



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

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**Opinion in the Case: Atlantic Resources, Ltd. vs. Forestry Development Authority (FDA).**

**Background**

The Public Procurement and Concessions Commission (PPCC) received Complaint from Atlantic Resources, Ltd., through her legal counsel against FDA concerning the award of Forest Management Contract (FMC) Area “F”.

**Methodology**

The Panel Convened on the 3th of March, 2010, and decided to proceed with investigation of the complaint after a long delay due to unavoidable circumstances. In view thereof, the Panel reviewed the relevant documents including communications exchanged between them and FDA, the bid documents, the bid evaluation report, minutes of the IMCC, the Due Diligence Report among others.

**Facts**

The Government of Liberia, through FDA conducted concession bid proceedings for Forest Management Contract (FMC) Area “F”. The bid evaluation panel following evaluation of the bids, declared Atlantic Resources, the most responsive bidder for areas “F” and P both financially and technically, hence recommended Atlantic Resources, Ltd. for both areas to the IMCC for approval or rejection consistent with the PPC Act. IMCC, instead of rejecting or approving the concession entity’s recommendation, proceeded to re-evaluate and re-rank the bidders, which process put first Euro-logging which did not meet the minimum bid financial requirement for Area “F” as contained in the evaluation panel’s report, thus leaving complainant with area “P” alone. To the re-evaluation, re-ranking and subsequent selection of Euro-Logging to manage Forest Area “F” for which it did not qualify, complainant complained to FDA, request the reversal of IMCC’s decision and the subsequent award of the forest management for area “F” to her (complainant). In response, the entity, FDA denied petitioner’s request on ground that minimum reserved bid was not the only criteria used but many other factors to include business plan , equipment, personnel et.. FDA further cited a policy which it used as criteria that “fifty percent (50%) of the concession rights to a single investment interest is against Government’s security interest”. And to give forest area “F” in addition to forest area (“P”) already awarded Atlantic Resources would mean that Government is giving 50% of Liberia’s forest to one single investor. To this argument of FDA, complainant disagreed and described same as an introduction of strange evaluation criteria, which was not stated in the bid documents or instructions to bidders.

## **Two issues are raised by this complaint.**

1. Whether or not IMCC has the authority to re-evaluate and re-rank the bidders to produce a winner other than the winner that emerged from the bid evaluation process conducted by the evaluation panel?
2. Whether or not Government policy of not awarding 50% of its forest to a single investor, which was not mentioned or articulated in the bid documents nor instruction to bidders that can be used as a criteria to evaluate the bids?

As to issue No. 1 above stated, the PPC Act states that as one of the functions of the IMCC, it reviews the reports to ensure that procedures were in strict conformity with the criteria, the Act and relevant regulation approved or otherwise, the evaluation reports to enable the concession entity to continue with the next step of the process. This suggest that any irregularity, flaw or mistake observed by the IMCC in the report of the bid evaluation panel, said observation could be noted only, and the entire report sent back for correction (s); than for the IMCC to undertake the work of the concession entity as it relate to bids evaluation. See Section 82.1, subsections a-f; particularly Section 82.1 (b).

As to issue No. 2 above stated, we would like to begin by stating that any other eligibility requirement outside those that were established prior to the submission of bids is considered illegal and should be used as basis to evaluate bids.

To buttress this assertion, we quote Section 112 of the PPC Act which states that “No criteria shall be used for evaluation that was not set out in the concession” bid document made available to bidders and a concession entity shall not change the evaluation criteria after the bids have been submitted.

## **Ruling**

FDA, by introducing Government’s policy or regulation which stated that no one entity shall be give and /or manage 50% of Liberia’s forest area as criteria to evaluate complainant’s bids, when such criteria was not contained in the bid documents nor instructions to bidders is not only a violation of the PPC Act but also an introduction of strange elements or criteria adopted to evaluate bids. Said introduction of strange criteria is unacceptable in procurement practices and cannot be condoned, sustained or upheld. Hence FDA’s decision to take forest area “F” from Atlantic Resources on such basis is over ruled.

Also, IMCC’S re-evaluation and re-ranking of qualified bidders is unfounded, hence overruled. Atlantic Resources is hereby declared winner of Forest Area “F” and shall be awarded same forest Area “F” accordingly.

**AND IT IS HEREBY SO ORDERED.**

IN WITNESS WHEREOF, WE THE MEMBERS OF THE PANEL HAVE HEREBY SET OUR HANDS AND AFFIXED OUR SIGNATURES TO THIS DOCUMENT THIS 28<sup>TH</sup> DAY OF MARCH, A.D. 2010.

Signed:

\*Cllr. Beyan D. Howard, Chairman \_\_\_\_\_

Mr. Massaquoi M. Kamara, Co-Chairman \_\_\_\_\_

Atty. Eric B. Morlu, Secretary \_\_\_\_\_

Mr. David M. Jallah, Member \_\_\_\_\_

Mr. Martin S. Kollie, Member \_\_\_\_\_

Mrs. Esther Paegar, Member \_\_\_\_\_

\*Note: Cllr. Beyan D. Howard did not sign this opinion as he recused himself from the proceedings, Legal consultants, Inc. of which he is a partner being the legal counsels for complainant.