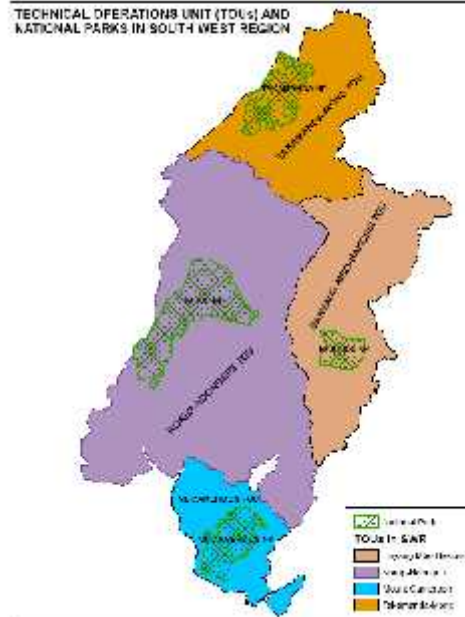


FITCAM'S INDEPENDENT INQUEST



PROGRAM FOR THE SUSTAINABLE MANAGEMENT OF NATURAL RESOURCES IN THE SOUTH WEST REGION OF CAMEROON (PSMNR-SWR)

A Development Program of the Republic of Cameroon Co-Financed by Federal Republic of Germany (GTZ/KFW) and the Government of Cameroon (MINFOF)

FINAL REPORT ON THE ASSESSMENT OF THE PSMNR-SWR TENDERS BOARD OPERATIONS FOLLOWING A LETTER OF COMPLAINT FROM FEMCO ENTERPRISE AGAINST MALPRACTICES

APRIL 2015

Introduction

On April 6th, 2015, the Managing Director of FEMCO Enterprise (a dealer in General Contracts, Suppliers and Telecommunications with Reg.N0.RC.BUA.2007.A.043) filed a complaint report to the CNLCC/CONAC/SWR and MINMAP/CLCC/SWR against the Regional Delegate of Forestry for the South West Region. The complaint tipped on malfeasance in the award of Tender NO.006/2014/PSMNR/MCNP to FEMCO Enterprise by Mr. Eben Ebai Samuel, Regional Delegate of Forestry for the South West Region. This report therefore is a collation of findings and summary conclusions and recommendations following an inquest into the aforementioned complaint.

It is also meant to inform the Director General of the Agency for the Regulation of Public Contracts (DG/ARMP) on operational lapses within the Regional Center of the Agency for the Regulation of Public Contracts, while relaying findings to the President of the Anti-Corruption Unit of the Ministry of Public Contracts and the National Anti-Corruption Commission concerning misapprehension of the Public Contracts Procedure by officials managing the Program for the Sustainable Management of Natural Resources in the South West Region of Cameroon (PSMNR-SWR).

Overview of the PSMNR-SWR

The Program for the Sustainable Management of Natural Resources in the South West Region (PSMNR-SWR), is a sustainable natural resource management Program/Project co-financed by the Federal Republic of Germany through KWF (A German based Financial Institution) and the Government of Cameroon through the Ministry of Forestry. The program is represented and coordinated by Frank Stenmanns (GIZ/KFW representative) and Mr. Eben Ebai Samuel (RD/MINFOF/SWR). Both serve as co-signatories for the PSMNR-SWR Program which is itself the initial Contracting Authority.

As a program with diverse development projects the PSMNR-SWR's projects are awarded through national invitations to tender involving local Cameroonian contractors. The PSMNR-SWR's national invitations to tender are nonetheless 'restrictive' and have its own 'Tenders Board' which evaluates and assesses bids and offers. As reported by the Coordinators, the PSMNR-SWR, awards for projects range between ceiling amounts of twenty to forty million francs CFA (20,000,000-40,000,000XAF) even though for some other projects, the award amount may exceed significantly the above stated sum.

