

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KANO JUDICIAL DIVISION
HOLDEN AT KANO

SUIT NO. *FT/HC/KS/045/23*

BETWEEN

PACIFIC SILVERLINE LIMITED -

PLAINTIFF/APPLICANT

AND

ATTORNEY GENERAL OF THE FEDERATION -

DEFENDANTS/RESPONDENT

MOTION EX PARTE

BROUGHT PURSUANT TO ORDER 26 RULES (1), (3), (8), (9) and (10) OF THE FEDERAL
HIGH COURT CIVIL PROCEDURE RULES, 2019 AND UNDER THE INHERENT
JURISDICTION OF THIS COURT.

TAKE NOTICE that this Honourable Court will be moved on the ____ day of
____ 2023 at the hour of 9'0' clock in the forenoon or so soon
thereafter as Counsel on behalf of the Claimant/Applicant may be heard praying
for the following Order:

1.

AN ORDER OF INTERIM INJUNCTION RESTRAINING THE FEDERAL
GOVERNMENT OF NIGERIAN OR ANY OF ITS
AGENCIES/APPOINTEES, PARTICULARLY, NIGERIAN PORTS
AUTHORITY, MINISTER OF FINANCE, SECRETARY TO THE
GOVERNMENT OF THE FEDERATION, THE CHIEF OF STAFF TO THE
PRESIDENT OR ANY OTHER AUTHORITIES, COMMISSION, OFFICERS,
APPOINTEES (HOWSOEVER DESCRIBED) FROM GIVING EFFECT TO
OFFICIAL MEMO DATED THE 22ND DAY OF AUGUST, 2023 WITH
REFERENCE NUMBER: PRES/00-3/NPA/1/87/MF/81/SGF/5/86-
1/COS/44 PENDING THE HEARING AND DETERMINATION OF THE
MOTION ON NOTICE.

II.

AN INTERIM ORDER RESTRAINING THE FEDERAL GOVERNMENT OF
NIGERIAN OR ANY OF ITS AGENCIES/APPOINTEES, PARTICULARLY,
NIGERIAN PORTS AUTHORITY, MINISTER OF FINANCE, SECRETARY
TO THE GOVERNMENT OF THE FEDERATION, THE CHIEF OF STAFF TO
THE PRESIDENT OR ANY OTHER AUTHORITIES, COMMISSION,
OFFICERS, APPOINTEES (HOWSOEVER DESCRIBED) FROM ISSUING
ANY SUBSEQUENT CERTIFICATE OF "NO OBJECTION" OTHER THAN
THE ONE ISSUED IN FAVOUR OF THE PLAINTIFF AND OTHER
PREFERRED BIDDERS WITH RESPECT OF THE SERVICE BOAT
MONITORING AGENCY AGREEMENT ON THE 30TH DAY OF AUGUST,



2023, PENDING THE HEARING AND DETERMINATION OF THE
MOTION ON NOTICE.

III. AND FOR SUCH FURTHER ORDER(S) AS THIS HONOURABLE COURT
MAY DEEM FIT TO MAKE IN THE CIRCUMSTANCES OF THIS CASE.

THE GROUNDS UPON WHICH THIS APPLICATION IS BROUGHT:

I. On 30th August, 2023, the Public Procurement Act, 2007 issued a Certificate of No objection in respect of service contract with respect to Service Boat Operations after a successful bid process in which the Plaintiff/Applicant emerged successful with respect to Warri Pilotage District which was one of the four pilotage district the exercise was conducted for.

II. Upon the issuance of the Certificate of no objection, the Plaintiff/Applicant has waited for the issuance of the award letter and the execution of the agreement having fulfilled all its obligations under the tender process since its initiation in 2020.

III. While awaiting the completion of the bid process, the Plaintiff learnt that the President of the Federal Republic of Nigeria, was misled to, a Presidential directive in 22nd day of august, 2023 with reference number: PRES/00-3/NPA/1/87/MF/81/SGF/86-1/COS/44 in contravention of the laid down procedure contained in the Public Procurement Act, wherein the President directed the issuance of a contract contrary to the provision of the Public Procurement Act, 2007.

IV. The purported directive issued by the President of the Federal Republic of Nigeria after the bid process had been concluded in which the President directed the reinstatement of an expired Service Boat Monitoring Contract to one integrated Logistics Services Limited (Intel) whose contract expired by effluxion of time in August 2020 on the purported basis that the Intel's Contract with the NPA was wrongly terminated is ultra-vires the powers of the President and the President was misled into issuing that directive.

V. Contrary to the representation that informed the President's directive, Intel's contract which was for 10 years was not terminated but abated by effluxion of time in August 2020.

VI. Intel fully participated in the bid process initiated by the NPA and was accordingly disqualified for violating the Tender rules to wit; bidding for more than one Pilotage district.

