

Forestry Development Authority
Regulation No. 103-07
Regulation on Bidder Qualifications

WHEREAS, the National Forestry Reform Law of 2006 establishes a transparent framework for the use, management, and protection of forest resources that balances the commercial, community, and conservation priorities of the Republic; and

WHEREAS, past failures to control forest use under the rule of law led to destruction of forests, diversion of public income into private accounts, and an international ban on trade in Liberian Forest Products; and

WHEREAS, to achieve sustainable commercial development of the forest the nation must ensure that forest users possess integrity of character and respect for law, as well as financial and technical capacity; and

WHEREAS, screening and prequalification of bidders on Forest Resources Licenses will serve commercial development and help ensure that the National Forest Policy and the laws of the Republic are honored and fairly implemented; and

WHEREAS, the Public Procurement and Concessions Commission has approved the use of prequalification in the award of Forest Resources Licenses; and

WHEREAS, the Public Procurement and Concessions Act allows the use of two-envelope bidding; and

WHEREAS, establishing and maintaining publicly available lists of Persons debarred and suspended from bidding is necessary to ensure the integrity of the management of the nation's forests; and

WHEREAS, the National Forestry Reform Law of 2006 authorizes the Forestry Development Authority to issue regulations and other rules necessary to implement the law (Section 19.1(a)), specifically including regulations that govern contracting and permitting (Section 19.1(c)); and regulations that establish standard qualifications for commercial forest operations (Section 5.2(a)(i)-(iii));

NOW, THEREFORE, the Forestry Development Authority does hereby rule and regulate as follows:

PART ONE: GENERAL PROVISIONS

Section 1. Definitions

In this Regulation, the following terms have the meaning indicated, unless the context otherwise requires:

- (a) Authority: Forestry Development Authority.
- (b) Board: Board of Directors of the Forestry Development Authority.

- (c) Categories: The categories of concessions listed in Section 2 of this Regulation.
- (d) Concession Bid Documents: The documents called for under Sections 104 and 105 of the Public Procurement and Concessions Act as enacted in 2005 or, if the Act is amended or superseded, similar official materials describing the proposed concession.
- (e) FMC: Forest Management Contract, a long-term license from the Government under Section 5.3 of the National Forestry Reform Law of 2006, allowing a Person to manage a tract of Forest Land and harvest or use Forest Products.
- (f) Government: The Government of the Republic of Liberia and all its branches, subdivisions, instrumentalities, authorities, and agencies.
- (g) Major FUP: A Forest Use Permit that Section 5.5(d)(i) of the National Forestry Reform Law of 2006 requires the Authority to offer through a concessions process because the permit allows use of more than US \$10,000 worth of Forest Resources, and “use” in this context means harvest, consumption, or destruction of Forest Resources, but does not include observation or study of Forest Resources or non-exclusive occupation of land.
- (h) Panel: The Prequalification Review Panel described in Part Four of this Regulation.
- (i) Person: An individual, partnership, joint venture, association, corporation, trust, estate, unincorporated entity, community, government or state, and any branch, division, political subdivision, instrumentality, authority, or agency thereof.
- (j) Significant Individual: Of a corporation means—
- (1) All members of the board of the corporation.
 - (2) All holders of offices created in the corporate bylaws.
 - (3) All individuals who have effective control over at least ten percent of the voting stock of the corporation, either through direct ownership or through direct or indirect control of the voting of other stockholders.
 - (4) All individuals authorized to withdraw funds or sign checks on the corporate bank accounts.
 - (5) All individuals authorized to transfer ownership of corporate assets worth more than US \$10,000, including individuals authorized to pledge those assets as security.
 - (6) All individuals presently entitled to receive, directly or indirectly, more than US \$10,000 per year from the corporation in interest payments, and all individuals to which the corporation owes, directly or indirectly, more than US \$100,000 in principal.
 - (7) All individuals who have received in the last two years, or can reasonably be expected to receive in the coming two years, more than US \$25,000 from the corporation from sources other than current employment or sale of goods or services at fair market value.

