A Civil Society Critique
Of the Pre-qualification Process

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This paper summarizes a range of issues that challenged the pre-qualification process. This critique, of the process, is prepared primarily for the Management of the Forestry Development Authority (FDA). The purpose of this paper is to highlight the key issues and suggests ways in which those issues could be dealt with. It does not, in any way, aim to raise questions about the outcome of the evaluation process review; the writer is in full agreement with the report of the panel. Finally, it is prepared for the benefit of our constituency and other stakeholders. The paper will be made public following submission to the Managing Director of the Forestry Development Authority (FDA).

Introduction

The concept of pre-qualifying logging companies to participate in competitive bidding processes for new timber concessions in Liberia is new. The process is specifically mandated by the FDA Regulation on Bidder Qualification[1]. The first ever prequalification evaluation was conducted between October and December 2007[2].

Overall, the concept is good; it provides a rare opportunity for screening potential timber companies to ensure that "*…they possess integrity of character and respect the rule of law*…[3]"This is a key element of the FDA's vision as established by the Regulation on Bidder Qualification adopted by the FDA in 2007. The prequalification evaluation process and the methodology adopted for the evaluation must therefore support this vision in every respect. Conducting the evaluation to uphold this vision is critical. To further demonstrate its unwavering desire to uphold this vision, the panel must conduct the evaluation in a transparent and consistent manner. This will provide an opportunity for people who may have information on the past behavior and practices of logging companies to come forward with those information to better equip the pre-qualification panel. This will add value to the process.

This is particularly important if the exercise is to maintain its usefulness and integrity and to ensure that it does not become a box ticking exercise or an opportunity for possible rent-seeking behavior or other corrupt practices by a few individuals within government, especially those charged with issuing clearances for various purposes.

[1] FDA Regulation No. 103-07 Regulation on Bidder Qualification (September 11, 2007)
[2] The full panel's report is available on request
[3] Preamble of FDA Regulation on Bidder Qualification

Issues arising from the 1st sitting of the prequalification evaluation panel

During the review process, a couple of issues or questions and challenges emerged. These issues need to be discussed and preferably addressed before another round of Pre-qualification exercise gets underway. Combined, these issues presented a host of lessons to inform future reviews.

These issues are presented below with some suggested actions:

1. There was disagreement amongst members of the Panel about the fate of companies recommended for debarment by the 3rd Phase Concession Review Committee. The panel was unable to confirm whether or not the Government, by endorsing the recommendation to cancel all logging concessions through Executive Order #1 in 2006, in fact fully endorsed the committee's findings and recommendations.

Suggested Action: *the Government of Liberia should formally act on this outstanding recommendation of the 3rd Phase Forestry Concession Review Committee. The FDA management should present this issue to the Board of Director and follow up to ensure that a firm decision is taken on the matter. The public should be informed about the outcome of these discussions.*

2. The lack of clarity on the role of the Truth and Reconciliation Commission (TRC) and the purpose of the TRC clearances created some challenges for the Panel. This is of particular concern considering its implications for the debarment standards established in the Pre-qualification regulation. During the review, a handful of TRC clearances were presented to the Panel even though the Commission had not started hearing on natural resource issues[4]. This prompted a request for clarity from the Chairperson of the Panel. In response, the TRC categorically rejected the aforementioned clearances and declared them null and void[5].

Suggested Action: *the FDA management should request a formal investigation of the circumstances surrounding this issue because it has implications for the quality of the Panel's work and the relevance of clearances from the TRC. Additionally, this raises questions about the integrity of the process whereby logging companies will apply and receive clearances for future pre-qualification processes. Also, beyond the prequalification process, this raises some hard questions about the integrity and workings of the TRC itself, which has serious implications for national reconciliation and healing.*

[4]TRC clearance for LLWPC dated October 26, 2007 and signed by Mr. Nathaniel Kwabo, Executive Secretary of the TRC

[5] See letter from the Cllr. Jerome J. Verdier, Sr., Chairman of the TRC to the Managing Director of the FDA dated December 3, 2007

3. The Regulation on Prequalification clearly states that anyone owing forestry related taxes should not be pre-qualified. However, it became obvious that if this provision was applied fully none of the old logging companies would have pre-qualified. The Ministry of Finance issued several tax clearances to companies that had not met their full financial obligations to Government at the time of the review. Based on these clearances the Panel made the decision to allow those companies to be pre-qualified following assurances from the Ministry of Finance that they would not be allowed to bid if the balance of their arrears were not cleared.

