 DEVELOPERS AND OPERATORS

Cargo handling, stevedoring, warehousing and delivery
Acquisition of cargo handling and operations related equipment
Development and maintenance of ports' superstructure
Maintenance of safety and security within the terminal
Towage, mooring, bunkering, ship chandelling and ship repairs.

5.0 PORT REFORMS AND NEW PORT DEVELOPMENTS

5.1 Sometime between 2003- 2007, the Federal Government embarked upon a reform of the ports with the adoption of the Landlord model of port development as a policy.

Under the policy, The federal Government through its agencies would hold title to land, infrastructure and reversionary interest in all ports. The responsibility for the operations and maintenance is handed over to private sector operators who will invest in equipment, infrastructure upgrade and maintenance and carry out the operations. This applied to existing brown filed ports that were concessioned under the reform programme.

As regard new port development, for international shipping, the Nigerian Ports Authority in line with the Landlord policy adopted by the federal government is responsible for port planning, development of masterplan, timing for the development and ensuring port capacity needed matches the economic development of the nation.

In doing this, NPA is required to undertake studies, identify capacity gaps, plan the development of new ports, prioritize and develop bankable studies for public solicitation for port development in line with existing legislations.

The developments are tailored on the landlord model requirement with government providing land, common user facilities and regulation while the investment in infrastructure, equipment and management of the ports is left to the private sector through the grant of a concession by government. A similar approach is required for domestic/inland ports where NIWA has jurisdiction for port development.

5.2 The Process for Port Development

The process of port development currently would require private sector participation (including State Governments that participate through their investment agencies). Since it is a Public private partnership arrangement, the processes are guided by the Infrastructure Concession Regulatory Commission Act, 2005 and the guidelines made thereunder.

The ICRC Act under section 1(1) empowers all Federal Government Ministries, Departments, Agencies, corporations or bodies involved with the financing, construction, maintenance etc of public infrastructure to undertake same through a concession with the private sector which must have been prequalified. It implies a competitive process for the award.

Based on the above, ICRC developed guidelines for the identification, prioritization, development of business case, tendering, and award of concession for private sector participation in the financing, development, and management of public infrastructure by the private sector. The steps are provided on the ICRC website, a summary of which is as follows

5.3 Steps Provided by ICRC in the Development of Ports

Project identification, prioritization, undertaking of feasibility, establishment of an Outline Business Case. The project is listed by ICRC on its PPP project pipeline for public access.

Approval of Outline Business Case by ICRC and presentation for open competitive bidding and emergence of preferred bidder in conjunction with relevant ministries/agencies.

Preparation of Full Business Case, contract negotiation and presentation for ICRC issuance of Certificate of Compliance.

FEC approval and award of concession, project financing/construction.

Compliance monitoring during the term by government and handback at the end of term.

5.4 Solicited Proposals (Private Initiated Infrastructure Projects)

These are projects initiated by the government that is submitted in response to a specific work statement from the Ministry. A Request for Proposals (RFP) or Request for Applications (RFA) is sometimes issued to solicit proposals for specific projects or to provide specific services or goods.

5.4 Unsolicited Proposals (Private Initiated Infrastructure Projects)

These are projects initiated by private sector entities including State Governments, whether directly or through their investment corporations.

The process starts with the private sector recognizing an investment opportunity or a gap in capacity and presents a proposal to government on infrastructure development in the form of an Outline Business Case.

This is taken through the process to determine whether it meets government objectives, would result in advancement of the economic interest, supply needed capacity, enhance the welfare of the citizens and yield, value for money to government among other considerations by the government agency responsible, in line with requirements of the ICRC Act.

The process would typically involve:

Acceptance and evaluation of the proposal or Outline business Case by the government Agency. Where the Government agency is satisfied, it would accept the proposal or acquire same and present for ICRC approval and issuance of Certificate of Compliance.

The Agency either pays the cost of the proponent or accept same for competitive bidding on terms (including granting a right of first refusal to the proponent upon a competitive bidding process or through the award of bonus points during evaluation).

The proposal is put through competitive bidding after which there is preparation of the Full Business Case, contract negotiation and award as earlier stated.

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5.5 Port Development Plan and the Receipt and Treatment of Unsolicited Proposals

The Government has received unsolicited proposals some of which were initiated by State Governments including the Lekki Port which was prior to the ICRC Act. The proposals are first and foremost, submitted FMOT to assess if the proposals fit into the development plans and projections of government. This requires a lot of streamlining to ensure that projects are viable and does not result in over capacity that could render both the new and existing facilities unviable.

The current position of the Government is to discourage unsolicited proposals that are not based on viable projects and future developments contained in the infrastructure development plan of government under the National Transport Policy and programmes of the Agencies.

6.0 THE PORT DEVELOPMENT MASTERPLAN

6.1 NPA is in the process of developing a port development masterplan that would set out its policy in respect of port infrastructure development such that would match the current and future economic expectations/national goals and objectives:

Identify the gaps in infrastructure capacity;

Make projections on needed growth to address the capacity deficiency; and

Plan future development to ensure that port development is spaced out in time and over locations to ensure (a) in time development, (b) technology is up to date, (c) avoid over capacity that could result in unviable ports (Delta cluster of ports in the 1970s), (d) ensure competition, and (e) achieve economic growth, among other policy objectives.