(k) TSC: Timber Sale Contract, a license from the Government under Section 5.4 of the National Forestry Reform Law of 2006, allowing a Person to harvest timber from a specified tract of Forest Land.

Other terms used in this Regulation have the meaning established in the National Forestry Reform Law of 2006, as amended.

Section 2. Categories of Concessions

For purposes of this Regulation, concessions fall into the following four Categories of Forest Resources Licenses:

- (a) Major FUPs.
- (b) TSCs.
- (c) Ordinary FMCs, which are FMCs involving less than 250,000 hectares of land.
- (d) Large FMCs, which are FMCs involving 250,000 hectares or more of land.

Sections 3 to 20. Reserved

PART TWO: DEBARMENT AND SUSPENSION

Section 21. Lists

In addition to the Government-wide debarment list kept by the Public Procurement and Concessions Commission under Section 44 of the Public Procurement and Concessions Act, as amended, the Authority shall keep a list of debarred Persons and a list of suspended Persons.

Section 22. Effect of Listing

- (a) If a Person is on the list of debarred Persons or the list of suspended Persons, the Person is ineligible to bid on a Forest Resources License offered through a concessions process.
- (b) If the Person is a corporate entity, all of the following are also ineligible to bid on a Forest Resources License offered through a concessions process:
 - (1) Any corporation that owns a portion of the listed corporate entity.
 - (2) Any corporation that is owned in part or in full by the listed corporate entity.
 - (3) Any corporation that shares board members with the listed corporate entity.
- (c) If the Person is a natural person, any corporation for which the Person is a Significant Individual is also ineligible to bid on a Forest Resources License offered through a concessions process.

Section 23. Standards for Listing

- (a) The Authority shall place on the list of debarred Persons all Persons involved in any way with the use, management, or harvesting of Forest Resources who have aided or abetted civil disturbances involving the use of weapons.
- (b) The Authority shall place on the list of suspended Persons those who have defaulted on their financial obligations related to forest use.
- (c) The standard of proof for listing is clear and convincing evidence.

Section 24. Procedure for Listing

- (a) Any Person, including the Authority, may petition the Authority to add Persons to the list of debarred Persons or the list of suspended Persons.
- (b) The Authority shall make a prompt and thorough investigation of the allegations in the petition.
- (c) The Authority shall notify the Persons being investigated either directly or, if the Authority cannot locate the Persons, through an advertisement in a newspaper of general circulation.
- (d) The Authority shall allow the Persons being investigated fair opportunity to present evidence in the investigation.
- (e) The Authority shall publish a draft summary of its findings from the investigation in an advertisement in a newspaper of general circulation.
- (f) In that advertisement, the Authority shall invite the public to submit additional evidence bearing on the listing.
- (g) No sooner than 60 days after publishing its draft summary, the Authority shall publish in a newspaper of general circulation a final summary, a decision on listing, and a statement of reasons.
- (h) Upon publishing its decision on listing, the Authority shall make any necessary additions to the list of debarred Persons or the list of suspended Persons.
- (i) The Authority shall inform the Public Procurement and Concessions Commission of any change that the Authority makes to the list of debarred Persons or the list of suspended Persons.

Section 25. Removal from the Lists

- (a) The following are the only routes for removal from the suspension or debarment lists:
 - (1) The Authority shall remove a Person from the debarment list if three years or more have passed since the date of listing.

(2) The Authority shall remove a Person from the suspension list if the cause of the suspension has been remedied.

(3) The Authority shall remove a Person from either list if a court of competent jurisdiction of the Republic orders the Authority to remove the Person from the list.

(b) Upon petition of any listed Person, the Authority shall consider whether the Person is entitled to removal under Subsection (a) of this Section.

(c) Upon reaching a decision on removal with respect to any Person, the Authority shall make any necessary changes to the list of debarred Persons or the list of suspended Persons.

(d) Persons removed from the suspension or debarment lists remain subject to the prequalification requirements contained in Part Three of this Regulation.