Highlight of the Problem

In mid 2014, the PSMNR-SWR launched a Restricted National Call for Bids NO.006/2014/PSMNR-SWR/MCNP: FOR THE CONSTRUCTION OF KUKU-KUMBU and LYKOKO WATER SUPPLY SCHEMES MEME DIVISION SOUTH WEST REGION OF CAMEROON. On September 30th, 2014 a Proposed List of Contractors to Tender for the Construction of Kuku Kumbu and LYKOKO Water Points was released by the Regional Delegate of Forestry/SWR (See annex 1) as follows:

1	MULTI ENGINEERING ENTERPRISE	etoneseh@yahoo.com B.P.BOX 305, Buea.	Contracting: Water	Etone Emmanuel	677007010
2	BUMCO CONSTRUCTION ENTERPRISE	agtgroupp@yahoo.com P.O.BOX 437 Kumba	Contracting water building, bridges/culverts	Buminang Wilfred	677428116
3	NEBAN ENTERPRISE	nebanconstruction@yahoo.com P.O.BOX 484, Bamenda	Contracting roads, water, buildings	Ngu Fabian Neban	677782184 696268384
4	ETS FADCAM	Fadcam2000@yahoo.com P.O.BOX 125, Muyuka	Contracting water and roads	Fang Anang David	675339250
5	FEMCO ENTERPRISE	efomujong@yahoo.co.uk P.O.BOX 275, Buea	Contracting water	Fomujong Elias	677738877

Four (4) months after, On 29th of January 2015 at 11:00am at MINFOF Conference Hall the Opening of Bids for Tender NO.006/2014/PSMNR-SWR/MCNP: FOR THE CONSTRUCTION OF KUKU-KUMBU and LYKOKO WATER SUPPLY SCHEMES took place chaired by the representative of the RD/MINFOF/SWR.

On Friday 27th, February 2015 the PSMNR-SWR Tender Evaluation Team (TET) met to actualize and harmonize their findings which ended up with the recommendations summarized below (Please see annex 2 for a detailed TET analytical report):

Recommendations:

Based on the evaluation criteria as stipulated in the tender document, the committee recommended as follows:

Lot.1

NO	Company Names	TET: Recommendations
1	FEMCO Enterprise	Lowest bidder recommended for contract award
2	BUMCO Enterprise	Bid value higher than confidential price
3	NEBAN Enterprise	Bid value higher than confidential price

Lot.2

NO	Company Names	TET: Recommendations
1	FEMCO Enterprise	Lowest bidder recommended for contract award
2	BUMCO Enterprise	Bid value higher than confidential price
3	NEBAN Enterprise	Bid value higher than confidential price

Composition of PSMNR-SWR-Technical Evaluation Team (TET)

1. Fred Molua Makolo- IDO-MCNP
2. Akum Osia Nkwenti-Consultant ORICAA
3. Gamjie Tansah Joan-Consultant
4. Etta Ebob K. -Chief Engineer GFA/PSMNR
5. Epoh Franlins Atem-BBM,RDFOF,SWR

Letter of the Regional Delegate of MINFOF

On March 11th, 2015 the Regional Delegate-MINFOF-SWR-wrote to the Chief Engineer (PSMNR-SWR) Dr. Etta Ebob opinionating that the proposed award to FEMCO Enterprise be rejected for the following reason:

‘Giving the observation on the quality of work made by the joint team during the mission as well as additional unnecessary cost incurred by the program due to the poor quality of work by the Contractor (FEMCO Enterprise)...FEMCO Enterprise should not be awarded the contract for the construction of both water schemes’ (See annex 3 for details).

According to the letter of complaint against malpractices filed by the Managing Director of FEMCO Enterprise:

‘...information which was later confirmed by authorities when I confronted them was that my enterprise had the best bid (both technically and financially). The GIZ/kwf representative-Frank Stenmanns confirmed that my Enterprise had the best bids, but that declaring the results (winner) was the prerogative of the Delegate of

Forestry. When the Regional Delegate called in the Frank Stenmanns and the infrastructure head-Dr. Ebob, his emphasis was not on why the results were altered but rather on who gave me the information that I had won. He told me in white and black that he is the one who decides who wins a job or not...' (See annex 4: FEMCO Enterprise's complaint for details)

Overview of inquest

In reaction to the complaint deposited at my office (CNLCC/SWR/CONAC: MINMAP/CLCC/SWR: IGI-FITCAM); I reached the Regional Delegate MINFOF/SWR on phone on Friday 17th, April 2015 to understand the problem of the matter from his perspective. Unfortunately the RD/MINFOF traveled to Yaoundé for a meeting and could only return by Monday of 20th, April 2015. We however programmed for a meeting for Monday 20th, April 2015. I latter seized the opportunity of his absence to make further findings with the PSMNR-SWR/Tenders Board and also with Mr. Frank Stenmanns the GIZ/kfw representative.

