



global witness

15 July 2009

Memorandum on the due diligence report on companies bidding for Forest Management Contracts

On 30 June 2009, the final due diligence report on companies that have bid for the latest round of four forest management contracts (FMCs) was submitted to the Forestry Development Authority (FDA) by the International Procurement Agency. The report consisted of a legal due diligence report by AB & David Law Ghana, a financial due diligence report by Ernst & Young Ghana and a response by the due diligence team to comments on the draft reports by GEMAP Controller Thomas Downing. The due diligence report aimed to provide legal and financial background checks into the bids received for forest management contracts (FMCs) F, K, I and P. The due diligence report is a tool to support the decision making process and will be viewed alongside a report by the bid evaluation committee.

The comments made on the report by GEMAP Controller Thomas Downing highlight serious flaws in the work of the due diligence team. It is apparent from the team's written responses to these comments, however, that they have not dealt with many of the concerns that he raises.

The result is a due diligence process which is severely flawed and cannot give the Liberian government the assurances it needs about the credentials and track records of the companies that have submitted bids for the FMCs. Global Witness is therefore calling on the Liberian government to suspend the FMC allocation process until further due diligence on the bidding companies has been completed to an adequate standard.

The memorandum which follows highlights some of the key failings in the due diligence team's report.

1. Shortcomings in the terms of reference

Global Witness found that neither the bid evaluation committee's terms of reference (TOR) nor the due diligence companies' TOR included a requirement to investigate the companies 'significant individuals' (associated parties), associates and beneficial owners and their previous operations to ensure that they have a track record of legally-compliant operations and a respect for human rights.

Given the role that the timber industry very recently played in abusing human rights and fuelling conflict in Liberia and the surrounding region, it is vital that only companies who have a proven track record of legal compliance and respect for human rights are granted FMCs. However, Global Witness investigations have uncovered serious concerns with the significant individuals, associates and beneficial owners of a number of companies that have submitted. Further information on our findings is included in the memorandum 'Background investigations into companies bidding for Liberian forest management contracts'.

2. The interrelationships between the bidders have not been explored

In the words of the GEMAP Controller, 'the interrelationships (between Southeast Resources and Atlantic Resources) raise the question as to whether each bidder prepared his own bid independently or whether, in the alternative, they collaborated. If they collaborated, the question arises as to whether collaboration violated the PPCA (Public Procurement Concession Act).' (Southeast Resources and Atlantic Resources shared certain documents prior to the bid. A document of one company appeared in the bid envelope of the other).'

The document 'Background investigations into companies bidding for Liberian forest management contracts' attached sets out the connections between Atlantic Resources Limited and Samling, via the intermediary company Perkapalan Damai Timar. It also shows how Southeast Resources relates to Samling via Woodman. A third company, Alpha Logging, which has already won a forest management contract, is similarly linked to Samling via Woodman.

The due diligence team failed to look into these interrelationships between the bidding companies. Moreover, it did not adequately assess whether the awarding of three FMCs to firms that are all either financed by or subject to the influence of the same company, might pose a risk to the Government of Liberia's capacity to regulate the forest sector. Were Southeast and Atlantic to be successful in their bids, this would give the Samling-affiliated companies control over 759,164 hectares of forest, which is 58% of the forest allocated for logging to date.

As pointed out by the GEMAP memo, Woodman and PDT may not have the capacity to provide financing themselves for Southeast and Atlantic and might be reliant on their own investors, ie Samling. The due diligence report fails to assess whether the contracts outlining financial obligations involving Samling are enforceable. For example, page nine of the financial due diligence report argues that 'the enforceability of the contract between PDT and Samling Global should be independently confirmed by legal representatives of the FDA.' However, according to the GEMAP Controller, this should have been the responsibility of the due diligence team themselves.

3. Failure to verify statements by the companies and authenticate documents

The financial due diligence report includes the statement 'We have not sought to verify the accuracy of the data or the information and explanations provided by Bidders,' and later: 'We have assumed the genuineness of all the documents...' and 'we have relied on the information provided by the Bidders and have not carried out any investigations to verify'. The failure to verify and authenticate documents undermines the reliability of the report and its usefulness as a tool to support the decision making process for the allocation of FMCs. The TOR issued to the due diligence team by the FDA state that the contractor must 'determine whether the information supplied is accurate and the documents supplied authentic.' The Public Procurement Concession Act (PPCA) states, moreover, 'The extent of the due diligence shall ... at a minimum include a verification of... the authenticity of the certificate of incorporation and other statutory.'

The due diligence report also fails to investigate whether any of the companies have brought in any new 'significant individuals' into their operations since bidding prequalification certificates were issued. These checks are vital to ensure that the FDA knows exactly who is behind companies operating in Liberia.

4. Debarment of Unitimber

According to the GEMAP Controller, 'the President of Liberia sent a letter to the FDA indicating that Unitimber should be debarred because of the improper conduct of one of the company's principals. At the time the FDA determined that the person in question had severed his ties with Unitimber, however, that same person has represented the company in subsequent dealings with the FDA. In addition, this person may be connected with another company that is debarred, which may require debarment of Unitimber under FDA regulation.'

The due diligence team make no mention of this issue in their report, however, raising questions as to how thoroughly they have checked the credentials of even the most prominent representatives of the companies that have submitted bids.

5. Financial Capacity of the bidders

The due diligence report fails to provide sufficient information on the ability of bidders to financially support the concessions. This is particularly pertinent in the light of the United Nations Expert Panel Report of June 2009, which states that 'many of the delays (to the commencement of operations) have been due to the fact that the companies have not been able to fulfil the required financial obligation of \$250,000 to proceed with the signing of their contracts.' For example, the Ghanaian company John Bitar is supporting TimberTek as well as financing EcoTimber and, through EcoTimber, LTTC, which won a concession in an earlier tender. John Bitar's equity stands at only \$17 million (\$8 million in 2007). The due diligence report fails to demonstrate whether the firm could support both concessions.