

COTECNA

Hon. Charles Collins, Acting Chairman
Public Procurement and Concessions Commission

Monrovia, Republic of Liberia

Geneva, 17th March 2008

0/Ref.: LBR/AO-MFR.03.08.a

Subject: Request for Proposals — Provision of Pre-Shipment and Scanning Services

Our letter dated February 4, 2008 (LBR/AO-MFR.02.08.a)

Dear Hon. Chairman

We have the honor to extend our compliments, and wish to acknowledge receipt of the Ministry of Finance's letter dated February 22, 2008, and received on March 4, 2008 (GOL/FM-1/AMS/dma/3959/08), informing us that the Ministry of Finance is left with no alternative but to dismiss in its entirety our protest expressed in our above mentioned letter.

While we welcome the Ministry's efforts at addressing the pertinent concerns raised by us in the above mentioned letter, which is aimed at providing justifications for its decision in the award of the contract to BIVAC, we wish to strongly reiterate our earlier position to contest the decision from the result of the evaluation carried out by the Bid Evaluation Panel (BEP) leading to the elimination of our proposal and the awarding of the contract to BIVAC.

The Ministry's effort at justifying its decision failed in several respect to address our concern with regard to the breaches/violations committed during the bid evaluation process. Please see below:

1. Ministry of Finance failed to address as to why our letter of complaint dated **December 19, 2007 (LBR/AO.MFR.12.07)** addressed to the former Director of Procurement, Mr. Dio Williams whereby we complained about the launch of the Laboratory facilities by BIVAC during the Bid evaluation process. The Ministry deliberately ignored and refused to respond to the said complain in line with part 8: Section 125, subsection 4 of the Public Procurement and Concession Act, which created the Public Procurement and Concession Commission. ("The Procuring entity, shall upon receipt of a complain, shall investigate the complain with in 14 days as of receipt of complain"). Our consideration is that compliance to this provision cannot, and should not be at the discretion of anyone, but must be fully in line with the laws, as provided.
2. Though, the decision of the ministry to have extended BIVAC'S contract at the time and under the circumstances might have been logical, we strongly disagree with the Ministry's definition/interpretation of section 1.6.4 of the RFP(Instructions to consultant) "If a short listed consultant (BIVAC) could derive a competitive advantage from having provided consulting services related to the assignment in question (PSI Services) the client (the Ministry of Finance) shall make available to all short listed consultants (COTECNA, SGS, INTERTEK)

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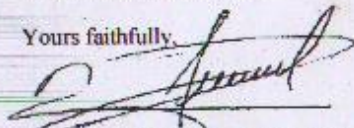
together with the RFP all information that would in that respect give such consultant (BIVAC) any competitive advantage over competing consultants (COTECNA, SGS, INTERTEK)". We also reject the ministry's assertion that the extension of the BIVAC contract in the like manner did not constitute any UNFAIR ADVANTAGE to us as defined by the provision, since in fact, BIVAC greatly and advantageously capitalized on the unconditional extension granted to launched and widely publicized her lab facilities. In any case, adherence to the provisions of section 1.6.4 by the Ministry would have provided the advantage and opportunities for us to had protested the unconditional extension granted to BIVAC at a fairer time, considering the unfair consequences that the action could generate to competing bidders.

3. On the launch of the said petroleum inspection lab by BIVAC and the wide publicity that accompanied the exercise (Analyst Newspaper, vol.9, number 65, Thursday, December 13th, edition, page 2) the ministry's justification that BIVAC made a business decision to invest in the petroleum laboratory project prior to the seating of the present government and that the project was implemented at no cost to government is far off the target, as we have never questioned to know whether the decision to invest in the laboratory project was political or business, neither have we questioned as to who funded the project. We are simply questioning the "timing" of the launch of the project, occurring barely two (2) weeks after the submission of the proposals for evaluation. Certainly, the ministry, in its justification, failed to address our concern, as to the "timing" of the launch of the lab facilities. We are particularly concerned with the timing because the unavailability of such facilities within the current PSI regime was among other things, highlighted in the RFP (Term of Reference, Section 4.3, page 19) as one area of inadequacy that would need review at the next phase of the contract. And we maintain that BIVAC should have been prohibited from addressing this inadequacy which had existed since the launch of her first contract with the government of Liberia in 1997.

In view of the above, Mr. Chairman, we wish to clearly indicate that the ministry, in its response to our protest failed to satisfy our concerns, and we are therefore, left with no alternative but to take due advantage of part 8: (Complaint, Appeal and Review Process) Section 126, subsections (1) (2) and (3), for which purpose, we hereby submit this letter, with the relevant attachments for your attention and action.

Thanking you in advance,

Yours faithfully,



Mr. Marco Franchi - Vice President
COTECNA INSPECTION SA

CC: Mr. D. REYMOND, Cotecna Inspection SA, Executive Vice-President,
Geneva

Mr. A PRUNIAUX, Special advisor, Mauritius

Hon. Antoinette M. SAYEH, Minister OF Finance

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