During my discussions with Dr. Ebob and other PSMNR-SWR Tenders Board members that Friday, I was able to glean on a lot of information on the functioning of the PSMNR-SWR'S Tenders Board and how the Bids for Tender NO.006/2014/PSMNR-SWR/MCNP: FOR THE CONSTRUCTION OF KUKU-KUMBU and LYKOKO WATER SUPPLY SCHEMES were analyzed and evaluated. Mr Frank Stenmanns the GIZ/kfw representative whom I met in a separate meeting said he will only comment on the issue in the presence of the Regional Delegate MINFOF/SWR and thus agreed that we all assemble for a session on Monday 20th April, 2015 as fixed by both the RD/MINFOF and myself.

As soon as I finished meeting with the aforementioned officials, I traveled with the complainant (the Managing Director of FEMCO Enterprise) to meet the Chef of Center for ARMP/SWR. We were received by the ARMP Chief who acknowledged having received the letter of complaint from the Managing Director of FEMCO Enterprise and had requested for a copy of his tender file alongside other documents but had not had the time to review the documents in question. He however, promised to read through the documents thoroughly over the weekend as both of us (the RD/ARMP and Myself-CNLCC/CONAC/SWR-CLCC/MINMAP) agreed to meet the RD/MINFOF and the other members of GIZ/kfw and PSMNR program at the office of the RD/MINFOF on Monday 20th April, 2015. In the same meeting I recalled to the

ARMP chief of Center the worrying matter of the PSMNR-SWR's Tender Board not having any authorization document to act independently as a Tender Boards under special status seeing that, it manages award offers that are equal to the amount managed by the Regional Tenders Board for the SWR. While we all remained keen into finding out why this was so, we however agreed to work together to find out why.

To my surprise in spite of the fact that the ARMP chief had in his possession a copy of the complaint report from FEMCO Enterprise, he declined on Monday 20th April, 2015 to join us for the exercise at MINFOF; stating that he cannot join us in the meeting because he had not received a CONVOCATION letter from me to join the meeting. We nevertheless, had the meeting on Monday 20th, April, 2015 with all concerned parties (RD-MINFOF, GIZ-kfw and Dr. Ebob). The following day the ARMP Chief went alone to meet the RD-MINFOF who briefed him on our conclusions, he thereafter called the Managing Director of FEMCO enterprise on phone to meet him at his office purporting to have arranged the matter for him. When both of them met (ARMP and FEMCO) he demanded to hear from FEMCO all that transpired in the meeting but FEMCO declined to supply the requested information. It has been reported by many stakeholders that the ARMP Chief makes calls to contractors (reasons best known to him) which is inappropriate.

Findings and Recommendations

1. Following the inquest the CNLCC/CONAC/SWR; CLCC/MINMAP/SWR conducted on the PSMNR-SWR a number of practices that do not conform to best practices in the award of contracts where noticed as follows:
2. The PSMNR-SWR's Tenders Board does not possess any authorization from the Minister of Public Contract/Government of Cameroon to operate as a separate tender's board under the Special Project Status.
3. The Project is also not listed in the ARMP official document of Contracting Authorities and Projects under Special Status (see Journal des Marche Public N0.611 of July, 2014).
4. Because of its isolation and obscurity it continues to act alone without (soliciting) technical advice from the Regional Delegation of the Ministry of Public Contracts-MINMAP/SWR and the Agency for the Regulation of Public Contracts-ARMP-SWR) as a result:
5. The composition of the PSMNR-SWR's Tenders Board does not conform to the norms in force with respect to the financial offers for projects which it awards (20m-40m XAF).

For instance in a normal Tenders Board, the President/Chairperson is appointed by MINMAP. The Secretary may come from delegation concern (MINFOF). The Ministry of Finance –MINFI- equally has to be represented, GTZ/kwf which is the supposed donor institution is to be represented at all the award stages of the commission. ARMP in this case is just the collector of bids.