The Bureau of Public Procurement having been satisfied with the bid process, has issued a Certificate of No objection on the 30th day of August 2023 in favour of the Plaintiff/Applicant and other Preferred bidders of other Pilotage district according to Section 16(4) of the Public Procurement Act.

Upon the issuance of the Certificate of No Objection, the process is semi-complete save for the issuance of the award letter and execution of the requisite contract.

that the President has no powers under the enabling laws to issue directives contrary to the laid down procedure as stipulated in the Public Procurement Act.

that it will be in the interest of justice to restrain the Defendant/respondent from circumventing the procurement process and accordingly compel the Defendant to complete the process and issue an award letter in favour of the Plaintiff/Applicant as stated in the Certificate of No Objection issued by the Bureau of Public Procurement.

that the Plaintiff/Applicant will suffer irreparable damage if the procurement process is circumvented based on the said presidential directive.

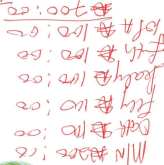
there is a urgent need to keep matters in status quo



Mase D A Ani Esq.
Muzaamil Yahaya Esq.
Arminu Sanli Yakasai Esq.

AND, Nigeria.
2348065364351
2348054436886
yandog@nigeriabot.org

18 SEP 1966



Settled By:

(5)

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KANO JUDICIAL DIVISION
HOLDEN AT KANO**

BETWEEN

PACIFIC SILVERLINE LIMITED -

AND

ATTORNEY GENERAL OF THE FEDERATION - DEFENDANTS/RESPONDENT
AFFIDAVIT IN SUPPORT OF MOTION EX PARTE.

I, **NAJIB KOGUNA**, Adult, Male, Muslim, Nigerian citizen of 17 Dogarawa Road, Kano do make oath and state as follows:

1. That I am a Director of the Plaintiff/Applicant herein and by virtue of my position I am conversant with the facts of this case.
2. That I have the authority of other Directors of the Plaintiff/Applicant to depose to this affidavit.
3. That the Plaintiff/Applicant is a Limited Liability Company carrying on Business in Nigeria with presence in Kano at No 17, Dogarawa Road, within the Judicial Division of this Court.
4. That the object of the Plaintiff/Applicant includes but is not limited to marine security and other ancillary services.
5. That the Subject matter of this suit affects the entire well-being of the Nation and all the states of the Federation including Kano State where the Plaintiff/Applicant is equally carries out business.
6. Unless otherwise stated the facts to which I depose herein are facts within my knowledge or obtained in the course of my work as a Director of the Plaintiff/Applicant.
7. I know that the Defendant/Respondent is the Chief law officer of the Federation and the Federal Minister of Justice who all actions against and/or on behalf of the Federal Government of Nigeria are commenced for and against.
8. I know that under the constitution there is separation of power amongst the three arms of Government.
9. Actions initiated in the name of the Defendant also covers all agencies of the Federal Government.

SUIT NO.



10. That in 2007, the National Assembly enacted the Public Procurement Law which was assented by the President to regulate Procurement Processes in Nigeria and set a legal frame work to regulate the grant of contracts by the Federal Government of Nigeria, its Ministries, Department and Agencies.

11. That sometime in December, 2019 the Managing Director of Nigerian Port Authority, one of the Agencies of the Federal Government of Nigeria in compliance with the Public Procurement Act initiated a public tender process for the appointment of Service Monitoring Agents in the Different Pilot District in the country.

12. Pursuant to the performance of the exercise the Plaintiff successfully participated in the Bid Process and came out qualified for the Warri Pilot District Service Boat Operations Monitoring Service.

A Copy of the Letter from the Nigerian Port Authority dated the 1st day of August, 2020 is hereby Annexed and Marked as Exhibit Pacific 1

13. The Bureau of Public Procurement in accordance with the Public Procurement Act, 2007 have now issued a Certificate of No objection in favour of the plaintiff with respect of Warri Pilot District. **A Copy of the Certificate of No objection is herein annexed and Marked as Exhibit Pacific 2.**

14. This is the last phase of the Procurement procedure and Nigerian Port Authority is only required to issue the Plaintiff with award letter and the execution of the contract agreement having fulfilled all its obligation under the tender process since its initiation in 2020.

15. The Plaintiff's legitimate expectation is that the Federal Government of Nigeria and all its agencies will carry out its operations in accordance with the dictates of the law without any interference whatsoever.