Section 26. Appeal and Petition to the Board

(a) Any Person may appeal a decision of the Authority under Sections 24 or 25 of this Regulation to the Board.

(b) If the Board finds that the Authority's decision is inconsistent with its statement of reasons, is procedurally flawed, or is otherwise contrary to law, the Board may reverse the action of the Authority.

(c) Any Person may petition the Board to direct the Authority to act without further delay on a listing or removal decision.

(d) If the Board finds that the Authority has unreasonably delayed action on a listing or removal petition, the Board may direct the Authority to expedite action on the petition.

(e) Within ten days of receipt of notice of a final, written decision of the Board under this Section, the Person may file a notice of appeal in a court of the Republic with competent jurisdiction. The person shall also file a copy of the notice of appeal with the Board.

Sections 27 to 30. Reserved

PART THREE: QUALIFICATION PROCESSES

Section 31. Prequalification Requirement for All Bidders

(a) Only Persons with a valid prequalification certificate issued under Part Four of this Regulation may submit bids for Forest Resources Licenses offered as concessions.

(b) All bids must include a notarized and unaltered copy of the bidder's valid prequalification certificate.

Section 32. Additional Use of Two-Envelope Bidding in Some Tenders

(a) Before preparing Concession Bid Documents for a Forest Resources License offered as a concession, the Authority shall determine whether the concession involves special technical or financial demands beyond the normal technical and financial demands for managing a forested areas.

(b) If the concession involves special technical or financial demands, the Authority shall offer the concession using a two-envelope bidding system, as described in Part Five of this Regulation.

Sections 33 to 40. Reserved.

PART FOUR: PREQUALIFICATION

Section 41. Applications for Prequalification

(a) Persons wishing to prequalify must submit an application on an official form provided by the Authority; the Authority shall create a standard form for applications and provide it to Persons for the fee prescribed under Authority Regulation 107-07.

(b) Applications must include or indicate the following:

(1) The applicant's name and contact information.

(2) The Category of Forest Resources License for which the applicant wishes to prequalify.

(3) If the applicant is facing an impending bidding deadline, the date of the deadline.

(4) The answers to the questions in Schedule I of this Regulation.

(5) A copy of a business plan demonstrating technical and financial capacity to hold a Forest Resources License in the desired Category.

(6) If the applicant is seeking to prequalify for an Ordinary FMC or a Large FMC, a demonstration of capacity and strategy for increasing value-added industries in the Republic.

(7) If the applicant is seeking to prequalify for a Large FMC, a demonstration of expertise or experience in forest management as required under Section 45(c) of this Regulation.

(8) A statement by the applicant swearing or affirming, under penalty of perjury, that the information in the application is correct to the best of the applicant's knowledge.

(c) A Person may apply to the Authority for prequalification at any time.

(d) The Authority shall promptly forward applications to the Prequalification Review Panel described in Section 42 of this Regulation for review.

Section 42. Prequalification Review Panel

(a) The Authority shall appoint a standing Panel to judge applications for prequalification.

(b) The Authority shall keep seven members on the Panel, as follows:

(1) One representative of the National Investment Commission, appointed with the approval of the Executive Director of the Commission.

(2) One representative of the Ministry of Justice, appointed with the approval of the Minister of Justice.

(3) One representative from the Ministry of Finance, appointed with the approval of the Minister of Finance.

(4) One representative from civil society, chosen after consultation with civil society groups on any forest management stakeholder list maintained under Authority Regulation No. 101-07, concerning public participation.

(5) One expert on forest management or commercial logging from the Authority's staff.

(6) One expert on forest management or commercial logging not from the Authority's staff.

(7) The head of the Authority's Procurement Unit.

(c) The Authority shall designate one member of the Panel to serve as chair and one to serve as vice chair.

(d) The Head of the Authority's Procurement Unit shall serve as secretary of the Panel.

(e) Members shall serve a term of one year, subject to reappointment.

(f) If a member leaves before the end of a term, the Authority shall appoint a similarly qualified individual to serve the remainder of the term.

