



Republic of Liberia
Complaints, Appeals & Review Panel (CARP)
Public Procurement & Concessions Commission
Executive Mansion Grounds
Capitol Hill, Monrovia, Liberia



July 8, 2010

OPINION IN THE CASE BSP LIBERIA, INC. VS. MINISTRY OF AGRICULTURE

Background

The Public Procurement and Concessions Commission as the regulator and overseer of the procurement process in Liberia, has as one of its organs the Complaints, Appeals and Review Panel. The Panel's responsibility is to investigate complaints from aggrieved bidders in any given bid proceedings. Consistent with said responsibility, one of the two entities that bid for the Decoris oil palm plantation, BSP Liberia, Inc. filed a complaint on August 10, 2009 against the Ministry of Agriculture for alleged unlawful exclusion from the bid process of the involving the leasing of the Decoris Oil Palm Plantation by the Government of the Liberia.

Methodology

As a practice, the panel restricted itself to review of records in the case. Consistently, it reviewed the following available records: The Request for Proposal (RFP), Information to Bidders, Instructions to Bidders, SIFCA's technical proposal, BSP's technical proposal, initial Bid Evaluation Report by the chairman of the Evaluation Panel, the June 9, 2010 Memorandum/Decoris Bid Evaluation Panel Final Report to IMCC, IMCC's approval of SIFCA as the most responsive Bidder for the Decoris Oil Palm Plantation and the financial due diligence on the SIFCA Group. May we state herein that the Panel has got difficulty in getting the required documentation from the Concession Entity due to change in administration in said entity, which posed problem of accessing or locating the documents as were required by the Panel for investigation.

Facts in the Case

In a bid to revitalize the commercial agriculture sector, The Government of Liberia, through the Ministry of Agriculture, put into place the process of outsourcing the Decoris Oil Palm Plantation. This 4400 Oil palm plantation was initially developed in 1980 and is currently owned by the Government of Liberia. During the Liberia civil war, the plantation was left practically unattended and requires extensive rehabilitation. Consistent with the policy to reactivate the plantation, the Ministry of Agriculture, as the Concession Entity, conducted bid proceedings that led to the outsourcing and Management of the Decoris Oil Palm Plantation. When the Ministry

issued the invitation for Expression of Interest (EOI), five International Firms responded; two of which, BSP Liberia Inc. and SIFCA submitted proposals. Pursuant to the PPCC Act, the Inter-Ministerial Committee (IMCC) set up for the conduct of the bid proceedings, constituted the bid evaluation panel, and charged it with the responsibility of evaluating the bids in accordance with the predetermined and published criteria outline in the bid documents. As provided in the bid document, the only bidders whose technical proposals that attain or exceed the minimum score of 70% of the 100 points would be able to advance to the next stage, the opening of the financial proposal. Interestingly, after the evaluation of the two technical proposals of BSP and SIFCA, BSP obtained the score of 67.35%, while SIFCA received the score of 86% . Automatically, BSP dropped for failure to score the minimum points as required by the bid documents.

The complainant in this case complained that it was excluded from the process after the evaluation of its technical proposal and that its financial proposal was not evaluated by the evaluation panel. This exclusion from the process mid-way is what the complainant referred to as gross breach of the PPC Act, hence this complaint to the Commission.

Issue in the Case

The issue in this case is whether or not the dropping or exclusion of a bidder who did not score the minimum points as contained in and required by the document is a violation of the PPC Act or International best practice in procurement or procurement of concession?

Discussion of the issue

It is said in procurement or procurement of concession that no standard that was not predetermined as a criterion for evaluation should be adopted or used as a basis of evaluation of the bidder's bid. Only predetermine criteria contained in the bid document or instructions to bidders shall be used to evaluate the bids. This position is supported by section 112 of the PPC Act which says "No criteria shall be used for evaluation that was not set out in the Concession bid documents made available to bidders and a concession entity shall not change the evaluation criteria after the bids have been received ". Similarly, all guidelines or criteria set in the bid document of instructions to bidders are strictly enforceable.

This panel has passed on analogous issue in the case FOMENTO V. Ministry of Lands, Mines and Energy. In that case, the issue was "whether or not the concession entity acted legally and consistent with procurement practices when it returned complainant's financial proposal unopened for reasons that said complainant's technical proposal did not meet the minimum required score as required by the bid document to advance to the second stage, the opening of the bidder's financial proposal. In resolving this issue, the Panel said "when the technical proposal of the bidder fails to meet minimum required score, said bidder is not qualified to advance to the second stage of the bid evaluation process; as it is the score or outcome of the technical proposal that informs the evaluation committee as to the next step and which bidder progresses to the

(next) stage of the evaluation process, which is the opening of the financial proposal of the bidder.

In view of the above, couple with the fact that the bid document in this case predetermined the minimum score that would qualify the bidders or any of them to advance to stage two of the evaluation process, that is the attainment of minimum of 70 points for the technical proposal, the Concession entity did not err when it dropped or excluded the complainant, BSP Liberia Inc. from the evaluation process for failure to score the minimum of 70 points that would qualify said entity's financial proposal to be evaluated.

Consequently, the Panel hereby affirms the concession entity's decision and dismisses complainant's case against the Ministry of Agriculture for lack of merits and the legal basis.

AND IT IS HEREBY SO ORDERED.

IN WITNESS WHEREOF, WE, THE MEMBERS OF THE PANEL ON COMPLAINT APPEALS AND REVIEW OF THE COMMISSION HAVE HEREUNTO SET OUR HANDS AND AFFIXED OUR SIGNATURES TO THIS RULING, THIS 9TH DAY OF JULY, A.D. 2010.

Signed:

Cllr. Beyan D. Howard, Chairman_____

Mr. Massaquoi Morlu Kamara, Co-Chairman_____

Atty. Eric B. Morlu, Secretary_____

Mr. David M. Jallah, Member_____

Mrs. Esther Paegar, Member_____

Mr. Martin Kollie, Member_____