



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

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November 7, 2008

INDEPENDENT COMPLAINTS, APPEALS & REVIEW PANEL'S OPINION IN THE  
CASE: GLOBAL WOOD INDUSTRIES, INC. VS. THE FORESTRY DEVELOPMENT  
AUTHORITY (FDA)

The Management of the Forestry Development Authority (FDA) in a bid to restart commercial logging activities in Liberia after the lifting of the UN ban in June 2006, on the 5<sup>th</sup> of March 2008, advertised for request for proposal (RFP) for three (3) Forest Management Contracts (FMC). The advertisement lasted for six (6) weeks and the deadline for submission of bids was April 28, 2008 at the hour of 5:00 PM. One of the three (3) areas called FMC Area A, the subject of this complaint filed by Global Wood Industries, Inc. was bid for by seven (7) companies. These bids were publicly opened, read and turned over to the bid evaluation panel constituted by the Inter-Ministerial Concession Committee (IMCC).

The Panel was composed of the Ministries of Finance, Planning and economic Affairs, Justice and State. The Panel also included the Forestry Development Authority, National Investment Commission, Civil Society Representative and Private Sector Representative. In addition, there were two (2) resource persons: Mr. Alfred Kotio and Mr. Adewumi of UNMIL.

Amongst some of the notations made at the bid opening, was that of the seven (7) companies. Global Wood bided Thirteen Million Five Hundred Thousand United States Dollars (13.5M USD); Tropical Reserve, Inc. bided Ten Million Fifty Five Hundred Thousand United States Dollars (10.55M USD); and while the other five (5) companies bided sequentially lower order.

Ultimately, the bids were evaluated based on established, pre-determined criteria. The evaluation result show bidders compliance with the bidding procedures and the evaluation criteria set out in the bidding document, and that the most responsive bidder in FMC Area A are Tropical Reserves Entrepreneurial Enterprises as first provision; Alpha Logging and Wood Processing Corporation and Global Wood Industries, Inc. tied at second place provisional winners. From the overall evaluation process (Technical & Financial Proposals) and the analysis of the findings from the then ongoing due diligence exercise, the Panel finally recommended Global Wood Industries, Inc. as first provisional winner and Alpha Logging and Wood Processing Corporation as the second provisional winner for FMC Area A. Consequently, based on the evaluation panel's report, the FDA Management recommended to the IMCC, the body that has the concession contract granting power of authority, Global Wood Industries, Inc. as provisional winner of the FMC contract for Area A.

The minutes of the IMCC dated September 1, 2008 showed that there were mixed feelings amongst members of said body when the FDA recommended Global Wood Industries Inc. as provisional winner of the FMC contract for Area A.

We cannot understand why would there be such mixed feelings if the FDA was speaking from the facts then available to her. Since the law (PPCA) requires that prior to the submission of the evaluation report to the Inter-Ministerial Concession Committee, a concession entity shall undertake due diligence on all responsive bidders, we see no reason why the IMCC received the FDA recommendation with mixed feelings for having done its job in keeping with law. Under the law, the extent of the due diligence shall be determined by the entity at a minimum to include a verification of the following, such as, authenticity of the claims of technical and financial capabilities made by the bidder.

The IMCC set aside FDA (the concession entity's) recommendation and decided the winner of the bid allegedly based on the financial strength of the bidders. This brings us to the discussion of the two (2) due diligence reports by the due diligence team that could inform the IMCC in their selection process.

FDA set a threshold of Fifteen Million United States Dollars (15M USD) to qualify a bidder for FMC Area A. Our perusal of the bid documents revealed that this amount, i.e., 15M USD was not mentioned in the bid documents as a requirement. It came in the process of the bid proceedings. What a violation of the Public Procurement and Concession Law? According to procurement and concession best practice, that which is not in the bid documents cannot be used as the standard to judge bids or submission by bidders. The use of such a standard is to compromise the transparency and competitiveness of the bidding process. Notwithstanding, let's assume that the 15M USD was in the bid documents, thus the set standard or requirement to win. The July 10, 2008 due diligence committee report revealed that the Alpha Logging and Wood Processing Corporation had a cash balance of 0.5 Million USD in her account. Alpha Logging and Wood Processing Corporation projected an initial investment of Seventy Million United States Dollars (72M USD), including equipment, all to be made in the first three years of operations. She was then asked by FDA to provide sources of this capital along with evidence that the provider of the capital had sufficient financial resources to invest this amount and copies of all agreements between them and the capital provider.