Section 43. Meetings and Records of the Panel

(a) The Panel shall meet at the following times:

(1) At the call of the Authority, at the Authority's discretion.

(2) At the call of the Authority, as the Authority is required in response to a petition under Subsection (b) of this Section.

(3) At times determined by the Panel itself, under Subsection (c) of this Section.

(b) *The Authority shall call the Panel in response to a petition as follows:*

(1) During the first two weeks after the Authority invites bids for a particular concession, any Person lacking a valid prequalification certificate for that Category of concession may submit with its application for prequalification a petition to the Authority to call the Panel to review prequalification applications.

(2) In response to a petition received under this Subsection, the Authority shall call the Panel to meet at least ten days before bids for that concession are due.

(3) The Authority may arrange a single meeting of the Panel to satisfy multiple petitions.

(c) The Panel may set additional meeting times and may recess a meeting in progress until the next business day.

(d) Except in the case of meetings continuing after a recess, the Authority shall give at least 48 hours' notice of any meeting to the Panel members and to Persons whose applications may come before the Panel.

(e) The Panel may open or close its meetings to applicants, the press, and the public; however, all records, documents, and other information produced by the Panel belong to the Authority and are subject to Section 18.15 of the National Forestry Reform Law of 2006, regarding public access to information.

(f) Five members of the Panel constitute a quorum to do business, and the Panel shall make its decisions by majority vote of the members present.

(g) The Panel shall keep records of which members are present at meetings and how they vote.

(h) Members shall recuse themselves on matters in which they have a personal financial stake, and the chair shall consider recused members to be absent for the purpose of determining the presence of a quorum or the outcome of a vote.

Section 44. Powers and Duties of the Panel

(a) The Panel shall review applications for prequalification to bid on concessions of Forest Resources Licenses and shall approve or reject them by applying the standards in Section 45 of this Regulation.

(b) The Panel shall give priority to reviewing applications from Persons seeking prequalification for concessions with approaching bid submission deadlines.

(c) The Panel shall not unreasonably delay approval or rejection of any application.

(d) After the Panel approves or rejects an application, it shall promptly give the applicant notice of its decision.

(1) Notices of approval must include a prequalification certificate indicating the Category for which the applicant is prequalified and the date of approval.

(2) Notices of rejection must include a short statement of reasons why the application was rejected.

Section 45. Standards for Prequalification

(a) The Panel shall apply the following standards when reviewing applications for prequalification certificates:

(1) The objective, yes-or-no criteria set out in Schedule I of this Regulation; and

(2) An evaluation of the bidder's business plan to determine whether the applicant has the general capability to carry out Operations under that Category of Forest Resources License.

(b) For concessions in the Ordinary FMC and Large FMC Categories identified in Section 2 of this Regulation, the Panel shall reject applicants unless they demonstrate capacity and strategy for increasing value-added industries in the Republic.

(c) In addition, for concessions in the Large FMC Category identified in Section 2 of this Regulation, the Panel shall reject applicants unless they either:

(1) Demonstrate experience in successfully implementing sustainable forest management by presenting a certificate of "Certification of Sustainable Forest Management," issued by an internationally recognized certification system, and demonstrate that the company will employ expertise in long-term sustainable management of tropical forests in Liberia; or

(2) Present evidence of retaining employees, consultants, or subcontractors with experience and expertise in sustainable forest management.

Section 46. Prequalification Certificates

(a) Prequalification certificates (issued to successful applicants under Section 44(d)(1) of this Regulation) are specific to the applicant and are non-transferable.

(b) For a prequalification certificate to be valid with respect to bidding on any particular concession for a Forest Resources License, the following must be true:

(1) The prequalification certificate was issued for the same Category of Forest Resources License for which it is being presented;

(2) The prequalification certificate was issued within three years of the deadline for the bid;

(3) The standards for prequalification, set forth in this Regulation, have not changed since the Panel issued the prequalification certificate; and

(4) The facts that the bidder stated in the prequalification application have not materially changed.