16. Whilst the Plaintiff was awaiting the Award and signing of the contract agreement, the Plaintiff discovered that the President of the Federal Republic in clear disregard to the laws of the land gave a directive to circumvent the procurement process and re-instate a Service Boat Monitoring Contract to Integrated Logistics Services Limited (Intel) whose contract stands determined by effluxion of time in August, 2020. **A Copy of the President Memo reference Number: PRES/00-3/NPA/1/87/MF/81/SGF/S/86 - dated the 22nd day of August, 2023 is herein annexed and Marked as Exhibit Pacific 3**

17. That I know that contrary to the representation that informed the President's directive Intel's contract which was for a period of 10 years was not terminated but abated by effluxion of time in August, 2020. **A Copy of the Memo from the Office of the Defendant reference Number: MJ/DSD/23/VII- dated the 18th November 2021 is herein annexed and Marked as Exhibit Pacific 4.**



SWORN TO AT THE FEDERAL HIGH COURT REGISTRY, KANO, This 18th day of September, 2023

BEFORE ME

DEPONENT

24. I make this solemn deposition in good faith, conscientiously believing the same to be true and correct in accordance with the Oaths Act, 2004.
23. That I know that it will be in the interest of justice that this court accedes to the reliefs sought by the plaintiffs.
22. That I know that the Federal Government is losing huge revenues due to the non-completion of the process.
21. That it will be in the interest of justice to prevent the completion of the act contained in Exhibit PS4
20. That I know that President has no powers under the enabling laws to issue directive contrary to the laid down procedure as stipulated in the Public Procurement Act.
19. This state of affairs is also confirmed by the letter from the Bureau of Public Procurement dated the 9th day of March, 2021. The letter from the Bureau of Public Procurement is herein Marked as Exhibit Pacific 5 respectively.
20. That I know that Intel is aware that this particular contract was going to expire by the effluxion of time and not a case of wrongful termination as it participated in the bid process initiated by the Nigerian Port Authority and was accordingly disqualified for violating the Tender rules to wit; bidding for more than one Port district. In the letter from the Office of the Defendant, the Defendant stated this fact in paragraph 8 of the said Exhibit

(7)



NIGERIAN PORTS AUTHORITY

HO/OGM/PROC/4D/2/513

12th August, 2020

Messrs. Pacific Silverline Limited,
4B, Louis Solomon Close,
Off Ahmadu Bello Way, Lagos.
+234 127 3620 - 3
info@pacificsilverline.com

Dear Sir,

RE: EXPRESSION OF INTEREST FOR THE PROVISION OF SERVICES AS MONITORING AGENTS
FOR SERVICE BOAT OPERATIONS IN WARRI PILOTAGE DISTRICT, PUBLIC NOTICE NO: 4115,
LOT 2

ISSUANCE OF REQUEST FOR PROPOSAL (RFP)

This refers to your Expression of Interest on the above mentioned subject matter. Please be informed that your company along with three (3) others have been prequalified to proceed to the next stage of selection process.

Consequently, you are required to collect the Request for Proposal (RFP) from the Office of the General Manager, Procurement, 3rd Floor, NPA Annex Building, 1 Joseph Street, off Marina, Lagos on evidence of payment of a non-refundable fee of ₦10,000.00 (Ten Thousand Naira) only. The RFR Number can only be generated at the office of the Asst. General Manager Tariff & Billing on the 4th Floor of the Corporate Headquarters, 26/28 Marina before payment in any commercial bank.

You are required to submit two (2) bound copies of your Technical Proposals in a sealed envelope and addressed to "SECRETARY TO THE TENDERS BOARD, NIGERIAN PORTS AUTHORITY" showing the Project Title "RE: EXPRESSION OF INTEREST FOR THE PROVISION OF SERVICES AS MONITORING AGENTS FOR SERVICE BOAT OPERATIONS IN WARRI PILOTAGE DISTRICT, PUBLIC NOTICE NO. 4115, LOT 2". Furthermore, the reverse side of the sealed envelope should have the name and address of your company. The sealed envelope should be placed in the designated Tender Box located on the 3rd floor of NPA Annex Building, 1, Joseph Street, off Marina, Lagos not later than 11.00am on Wednesday, 9th September, 2020.

The technical proposals received before the deadline for submission will be opened immediately at 11.00am on Wednesday, 9th September, 2020 in the Conference room on the 3rd floor of NPA Annex Building, 1, Joseph Street, off Marina, Lagos in the presence of bidders or their representatives. Please, ensure that you sign the bid submission register in the Bid Submission office as the Authority will not be held liable for misplaced or wrongly submitted bids. For further enquiries, please contact the "General Manager Procurement" on e-mail: info.procurement@nigerianports.org. Late submission will not be entertained. All costs incurred as a result of this tender invitation and any subsequent requests for information shall be borne by the bidding companies.

Yours faithfully,

A. Bademosi
Principal Manager, Procurement
For: Managing Director

(8) EXHIBIT Pacific 1

NIGERIAN PORTS AUTHORITY PROCUREMENT DIVISION INTERNAL MEMORANDUM

TO: Asst. General Manager, Tariff & Billing

FROM: General Manager, Procurement

REF: HQ/GM(PROC)/AD/

DATE: 12/08/2009

SUBJECT: PAYMENT FOR NON-REFUNDABLE FEE FOR COLLECTION OF
STANDARD BIDDING DOCUMENT (SBD)/REQUEST FOR
PROPOSAL (REP)

Kindly generate RRR number for non-refundable payment for

Messrs. Pacific Silverline LTD Address: 48 Lotus
Bohemian Grove off Okunimu Road, Lagos State

in the sum of ₦10,000 (Ten Thousand Naira) only in
favour of Nigerian Ports Authority for issuance of official receipt for Standard Bidding
Document/Request for Proposal in respect of project(s) as stated below.