In response, the company provider a letter which confirmed Woodman's (capital Provider) commitment to invest 70M USD in the logging industry in Liberia and committed itself to undertaking all other expenses associated with logging in Liberia. Conversely, Global Wood Industries, Inc. financial capacity was assessed. The committee put it at this: Global Wood Industries, Inc. financial capacity as at June 2008 stood at Three Million One Hundred Thousand United States Dollars (3.1M USD). There were no signed agreement between the company and its financial backers. However, the report said that the capital committed to be provided by Global Wood Industries, Inc.'s financial along with the capital already invested had reached a total of Six Million Six Hundred Thousand United States Dollars (6.6M USD), though it fell far below the Ten Million United States Dollars (10M USD) required in the business plan or threshold for qualification to winning the FMC Area A.

Upon request that bidders should offer clarification and corrections after the initial due diligence report (July 2008 Report), two (2) companies responded, which responses or re-submission of the two (2) companies provided basis for the second round of due diligence.

## **Due Diligence Report of August 26, 2008**

### **1. Alpha Logging and Wood Processing Corporation**

- a) Capacity to enter contract: The Company was issued pre-qualification certificate by FDA/GOL. Later, the company had changed in ownership which rendered the pre-qualification invalid. Sixty Percent shares owners in the Company, Eagon, a Korean Company sold its shares to a Malaysian Company, Woodman's Sdn Bdn. Strangely enough, when the due diligence committee visited Alpha Logging and Wood Processing Corporation in June 2008, Eagon's representative was present or represented. According to the committee, neither Alpha nor Eagon mentioned the transfer of ownership; they both portrayed Eagon as a continuing owner. Woodman or Woodman's owners were not identified, have not been identified, nor have they submitted any affidavit as FDA Regulation 103-07.
- b) Financial capacity access to capital: The Company had a cash balance of Five Hundred Thousand United States Dollars (0.5M USD) as at May 26, 2008. Accordingly, on June 7, 2008, they entered into an agreement with Woodman (the said Woodman who acquired Sixty Percent (60%) ownership shares by the purchase of Sixty Percent (60%) from Eagon, Majority shares owner in Alpha where Woodman obligated itself to supply Alpha Seventy Million United States Dollars (70M USD) in capital and equipment as well as services of experts in value added processing and sustainable Forest Management. When asked by FDA for documentation or evidence of Woodman capability to provide Seventy Million United States Dollars (70M USD), it provided Woodman's financial statements read that Woodman was not capable of providing Seventy Million United States Dollars (70M USD), but appeared capable of raising Fifteen Million United States Dollars (15M USD), the amount set by FDA as the threshold to qualify bidders for the FMC Area A.

Although the due diligence team said that Woodman appears capable of providing 15M USD, it did not establish or say the actual money in Woodman's account upon seeing and viewing the financial statements. Had it got something to hide when in fact it should report its funds? We find it to be an error to presume the financial capability of Woodman. We therefore find that the IMCC selection of Alpha is based on presumption and not facts gathered from the due diligence conducted.

### **2. GLOBAL WOOD INDUSTRIES, INC.**

- a) Capacity to enter contract: The company was issued pre-qualification certificate by FDA/GOL upon presentation of the required documents. The due diligence report indicated that the company provided Memorandum of Understanding under which persons who were not identified as significant individuals in pre-qualification materials will invest substantial funds. Likewise, the addition of significant individuals appears to invalidate the pre-qualification certificate per FDA Regulation 103-07, Section 46.
- b) Further, the significant had not submitted affidavits as required by FDA Regulation 103-07.
- c) Financial capacity-access to capital: According to what is stated in the due diligence reports, FDA sets minimum standard for a medium FMC Area 'A', at Fifteen Million United States Dollars (15M USD). Notwithstanding, FDA did apply the standard to pre-qualify the seven (7) bidders for FMC Area A.

As at June 9, 2008, the Company had 0.3M USD in its account at Global Bank in Liberia. It holds equipment valued at Three Million Two Hundred Thousand United States Dollars (3.2M USD); come December 31, 2008, Global Wood Industries would hold Six Million Six Hundred Thousand United States Dollars (6.6M USD) in capital and equipment as a result of the MOU entered into and signed by persons holding Powers of Attorney issued by families members which transactions the due diligence team termed as valid transactions. As to the additional information and evidence of further financial capability provided by Global Wood when asked to do so, such as the one of Ecobank, the team said that the Company presented a “Letter of Comfort” from the bank referring to a possible loan. The team however said that the letter did not represent a commitment by the bank to make loan.