Sections 47. The List of Prequalified Persons

(a) In January and July of each year, the Authority shall publish in two newspapers of national circulation a list of all Persons issued prequalification certificates during the previous three years.

(b) The Authority shall keep at its headquarters a list of Persons issued prequalification certificates in the last three years and shall allow the public to examine the list, without charge, during normal business hours.

(c) Being named on a list under this Section is not evidence of prequalification for purposes of bidding; a bidder must possess a valid prequalification certificate under Section 46(b) of this Regulation.

Section 48 to 50. Reserved.

PART FIVE: TWO-ENVELOPE BIDDING

Section 51. Process and Standards for Two-Envelope Bidding

(a) When the Authority offers a concession under a two-envelope bidding system, the Authority shall disclose in the Concession Bid Documents the standards that will be used to evaluate the contents of the first envelope, subject to the requirements of this Section.

(b) These standards must consist of the following:

(1) Whether the bidder demonstrates the ability to carry out Operations under the specific Forest Resources License being offered, including the capability to satisfy the special technical or financial demands that led the Authority to call for two-envelope bidding;

(2) For concessions in the Ordinary FMC Category or the Large FMC Category identified in Section 2 of this Regulation, whether the bidder demonstrates the ability and presents a practical strategy for increasing value-added industries in the Republic under this concession;

(3) For concessions in the Large FMC Category identified in Section 2 of this Regulation, whether the bidder demonstrates the ability to manage the concession sustainably, in the light of the special circumstances of the concession; and

(4) Whether the bidder has a valid prequalification certificate under Section 46(b) of this Regulation.

(c) To establish its ability to meet the standards, the bidder shall submit the following in the first envelope:

(1) A copy of a business plan and other supporting documents demonstrating technical and financial ability to carry out Operations under the Forest Resources License, including, for concessions in the Ordinary FMC Category or the Large FMC

Category identified in Section 2 of this Regulation, demonstration of the ability and presentation of a practical strategy for increasing value-added industries in the Republic under this concession;

(2) For concessions in the Large FMC Category identified in Section 2 of this Regulation, evidence of management capacity as described in Section 45(c) of this Regulation plus evidence of ability to address any special challenges of sustainable management identified in the Concession Bid Documents;

(3) A notarized and unaltered copy of the bidder's valid prequalification certificate under Section 46(b) of this Regulation; and

(4) A statement by the bidder swearing or affirming, under penalty of perjury, that the information in the bid is correct to the best of the bidder's knowledge.

(d) In the second envelope, the bidder shall submit the amount that it proposes to pay for the concession.

(e) The Authority shall specify in the Concession Bid Documents the procedure for opening and reviewing the contents of the two envelopes.

Sections 52 to 60. Reserved

PART SIX: REPEALS AND EFFECTIVE DATE

Section 61. Repeals

This Regulation repeals no existing regulations.

Section 62. Effective Date

(a) This Regulation is effective on September 11, 2007.

(b) The Authority shall announce this Regulation and make it available to the public and the media.

SIGNED:

**Managing Director
Forestry Development Authority**

SCHEDULE I: YES-OR-NO PREQUALIFICATION CRITERIA

1. Is the Applicant a corporation registered to do business in Liberia, and NOT a partnership, sole proprietorship, natural person, not-for-profit entity or non-governmental organization, or unincorporated association? (See Public Procurement and Concessions Act, as amended, Section 86) [An answer of “Yes” is required for prequalification.]
2. If the Applicant seeks to produce cut wood or logs, does the Applicant have a main office in Monrovia? (See National Forestry Reform Law of 2006, Section 13.3) [An answer of “Yes” is required for prequalification.]
3. Is any officer or director of the Applicant or any Person with more than a one percent equity stake in the Applicant restricted from participating in the forest trade in Liberia? (For a list of people restricted from participating in the forest trade, see National Forestry Reform Law of 2006, Section 5.2(b)(v)-(vii).) [An answer of “No” is required for prequalification.]
4. Has any officer or director of the Applicant or any Person with more than a one percent equity stake in the Applicant been convicted of or pleaded no contest to a felony in the past five years? [An answer of “No” is required for prequalification.]
5. Is the Applicant in good standing in its payments of corporate taxes and social security in Liberia? [An answer of “Yes” is required for prequalification.]
6. Is the Applicant in good standing in its payments of forest-related fees, including stumpage, land rental, and forest product fees in Liberia? [An answer of “Yes” is required for prequalification.]
7. Is the Applicant in good standing in its payments of trade-related fees in Liberia? [An answer of “Yes” is required for prequalification.]
8. Has the Applicant or any affiliate of the Applicant been convicted or penalized for violation of any forest-related law in the last five years in Liberia? (As used in this Schedule, “affiliate” includes any parent or subsidiary of the Applicant, and any other entity or individual that shares directors, officers, or managers with the Applicant.) [An answer of “No” is required for prequalification.]
9. Has the Applicant or any affiliate of the Applicant been convicted or penalized for any violations of commercial law in the last five years in Liberia? [An answer of “No” is required for prequalification.]
10. Is the Applicant or any affiliate of the Applicant debarred from Government contracting in Liberia under the Public Procurement and Concessions Act, as amended? [An answer of “No” is required for prequalification.]
11. Has the Applicant or any officer, director, or affiliate of the Applicant been convicted or penalized for any violation of law in the last five years that reflects on honesty or moral character, such as theft, embezzlement, bribery, tax evasion, false swearing, or forgery? [An answer of “No” is required for prequalification.]

12. Has the Applicant or any affiliate of the Applicant been convicted or penalized for interference with fair and open competition in contracting? [An answer of “No” is required for prequalification.]

13. Has the Applicant been adjudged insolvent or bankrupt during the past five years? (Persons who have sought bankruptcy protection but are in compliance with a court-approved plan of reorganization permitted under the laws of Liberia may answer “no”.) [An answer of “No” is required for prequalification.]

14. For the purposes of this criterion, “Significant Individuals involved in the ownership or management” of a corporation means:

- (1) All members of the board of the corporation.
- (2) All holders of offices created in the corporate bylaws.
- (3) All individuals who have effective control over at least ten percent of the voting stock of the corporation, either through direct ownership or through direct or indirect control of the voting of other stockholders.
- (4) All individuals authorized to withdraw funds or sign checks on the corporate bank accounts.
- (5) All individuals authorized to transfer ownership of corporate assets worth more than US \$10,000, including individuals authorized to pledge those assets as security.
- (6) All individuals presently entitled to receive, directly or indirectly, more than US \$10,000 per year from the corporation in interest payments, and all individuals to which the corporation owes, directly or indirectly, more than US \$100,000 in principal.
- (7) All individuals who have received in the last two years, or can reasonably be expected to receive in the coming two years, more than US \$25,000 from the corporation from sources other than current employment or sale of goods or services at fair market value.

Has the Applicant supplied the Authority a complete list of Significant Individuals involved in the management or ownership of the Applicant, and have all the named Significant Individuals supplied the Authority with a sworn affidavit attesting that either:

- (a) The Significant Individual had no involvement in Liberia with forest harvest or the timber trade before January 1, 2006; or
- (b) The Significant Individual had involvement in Liberia with forest harvest or the timber trade before January 1, 2006 and has done all the following:
 - (1) The Significant Individual has filed with the Truth and Reconciliation Commission a sworn statement describing the individual’s involvement in Liberia in forest harvest and the timber trade, honestly and fully disclosing all illegal activities in which the individual was involved;

(2) The Significant Individual has cooperated upon request with Government-approved efforts to recoup funds lost due to illegal activity; and

(3) The Significant Individual has filed with the Authority a pledge to cooperate upon request in all future Government-approved efforts to recoup funds lost due to illegal activity, understanding that if the individual fails to keep the pledge, the Authority may cancel any license granted on the strength of the pledge? [An answer of “Yes” is required for prequalification.]