7.0 THE BLUE ECONOMY AND PORT DEVELOPMENT IN NIGERIA

7.1 Blue Economy

Blue Economy is a term in economics relating to the exploitation, preservation and the regeneration of the marine environment

Throughout history, the oceans have been used to extract natural resources, conquer new lands and trade goods

This is in addition to cooling the planet and making it habitable

It provides food, jobs, water and is a source of economic growth and livelihood for millions of people around the world

Nigeria's Blue Economy remains one of its anchor subsectors with maritime trade contributing 1.6% of the GDP

7.2 To properly address the issue of blue economy, there is the need to consider Government's current policy on port development and management in Nigeria.

Port development in Nigeria today can be classified into two:

Ports for international shipping as direct call locations for vessels engaged in international trade. These ports are developed and managed by the Nigerian Ports Authority under the Nigerian Ports Authority Act.

Coastal and inland ports for domestic trade (cabotage) which are developed and managed by National inland Waterways Authority.

7.3 Besides the regular ports under the above categories, there are other specialized facilities mainly for industry support which in the local parlance are referred to as private jetties licensed under the Nigerian Ports Authority Act through a process that involves the Presidential Committee on Private Jetties. Most of the facilities in this category are attached to industries such as fertilizer plants, LNG, Oil and Gas etc and handle cargoes meant for the operation.

Considering that Blue Economy includes activities such as fishing which involves the use of vessels/crafts that call at waterfront terminals or jetties, there is also a framework for licensing facilities in this category. This could be through grant of jetty licences or designation of existing terminals as fishing terminals.

One such process which is on-going is for the designation of KLT I in Lagos as a fishing terminal with the hope that others will follow across the country. It needs to be stated that fishing terminals are ports used for vessel calls just like any other facility. The involvement of NPA in this situation is the provision of the facility while the fishing activity is regulated under a different sector.

7.4 In recent years, the Blue Economy concept has developed as a sound paradigm for the comprehensive and sustainable management of marine and coastal areas and their natural resources. Coherent and optimized co-existence of all sectors of activity is needed, while preserving the quality of ecosystems, goods and services in the long term.

The Port plays a pivotal role in the development of the Blue Economy as the interface between maritime and terrestrial space.

7.5 Ports are the epicenter of many aspects of the Blue Economy, including:

Tourism and Leisure

Fishing

Aquaculture

Offshore Renewable Energy

Marine conservation

Coastal Protection

Ship Building

Oil and Gas

8.0 STREAMLINING THE QUALIFICATIONS PROCESS FOR THE DEVELOPMENT OF NEW PORTS IN A BLUE ECONOMY

Streamlining the qualifications process for the development of new ports in a Blue Economy assumes that there was hitherto no uniform standards for qualification of new port developers. This is factually inaccurate.

The aspect of the Blue Economy recently introduced only added another layer or layers of qualification that had not been in existence since issues relating to the environment and its impacts on port development is a relatively recent phenomena.

The requirement for Environmental and Social Impact and Assessment studies in capital projects, including port infrastructure, is a relatively new concept in these climes.

It is simply required as a major qualification that the developers of new ports MUST show how such developments will impact on all aspects of the ocean, including diversity, environmental protection, commerce, the lives of members of the host communities and the improvement of the economic prosperity of the country through the oceans.

In addition to the traditional qualifications of providing demonstrable evidence of ability to:

Finance

Develop (through an EPC Contract)

And manage a new port development

To be qualified, the developer MUST equally provide evidence of:

Ability to integrate all aspects of the project into the maritime domain in such a manner that it would positively impact many economic activities, therein in a mutually beneficial manner.

Must have the capacity to exhibit the environmental friendliness of the port development project, effectively tracking its carbon footprints to enable quick and effective determination of its impact on the marine environment and other economic activities within the ocean.

Provide short, medium and long term projections of its ability to reduce CO2 emissions within the port immediately commercial operations commence.

9.0 CONCLUSION

The emergence of the Public Private Partnership processes further streamlines the qualification process for private participants in the blue economy. This was an enabler that made it possible for State Government to be major promoters in the emergence of Deep Sea Ports in Nigeria. Every Port has both the waterfront and the back-up land area in which the initial is within the legislation of the Federal Government while the latter is within that of the State, since Certificate of Occupancy is being given by the State Government.

Unsolicited proposals from State Governments must undergo the required due diligence and procedures for constructing new ports. There is no short cut to the process. Federal Agencies also need to reduce the red-tape bureaucracies to make the process easy and seamless, observing the tenets of the Ease-Of-Doing-Business, in order to attract Foreign Direct Investments.

Over the years, it has been observed that the bane of port development in Nigeria has been absence of a Port Master Plan. This explains the number of unviable ports as well as urban encroachment to the port environment. A good example is the Lagos Ports with the attendant congestion along the port corridors. This development comes with its concomitant negative consequences on port efficiency and at a cost. This must be guarded against in future developments.

In addition, Port development must be preceded by rigorous studies to determine both technical and economic viability. This is the only way by which we can move on the path of a sustainable Blue Economy.

THANK YOU FOR YOUR ATTENTION