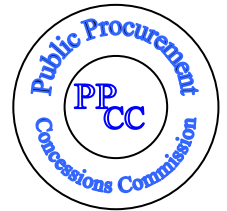


Republic of Liberia  
**Complaints, Appeals & Review Panel (CARP)**  
**Public Procurement & Concessions Commission**  
Executive Mansion Grounds  
Capitol Hill, Monrovia, Liberia

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September 19, 2009

**OPINION IN THE CASE:**

**SOUTHEAST RESOURCES LIMITED VS. FORESTRY DEVELOPMENT  
AUTHORITY (FDA)**

**Background**

The Public Procurement and Concessions Commission Act (PPC Act) which established the Public Procurement and Concessions Commission (PPCC) also created within the Commission an Independent Complaints, Appeals and Review Panel (ICARP) to review/investigate complaints or appeals from bidders to the Commission against procuring/concession entities emanating from procurement procedures. Consistent with the Law, PPCC received complain from Southeast Resources Limited through its legal counsel, Kemp and Associates against the Forestry Development Authority (FDA) concerning the awarding of Forestry Management Contract (FMC) Area “K”. It is this complaint that the Commission has passed to the Appeal Panel for investigation in keeping with the PPC Act.

**Methodology**

Consequently, the Panel convened on 19<sup>th</sup> September 2009, where the members agreed to proceed with the investigation of the complaint. In view thereof, the Panel reviewed all relevant documents and communications on the Forestry Management Contract Area “K”. These documents and communications included Southeast Resources Limited complaint, dated September 14, 2009, Bid Documents, Report of the Evaluation Panel and the Financial Due Diligence on Forestry Concession Bidders of June 29, 2009, the Minutes of the IMCC and the PPC Act.

**Facts**

The Government of Liberia through the Forestry Development Authority (FDA) conducted concession bid proceedings for Forestry Management Contract (FMC) Area “K”. Southeast Resources Limited and the International Consultant Capital were ranked first and second responsive bidders respectively. The evidence presented as per the Bid Evaluation Report states as follows:

**Southeast Resources Limited**

1. As established by the report of the Evaluation Panel, and confirmed by the Financial Due Diligence Report by Ernst & Young, a Financial Consulting Firm, Woodman Sdn-Bhd of Malaysia owns sixty percent (60%) of Southeast Resources.

Woodman agreed to provide US\$ 75,000,000.00 (Seventy Five Million United States Dollars) in support to the general operations for logging both in cash and other assets for Southeast.

2. That the bank statement of Woodman had a balance of over US\$ 4,000,000.00 (Four Million United States Dollars) as of December 31, 2008. Also, Owner's Equity was over 80,000,000.00 (Eight Million United States Dollars) as of December 31, 2007. However, the audited financial statement for the year ended 2008 had not being signed by the entity's auditors.

### **International Consultant Capital (ICCP)**

The report of the Bid Evaluation Panel and the Financial Due Diligence Report revealed the following:

1. That the ICC is being financed by Sealord LLC & Subsidiaries.
2. The equity of Sealord as of 31 December 2006 stood at US\$ 10.6 Million and the equity requirement for Area "K" is US\$ 10 Million.
3. The 2007 & 2008 financial statements were not presented to the Financial Due Diligence Committee.
4. The Committee further reported that they were unable to confirm whether the 2006 trend will continue and beyond.
5. The Financial Due Diligence Report also indicated that a Director of Sealord had promised to support ICC's venture in the amount of 23 Million United States Dollars; but same could not be verified nor confirmed by Ernst & Young.

### **Issues**

1. Whether or not the Concession Entity (FDA) adopted or used strange criteria or guidelines in the selection of the winner of Forest Management 'k'?
2. Whether or not the awarding of fifty percent of the Forestry Concession Rights being tendered to a single investment interest is a violation of the law?

### **Discussion**

#### **Issue #1**

As to issue #1, the guidelines /eligibility requirement as contained in the bid document/instructions to bidders that were to solicit bids from bidders is and remains the only criteria to evaluate the bids.

Any other eligibility requirement outside those that were established prior to the submission of bids is considered illegal and should not be basis to evaluate bids. See section 112 of the PPC Act which provides: 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 received".

#### **Issue #2**

At the meeting held at the National Investment Commission on August 18, 2009, the IMCC stated that it “took into serious consideration that given Southeast Limited FMC Area “K” would mean given fifty percent of the Concession Rights to a single investment interest and this practice would be dangerous.

The IMCC members also took into account the Liberian Diversifies Management Forest Resources overwhelmingly decided to award FMC Area “k” to the International Consultant Capital (ICC) which also have the capacity to financially and technically and sustainably manage the forest”.

Unfortunately, the IMCC failed to quote or cite the law upon which they relied to overturn the Bid Evaluation Panel’s Recommendation which placed Southeast Limited as the most responsive bidders for the FMC Area “K”. Under the PPC Act, the functions of the IMCC are clearly stated in section 82.1 subsections a-f. Specifically, section 82.1 (b) states “Review the evaluation reports to ensure that procedures were in strict conformity with the criteria, the Act and relevant regulations approve or otherwise, the evaluation reports to enable the concession entity to continue with the next step of the process”. This means that any flaws noticed by the IMCC in the report of the Bid evaluation Panel should be stated and referred to the Concession Entity for appropriate action. There is no provision under the PPC Act that gives the IMCC the authority to overturn the bid evaluation Panel recommendation and award a contract to any entity.

**Ruling**

In view of this finding and the law controlling, the Panel is of the opinion that complainant Southeast Resources Limited, be awarded the Forestry Management Contract Area “K” which it had won consistent with its submission and the procurement practices law.

AND IT IS HEREBY SO ORDERED.

IN WITNESS WHEREOF, WE THE MEMBERS OF THE PANEL HAVE HERE UNTO SET OUR HANDS AND AFFIXED OUR SIGNATURES TO THIS DOCUMENT THIS 19<sup>TH</sup> DAY OF SEPTEMBER, A.D. 2009.

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 \_\_\_\_\_

**\*Mrs. Esther Paegar did not sign this Opinion because she did not participate in the investigation.**