Public Notice No. 4115 Lot 2

Project Title Protection of services as mentioned
Agents for service boat operations in Warri
Maritime District

[Signature]

Senior Manager, Procurement

For General Manager, Procurement

CC: AGM, Finance - For your information and issuance of NPA official receipt

BUREAU OF PUBLIC PROCUREMENT



THE PRESIDENCY
1100 Constitution Avenue, N.W.
Washington, D.C. 20540
202-456-2400

BPP/S.S.I./Vol.XVIII/23/064

August 30, 2023

CERTIFICATE OF "NO OBJECTION" FOR AWARD OF CONTRACT

The Bureau of Public Procurement (BPP) having examined your request and all the documents forwarded confirms that the project has satisfied all due process requirements for issuance of a "No Objection" to proceed to award of contract. Federal Executive Council's (FEC) Approved for the award of the Contract.

Project Name: Award of contract for the Engagement of Service Boat Operations Monitoring Agents in the four (4) Portage Districts, as follows:

S/N	Name of Company	Description of the Service	Rate
1	Recon. L.A. Logistics Limited	Service Boat Operations Monitoring Agent in the Lagoon District (Sub-1)	11%
2	Recon. Pacific Services Limited	Service Boat Operations Monitoring Agent in the Lagoon District (Sub-2)	11%
3	Recon. Pacific Services Limited	Service Boat Operations Monitoring Agent in the Lagoon District (Sub-3)	11%
4	Recon. Pacific Services Limited	Service Boat Operations Monitoring Agent in the Lagoon District (Sub-4)	11%

Certified Project Cost: Approved 15% remuneration to the Contractors for the Engagement of Service Boat Operations Monitoring Agents in the four (4) Portage Districts for a Period of Ten (10) Years, inclusive of all taxes.

Source of Funding: These projects are Contractor-financed and as such, no funding is required from the Federal Government.

Implementing Ministry/Agency: Ministry of Marine and Blue Economy/
Nigerian Ports Authority (NPA)

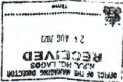
W.A. ———
Mamman Ahmadu, Mags
Director-General, BPP

Eng. Ibrahim G. Yusuf, Mags
Director of Public Procurement, BPP

NOT REVERSIBLE
A valid stamp only when used

EXHIBIT 2
PACIFIC 2

EXHIBIT 3



SECRET
NIGERIA

August 22, 2023

PRE/S/99-9/NPA/N/87/MF/N/BI/SBI/S/BS-V/CD/S/44

Reference

The Managing Director
Nigerian Ports Authority
26/28 Marina
Lagos

The Hon Minister
Ministry of Finance, Budget and National Planning
Central Business Area
Abuja

The Secretary to the Government
of the Federation
Shehu Shagari House
Three Arms Zone
Abuja

The Chief of Staff to the President
State House
Presidential Villa
Abuja

RE: BRIEF TO MR. PRESIDENT ON SERVICE BOAT OPERATIONS IN NIGERIAN PORTS AUTHORITY;
CASE FOR REINSTATEMENT OF INTELS NIGERIA LIMITED AS MANAGING AGENT

Reference:

A Letter MO/17/MF/VOL.XX/BS/45 dated 18th August 2023 on the above subject matter
I am directed to forward Reference A to you and to convey to you Mr. President's approval and further directive on prayer in para. 1 - 10.

2 Submitted for your further action please.

Gambirun Adarant

Private Secretary to the President

Enclosure
• Copy of Reference A

NIGERIAN PORTS AUTHORITY



NPA
FIN
Sgt
COS

REF: M011745/VC-X/545

18th August, 2023

His Excellency

Bola Ahmed Tinubu (GCFR)
President, Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria,
State House, Aso Villa,
Abuja.

Through:

The Permanent Secretary,
Federal Ministry of Transportation.

Your Excellency,

EXECUTIVE SUMMARY

ON

**BRIEF TO MR. PRESIDENT ON SERVICE BOAT OPERATIONS IN
NIGERIAN PORTS AUTHORITY: CASE FOR REINSTATEMENT OF
INTELS NIGERIA LIMITED AS MANAGING AGENT**

The attached brief is forwarded for the kind attention and consideration of His Excellency, Mr. President of the request to reinstate Intels Nigeria Limited as Agent to Nigerian Ports Authority (NPA) for the monitoring of Service Boat Operations in the oil industry related activities and collection of related charges.

The attention of Mr. President is drawn to the following facts:

a) Intels Nigeria Limited (Intels) was appointed as agent to provide this service to the Authority and had acted in that capacity for several years. Because of the remarkable growth in revenue recorded, Intels contract was renewed from time to time with the last renewal being in 2010 for 10 years expiring in August 2020.