A review of the records show that in response to FDA’s letter of July 22, 2008, Global Wood Industries, on August 22, 2008, submitted a dossier containing:

1. Certificate of Titles: indicating purchaser of equipment and machineries by Global Wood industries.
2. Power of Attorneys: indicating supporting investment commitment to Global Wood Industries;
3. Contractual Commitment: suppliers’ provision of additional equipment and machineries to Global Wood industries totaling USD10, 434071.67.
4. Access to capital: indicating assurance for loan commitment in the amount of 2.5M USD from Ecobank.
5. Additional Information: indicating technical capacities in (personnel and technology) for wood processing.

In the above mentioned letter of August 22, 2008, the Company indicated that “we could only provide authentic print-out of the originals sent to us via internet, the original copies themselves are on the way to us by Fedex or DHL, and should get here soonest. I will be personally available to clarify any concerns you may have on your submission.”

There is evidence that the submission by Global Wood Industries, Inc. was received and signed for by FDA on August 28, 2008. From reading the internal memorandum under the signature of Thomas Downing, GEMAP Controller at FDA, we discovered that the submission of Global Wood Industries, Inc. was received and less considered or without counter checking the information provided in the submission by Global Wood Industries, Inc. In the Controller’s letter, he stated that “bidder claimed that he has access to Nineteen Million Two Hundred Thousand United States Dollars (19.2M USD) in capital and equipment”.

According to him the due diligence report found assured access to only Three Million Five Hundred Thousand United States Dollars (3.5M USD). The difference being Fifteen Million Seven Hundred Thousand United States Dollars (15.7M USD) arising out of three (3) claims by the bidders; that which the due diligence team did not find persuasive. In some part of the due diligence report, it is said that Global Wood Industries had Six Million Six Hundred Thousand United States Dollars (6.6M USD). How come it now reduced to Three Million Five Hundred Thousand United States Dollars (3.5M USD)? We see this to be a contradiction.

The claim by Global Wood Industries that it has access to Nineteen Million Two Hundred Thousand United States Dollars (19.2M USD) is supported by evidence as we can see from the

records provided us by complainant. We are sure that the due diligence team also saw the evidence, except that it might be thinking something else as one can see in this statement by Downing of the team. Global cites firm commitment by two suppliers to provide equipment valued at Ten Million One Hundred Thousand United States Dollars (10.1M USD). We do not question the willingness of equipment vendors to supply. We did not find evidence, however, of Global Wood Industries' ability to pay. "Is the Company's ability to pay the standard requirement or the ability to access capital and equipment? We think it is the ability to access capital and equipment that matters here.

In view of the foregoing, coupled with the failure of FDA to investigate Complainant's complaint before final declaration of winner in this bid cast, there exist serious doubts over the process, particularly the selection of the winner, Alpha Logging and Wood Processing Corporation, who on one hand seem not to have provided convincing evidence to entitled her to be the most responsive bidder, thus the winner of the bid for FMC area A. The Panel therefore resolves that the process of bid proceedings which led to Alpha's victory for FMC Area A, was not entered into accordance with the PPCA. On the other hand, Global's claim of access to (19.2M USD) is supported by evidence from records available to us which was also made available to the procuring entity, the FDA. The standard requirement is not the bidder's ability to pay but the bidder's ability to access capital and equipment; which in this instant case, Global Wood is capable of doing. Our attention has not be drawn to any concrete evidence of Alpha's ability, whether through records available to us or the PPCA for which the procuring entity chose her (Alpha) as winner over Global. Hence, from the records available to us, we are of the opinion that Global Wood Industries, Inc. is the fair winner of the bid for FMC Area "A". As such, the Independent Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission says, in keeping with the Public Procurement and Concessions Act (PPCA), we have hereby resolved to replace the Procuring Entity's decision with the decision of the Complaints, Appeals and Review Panel. That is to say that the Panel through this opinion has now declared Global Wood Industries, Inc. as the true winner of the bid for FMC Area "A", thus overturning/setting aside the decision of the procuring entity (FDA) and all of its subsidiaries and/or committees that were involved with this particular process.

#### IT IS HEREBY SO ORDERED

Signed:

1. Mr. Massaquoi M. Kamara, Co-Chairman \_\_\_\_\_
2. Atty. Eric B. Morlu, Secretary \_\_\_\_\_
3. Mr. David M. Jallah, Member \_\_\_\_\_
4. Mr. Martin Kollie, Member \_\_\_\_\_
5. Cllr. Beyan D. Howard, Chairman\* \_\_\_\_\_
6. Mrs. Esther Paegar, Member\* \_\_\_\_\_

\*Cllr. Beyan D. Howard recused himself from this investigation and could not sign the opinion due to conflict of interest.

\*Mrs. Esther Paegar did not participate in the investigation because she is out of the country and therefore could not sign this opinion.