Suggested Action: *the FDA Board of Directors need to discuss this situation and present some guidance on this matter for the future. It is far too early to try amending any of these regulations because they are only now getting tested. However, efforts should be made to clarify these issues in a guidance note that future panels can refer to. For example, who is authorized at the Ministry of Finance to issue tax clearances? Can tax clearances from outside Monrovia be considered valid for future exercises? Is there a standard form or format for tax clearances at the Ministry of Finance? If these questions are addressed, the resulting guidance note should be available for the future sittings of the panel.*

4. There were several instances of different formats being used for clearances from the same Ministry or Agency. In most of those instances, the clearances were signed by different individuals. There were other instances in which clearances, from the same Ministry or Agency, were issued from different offices. This raised questions about the authenticity of those clearances.

Suggested Action: *The Panel should be authorized to conduct due diligence focusing on clearances received by it during its sitting. This will ensure that long hours of debate and negotiations within the panel when these issues arise do not unnecessarily delay or undermine the integrity of the panels work.*

5. Although the Texas International Group lied in its prequalification, the company was pre-qualified, based on the scoring it received. The company claimed that it did not have logging experience contrary to the fact that it conducted logging operations in 2004 and 2005 and had a sawmill. The Texas International Group had its operations near Gondor Town, Laar Clan in Grand Cape Mount County. The company also conducted a mining operation in the area. This is a serious case of dishonesty and a clear demonstration of questionable character. Although this issue was brought to the attention of other members of the Panel there was a feeling that the panel did not have the authority to '*investigate*'.

***Suggested Action**: Texas International Group's certificate of Prequalification should be withdrawn and the company barred from participating in any future pre-qualification exercises. This will send a clear signal to others applying for pre-qualification that the FDA is committed to upholding the rule of law and that any attempt to contravene the rules will not be tolerated.*

6. The NGO Coalition raised concerns about the confidentiality arrangements agreed by the members of the panel. The need to address genuine issues of confidentiality and the need to meet the public's demand for information is critical. The panel had to negotiate a compromise. However, this creates an opportunity for the panel, based on its composition and the motivation of individual members at a given time, to arbitrarily change the rules as they move along.

Suggested Action: *the FDA Board of Directors should authorize the panel to publish the full list of applicants and their significant individuals as a part of its efforts to be more transparent and accountable to the public. The panel should establish a medium through which individuals could communicate with it if s/he has information relevant to its work or the evaluation process.*

The following recommendations are presented here to further emphasize the need for action on the issues identified above.

1. The Government of Liberia should officially establish the debarment list for companies and individuals listed in the 3rd phase concession review report;

2. The FDA should request a formal investigation of circumstances surrounding the unauthorized issuance of clearances by the TRC Executive Director Nathaniel Kwabo;

3. The FDA should authorize the panel to work with the Ministries and agencies, that are required to issue clearances for the evaluation process, to establish a framework for validating future clearances;

4. The FDA should instruct the panel to publish the list of applicants and their significant individuals before commencing review and evaluation of their applications.

5. Future panels should research the behaviour of companies in other countries. In cases where there is substantial body of information, for example published reports, from credible sources that allege illegal logging or trading in conflict timber, such companies should be required to provide evidence to proof their innocence.

6. Future panels should also be required to carry out due diligence in the event that a member of the panel has information suggesting bad corporate history.

All of these actions will greatly improve the quality of the panel's work and further strengthen its role in the sector.

It is our hope that the FDA will implement these recommendations with urgency.