Arbitration, Lagos. The parties are expected to make huge deposits in US dollars if the process is to continue.

h) With the pendency of the Injunction and the pending Arbitration, the procurement process was effectively stalled and NPA could not legally take any further steps. Accordingly, the procurement process was inconclusive as no award was made to any other entity.

i) The suit instituted by the 4 prequalified entities under the procurement process, (namely Pacific Silverline Limited, Nexttee Oil and Gas Trading Company Nigeria Limited, ICA Logistics Limited and Tanasha Investments Limited) was struck out by the Federal High Court following objection by NPA to the effect that they lack locus standi because no award was made to any of them. Although they have appealed the judgment, there is no court order directing NPA to continue the uncompleted procurement process.

Service Boat Revenue Collection

j) An analysis of the impact on the Authority's revenue following the takeover of collection by the Authority at the expiration of the service boat agency agreement shows a sharp decline from a high of \$216m and \$209m in 2014 and 2015 respectively under Intels agency to \$130m and \$99m in 2020 and 2021 respectively after taking over by NPA. The situation in 2023 is even worse as the collection up to June 2023 is only \$55.3m.

Negotiations and Agreement of the Parties

Mr President is invited to note:

- i. that the parties have negotiated in good faith for over 3 years and eventually reached agreement on critical issues securing the otherwise difficult concessions with a view to resolving the dispute amicably on the terms set out on pages 8 to 11 of the attached brief.
- ii. that the concessions granted by Intels and Deep Offshore will earn a benefit for the NPA and the government to the tune of over US\$ 500,000,000 - taking into consideration:
 - a. the interest waiver of US\$ 193,317,556 (including the effect of following point c).
 - b. the reduction in interest on the outstanding debt from 6-months LIBOR rate to 6-months SOFR rate + 3%

4. Reduction of the interest rate on the indebtedness to Deep Offshore Services Limited from 6-months LIBOR rate + 6.5% computed in terms of the Excel spreadsheet marked 4a to 6-months SOFR rate + 3% effective from the date of execution of Supplemental Agreement and to be henceforth computed in the manner stipulated in the attached Excel spreadsheet marked 4b
5. Reduction of the Agency Commission on Pilotage collections from 28% to a lower commission of 24.5% as opposed to increasing it due to astronomical rise in cost of operations.
6. That all revenues collected by Intelis Nigeria Limited must be paid into the designated TSA account of the NPA at the Central Bank of Nigeria.
7. NPA shall issue an outstanding credit note amounting to **US\$148,111,068.71** in favor of Intelis Nigeria Limited as agreed by both parties in July 2017 to October 2017 and January 2019 to September 2019 reconciliation reports, to reduce the un-amortized DOSNL Phase 4B project balance outstanding and INL liability to NPA for the period of account.
8. The Parties agree that the construction work at the phase 4B Onne, which was suspended by both parties will resume in accordance with the terms of the Agreement. The emphasis will be on the road construction as same is germane to fast-tracking development in and around the Port facility, subject to the prevailing financial position of the Authority.
9. Discontinuation of all litigation commenced by Intelis and Deep Offshore in respect of NPA Public Tender No.4115 inviting Expressions of Interest to appoint a Managing Agent for NPA's four pilotage Districts in the Exclusive Economic Zone by filing of the settlement



It is recommended to Mr. President to consider the agreement reached by the parties and the points highlighted in I to V above and **APPROVE**:

PRAYER

- III. there is a subsisting court order restraining NPA from taking any further steps on the service boat contract pending the conclusion of arbitration with Intels/Deep Offshore
- IV. the procurement process was stalled by court order
- V. the revenue collection is dwindling seriously with adverse impact on the finances of the Authority.
- c. the spread of the repayment of the debt over 15 years, with the first two years interest-free
- d. the reduction in commission from 28% to 24.5%

2. Waiver of the sum of \$100,000,000 (One Hundred Million United States Dollars) part of the accrued interest as at 31st July, 2023 on the indebtedness to Deep Offshore Services Limited under the Phase 4B Agreement
3. A further waiver of the interest which shall accrue on the outstanding debt under the Phase 4B Agreement for the period of 2 years commencing on 01/07/2023 and ending on 30/06/2025, which is currently estimated in the sum of US\$93,317,556 (Ninety Three Million Three Hundred Seventeen Thousand Five Hundred Fifty Six United States Dollars) assuming the 6-months SOFR rate equal to 5.7623%; the final figure of the actual waiver under this Clause 7.a) shall be calculated based on the actual figures of the 6-months SOFR rate which shall be applicable in each relevant interest period;

Exhibit Pacific 4 (16)

ATTORNEY-GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE



Federal Ministry of Justice
Plot 71B, Shahu Shagari Way
Maitama, Abuja FCT
Nigeria

P.M.B 192 Garki
E-Mail: info@justice.gov.ng
www.justice.gov.ng
Tel: 0805 088 8806

MT/DSB/23/VII

18th November 2021

The Chief of Staff to the President,

State House,

Aso Villa,

Abuja.

RE: REVIEW OF THE CONTRACTUAL RELATIONSHIP BETWEEN
NIGERIAN PORTS AUTHORITY AND INTELS NIGERIA LIMITED

I wish to refer to State House correspondence dated 23rd February 2021 with Ref No. SH/COS/23/A/214 and 18th March 2021 with Ref No. SH/COS/23/A/216 requesting for my legal advice in view of the approval granted by Mr. President and the additional submissions made by the Nigerian Ports Authority (NPA) on the above subject matter.

2. I have considered the submissions made by the Honourable Minister of Transportation (HMT) and the Managing Director of Nigerian Ports Authority on the matter of the contractual relationship between the Nigerian Ports Authority (NPA) and Intels Nigeria Limited (INTELS). I wish to recall that before the additional submissions made by NPA, the Hon. Minister of Transportation (HMT) had in January 2021 secured presidential approval for:

1. The restoration of all contracts between NPA and INTELS currently suspended or purportedly terminated by NPA and INTELS which are now the subject of legal disputes between the parties;

and

ii. The withdrawal of all matters currently in Court or at arbitration by both parties in order to enable my Office (the Ministry of Transportation) resolve all pending issues administratively.

3. However, from a review of the additional submissions made by NPA, unless the HMT and INTELS can present facts to contradict these submissions, it is obvious that NPA neither suspended nor terminated any of its contracts with INTELS which therefore obviates the need for any restoration.

4. In furtherance of the foregoing, NPA listed Four (4) contracts with Messrs INTELS Ltd, three of which are still subsisting till 2030. These are:

i. Concession Agreement with Intels for Onne Terminal A and B dated 24th October 2005 which will come to an end in 2030.

ii. Concession Agreement with Intels for Calabar Terminal A in Calabar Port, Rivers State dated 24th October 2005 which will come to an end in 2030.

iii. Concession Agreement with Intels for Warri New and Old Terminal, Delta Port, Delta State dated 24th October 2005 which will come to an end in 2030.

iv. The fourth contract: Contract for Service Boat Operations Managing Agent with Intels Nig Ltd commenced in June 2007. The Agreement was renewed for 10 years commencing February 2011 and came to an end on 8th August 2020.

5. A major source of the dispute between NPA and INTELS is with respect to the above Service Boat Operations Management Contract awarded to INTELS to monitor oil related activities in the compulsory pilotage districts within the Exclusive Economic Zone on behalf of NPA. The

contractual agreement commenced in June 2007 and an extension of 10 years was approved by the HMT on 6th August 2010 to expire August 2020 pursuant to the Agreement between the parties (which implies that the HMT is aware of the proper duration of the contract). No further extension or renewal of the engagement was granted by HMT or NPA. It is apt to make reference to Article 2.1 of the Agreement which provides thus:

"The effective date for commencement of the service shall be the 9th day of August 2010 and shall continue in force for a period of 10 (ten) years to the 8th of August, 2020 thereafter unless earlier terminated in accordance with the terms and conditions of this Agreement."

6. Flowing from the above, there is certainty in the duration of the contract and the position of the law remains clear that a written contract freely entered into by the parties is binding on them. Accordingly, the contract for Managing Agent awarded to Messrs INTELS in 2007 validly came to an end and extinguished pursuant to the terms of Agreement between the parties which specified an end date of August 2020. The Agreement did not provide for any further extension of the contract in favour of INTELS.

7. It is also to be noted that NPA pursuant to the expiration of the above contract, kick-started the procurement process to appoint another Managing Agent in order to forestall any break in the services being rendered. NPA submitted that it concluded the tender/bidding process and forwarded the result to HMT for same to be presented for FEC's approval. However, NPA also stated that it is still awaiting feedback from HMT till date, resulting in loss of revenue to the government due to non-conclusion of the tender process.

8. INTELS also participated in the bid process but was found to have violated one of the bid advertisement criteria and was thereupon disqualified. It is pertinent to state that the participation of INTELS in

the tender process amounts to an admission on its part that the contract had indeed ended.

9. While HMT is yet to present the outcome of the bidding exercise for consideration by FEC, INTELs on the other hand resorted to litigation to frustrate the conclusion of the procurement process based on its grievance on a different subject-matter. This untoward development has created a vacuum in the provision of this critical service in the maritime sector with its attendant loss of revenue (from Service Boat Operations) to the Federal Government.

10. More importantly, it is imperative to note that the subject matter for which INTELs sued NPA is different from the contract for Managing Agent for Service Boat Operations. INTELs law suit is based on debt allegedly being owed by NPA to one of its sister companies Deep Offshore Nigeria Ltd for the construction and development of Onne 4b. The cost of the said construction was to be amortized from revenues derived from the Service Boat Operations Management. However, there is no clause in any agreement that stipulates that INTELs must be the revenue collecting Agent before the said amortized payments can be made. The law suit instituted by INTELs is therefore preventing the conclusion of the procurement process as well as the payments to Messrs Deep Offshore.

11. In essence the two contracts are different and the law suit is a deliberate action by INTELs to frustrate the procurement process initiated by NPA. While INTELs can explore available remedies under the Public Procurement Act 2007 to address its disqualification, however, its basis for frustrating the procurement process and continuance of the Service Boat Operations is considered unethical and adversarial to our national economic interest. I wish to note that INTELs approach in this case does not reflect a reciprocity of the huge and near monopoly of

opportunities afforded it by FGN in this sector owing to the long term contracts it currently enjoys up till 2030.

12. Furthermore, I wish to reiterate the potential exposure of the NPA and indeed the Federal Government to litigation in view of the restoration of contracts between NPA and INTELS. This is based on the fact that the companies that bided for the advertised Service Boat contract, having been duly pre-qualified may institute legal proceedings against the government if the contract is eventually awarded to INTELS, a Company that was disqualified during the procurement process. The Public Procurement Act precludes a Company that was disqualified during the procurement process from being awarded the contract. Such litigation would further forestall the Service Boat Operation Management by NPA.

13. It is instructive to note other contractual engagement between NPA and INTELS as follows:

a. Construction of ONNE 4 (consisting of Berths 9, 10 and 11) - the contract which commenced in April 2011 for a 40 months' period has been completed and discharged. This is also not a terminated contract.

b. Construction of Onne 4B - the contract was executed in 2013 for the construction of additional berths in Onne with a completion period of 6 years and a concession period of 25 years to INTELS upon completion. However, the contract was mutually suspended in 2017 over funding constraints. If the contract was mutually suspended, then it has to be mutually restored and not unilaterally as requested by HMT.

c. Utilization of Onne (Berths 9, 10 & 11) - it is the case of NPA that it did not execute any contractual agreement with INTELS for the use of the Berths though it offered the Berths to INTELS for its

use in 2013 but as at 2018, INTELIS made no payment to NPA for the use of the Berths which prompted the withdrawal of the offer letter. There can be no valid acceptance of NPA's offer where INTELIS fails to furnish appropriate consideration. INTELIS has however filed a case in Court.

14. NOTATIONS

Arising from the foregoing submissions of the parties as well as my legal advice on the subject matter, Mr President is hereby respectfully invited to note that:

a. Nigeria Ports Authority (NPA) and INTELIS Nigeria Ltd had entered into multiple contractual Agreements. These include contracts for Onne Terminal A and B, Calabar Port as well as Delta Ports. These contracts are to terminate in 2030.

b. NPA also awarded a contract for Service Boat Operations to Messrs INTELIS in 2007. The contract was further extended for another 10 years to expire in August 2020.

c. The service boat operation contract expired on the 8th of August 2020 in line with Article 2 of the agreement referred to in b above.

d. In anticipation of the pending expiration of the contract in 2020, NPA in 2019 commenced the procurement processes to enable the continued provision of the service and revenue generation for the FGN.

e. Messrs INTELIS along with other bidders submitted their bids for qualification in line with NPA's advertisement. However, INTELIS was disqualified at the evaluation stage for violating a criteria of the procurement process.

f. The companies that scored the highest were pre-qualified and forwarded to Federal Ministry of Transportation (FMT) for onward transmission to FEC for its approval.

g. NPA is still awaiting feedback from FMT till date, resulting in loss of revenue to the government due to non-conclusion of the tender process for the Service Boat Operations Management.

h. Upon its disqualification, INTELs sued NPA to Court and obtained an injunction preventing NPA from proceeding with the tender process. The law suit initiated by INTELs is based on a contract awarded to one of its sister Companies Messrs Deep Offshore Nigeria Ltd in 2011 for construction and development of Onne 4b.

i. However, it is pertinent to note that there is no clause in any of the Agreements which mandates NPA to retain Messrs INTELs as collecting agent in order to realise payment for the construction work for Onne 4b.

j. In order words, the procurement process for Service Boat Operations commenced by NPA is a completely different contract from that which Messrs INTELs is suing NPA for, and is now relying on to forestall the procurement process.

k. The Service Boat Operations was awarded in 2007 and expired in 2020. However, the contract to Messrs Deep Offshore was awarded in 2011. These are two separate contracts and the only link between the two is that payments for construction would be made to Messrs Deep Offshore from the revenues realized from the Service Boat Operations. Parties however did not agree that Messrs INTELs must be the Managing/Collecting Agent for the Service Boat Operations.

l. It is therefore clear from the correspondences forwarded to my Office, that the contract awarded to Messrs INTELs legally came to

an end in 2020 by virtue of the mutual Agreement between the parties, and not by virtue of any termination or suspension by NPA.

m. Furthermore, based on the fact that INTELS was already disqualified by the procuring authority (NPA) during the bidding process for the Service Boat Operations Management which has already been completed, it would expose the government to unnecessary litigation and potential judgment debts if INTELS is awarded the Service Boat Operations contract. The directive to restore all contracts between NPA and INTELS therefore carries with it significant litigation risk and may further forestall the execution of the Service Boat Operations Management by the NPA.

15. In view of the above, I am of the considered view that Mr President may have approved the restoration of all contracts between NPA and INTELS which were alleged to have been suspended or purportedly terminated by NPA based on insufficient information at the time. The purported termination could not have occurred since the contract for Service Boat Operations Management legally came to an end by effluxion of time in 2020 based on the Agreement of the parties.

16. Accept the assurances of my warm regards and best wishes, please.

ABUBAKAR MALAMI, SAN



Honourable Attorney-General of the Federation &
Minister of Justice.

**BUREAU OF PUBLIC
PROCUREMENT**



THE PRESIDENT
11, John F. Kennedy Drive,
Nassau, New Providence, P.O. Box 2671,
NASSAU, N.P.

BPP/5.1/Vol.XVIII/23/064

August 30, 2023

The Honourable Minister,
Ministry of Marine and Blue Economy,
Abuja.

DUE PROCESS CERTIFICATE OF "NO OBJECTION" FOR THE AWARD OF
CONTRACT FOR THE ENGAGEMENT OF MONITORING AGENTS IN THE
SERVICE BOAT OPERATIONS LOGISTICS SUPPORT BASE/PORT TO
OFFSHORE OIL/GAS PLATFORMS AT LAGOS, CALABAR, WARRI AND
BONNY/PORT HARCOURT PILOTAGE DISTRICTS BY THE MINISTRY
OF MARINE AND BLUE ECONOMY/NIGERIA PORTS AUTHORITY

Please find attached Due Process Compliance Certificate of "No Objection" for
contract award in favour of the Various Contractors as in the attached
signed Certificate with respect to the above projects.

The Bureau of Public Procurement (BPP) having examined your request and all
the documents forwarded confirms that the projects have satisfied all due
process requirements for issuance of a Certificate of "No Objection" to proceed
to seek Federal Executive Council (FEC) Approval for award of the
Contracts.

Certified Product Cost: Approved 15% remuneration to the Contractors, for
the Engagement of Service Boat Operators Monitoring Agents in the four (4)
Pilotege Districts for a Period of Ten (10) Years, inclusive of all taxes.

Please accept the assurances of my best regards and esteem.

W.V.A.

Muhammed Ahmadu, *WVAG*
Director-General

SECRETARY GENERAL
Ministry of Marine and Blue Economy

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WRITTEN ADDRESS IN SUPPORT OF MOTION EX-PARTE1.00 INTRODUCTION:

1.01 The Plaintiff/Applicant is praying this Honourable Court for the following Orders:

(i)

AN ORDER OF INTERLOCUTORY INJUNCTION RESTRAINING THE FEDERAL GOVERNMENT OF NIGERIAN OR ANY OF ITS AGENCIES/APPOINTEES, PARTICULARLY, NIGERIAN PORTS AUTHORITY, MINISTER OF FINANCE, SECRETARY TO THE GOVERNMENT OF THE FEDERATION, THE CHIEF OF STAFF TO THE PRESIDENT OR ANY OTHER AUTHORITIES, COMMISSION, OFFICERS, APPOINTEES (HOWSOEVER DESCRIBED) FROM GIVING EFFECT TO THE PRESIDENTIAL APPROVAL/DIRECTIVE AS CONTAINED IN THE OFFICIAL MEMO DATED THE 22ND DAY OF AUGUST, 2023 WITH REFERENCE NUMBER: PRES/00-3/NPA/1/87/MF/81/SGF/S/86-1/COS/44 PENDING THE HEARING AND DETERMINATION OF THE MOTION ON NOTICE.

(ii)

AN ORDER RESTRAINING THE FEDERAL GOVERNMENT OF NIGERIAN OR ANY OF ITS AGENCIES/APPOINTEES, PARTICULARLY, NIGERIAN PORTS AUTHORITY, MINISTER OF FINANCE, SECRETARY TO THE GOVERNMENT OF THE FEDERATION, THE CHIEF OF STAFF TO THE PRESIDENT OR ANY OTHER AUTHORITIES, COMMISSION, OFFICERS, APPOINTEES (HOWSOEVER DESCRIBED) FROM ISSUING ANY SUBSEQUENT CERTIFICATE OF "NO OBJECTION" OTHER THAN THE ONE ISSUED IN FAVOUR OF THE PLAINTIFF AND OTHER PREFERRED BIDDERS WITH RESPECT OF THE SERVICE BOAT MONITORING AGENCY AGREEMENT ON THE 30TH DAY OF AUGUST, 2023, PENDING THE HEARING AND DETERMINATION OF THE MOTION ON NOTICE.