6. The Letter of rejection from the RD/MINFOF to the Managing Director of FEMCO Enterprise relative to his Bids was NOT DATED and carried no reference as such one will hardly know when the rejection letter was served and the time left for FEMCO Enterprise to file for arbitration.
7. Furthermore, once a proposal is made the contracting authority is suppose to address his reservation for a particular proposal to the Tenders Board and not to an individual as was the case of letter N0.273/L/MINFOF/RDFOF/SW/08 where the reservation of the RD/MINFOF addressed to the Chief Engineer, PSMNR-SWR.
8. The Tender Document/DAO is the main document from which the Tender Board has to rely upon to eliminate any candidate. Once there is no clause in the tender document that eliminates a particular candidate the contracting authority of the board cannot come around to suggest any eliminatory criteria against a candidate which was not found in the tender document of DAO as was the case with the statement of reservation made by the RDMINFOF to eliminate FEMCO Enterprise.
9. FEMCO Enterprise was judge as having satisfied all the criteria mentioned in the tender document and was as a result proposed for the supposed Lot 1 and 2 awards but the RD/MINFOF brought up an eliminatory criteria to push out the Enterprise which was not found anywhere in the tender document/DAO.
10. Again, the Managing Director of FEMCO Enterprise was proposed an additional work task upon completion of the initial BOMANA Water Supply project which the RD/MINFOF based his arguments for the rejection of his bid for the KUKE-KUMBU and LYKOKO Water Scheme. There was an addendum to the contract for additional work and as such this was not necessarily an additional cost incurred by the PSMNR-SWR program for poor work done by FEMCO Enterprise. Thus the statement of the RD/MINFOF that ...*'giving the observation on the quality of work made by the joint team during the mission as well as additional unnecessary cost incurred by the program due to poor quality work done by the Contractor'* is unfounded and biased.
11. Worth mentioning is the fact that the Contracting Authority for the PSMNR-SWR is not the RD/MINFOF but the Program for the Sustainable

Management of Natural Resources in the South West Region. This personality is thus represented by two individuals (the GIZ.kfw representative and the RD/MINFOF representing the Government of Cameroon) at no single instance can either of these individuals postulate themselves as the ones with the mandate to determine who wins a contract or NOT.

12. Also members of the PSMNR's Tender Board are not included in the official government lists of eligible members permitted to conduct Technical Analysis of Bids.
13. The Tender Board has the prerogative to analyze the bids and make proposal of a candidate whom its judges as having satisfied the conditions and criteria elaborated in the Tender Document (Administratively, Technically and financially) and thereby propose to the contracting authority to contract the award. In an event where the Contracting Authority has a reservation he is demanded by law to write back to the tender board and propose a re-examination alongside his observations as to why there should be a re-examination.
14. The ARMP chief of Center should stop calling contractors and engaging them on phone in rewards.
15. The Proposal of the PSMNR-SWR's Tender Board to the Contracting Authority PSMNR's SWR is to be upheld considering that the Board judged FEMCO Enterprise as having satisfied all the conditions for the award; secondly, the observation made by the RD/MINFOF/SWR for a rejection of the award proposal made by the Tenders Board on behalf of FEMCO Enterprise was not mentioned in the Tender Document and is nowhere found as an eliminatory criteria.
16. Besides, the Report of the Field Mission's investigation following an inspection of the Bomana Water Supply Project was concluded and submitted 11th August, 2014 a month ahead of the date wherein the proposed list of 'Restricted' contractors to tender for the construction of KUKU KUMBU and LYKOKO Water Points Projects was published (30th September, 2014) and a month ahead of the date when FEMCO Enterprise was officially invited by the RD/MINFOF to participate in the restricted call for Tenders launched by PSMNR-SWR (October 1st, 2014).
17. This concludes the fact that at this stage and point the PSMNR-SWR Contracting Authority was never dissatisfied with the quality of work delivered by FEMCO Enterprise in the past.

18. The Public Contract Award Procedure of the PSMNR-SWR Program and the degree of freedom/freehand which the existing Tenders Board of PSMNR-SWR have in evaluating and analyzing bids/offers should be further investigated not leaving out where it derives its statutory mandate to operate as a Special Project Board.

Done in Buea: 22nd April, 2015

Stephen Asek

Focal Integrity Team for Cameroon
Country Director

CC:

- The Minister of State for Public Contracts [Through the President of the Unit for the Fight against Corruption] MINMAP/YAOUNDE
- The Chairman of the National Anti-Corruption Commission of Cameroon [CONAC][Through the Executive Secretary National Anti-Corruption Strategy of Cameroon]
- The Director General Agency for the Regulation of Public Contracts (ARMP) Cameroon
- The Managing Director FEMCO Enterprise
- The Contracting Authority: Program for the Sustainable Management of Natural Resources-SWR-Cameroon

Annexes/Correspondences:

1. Letter of Complaint from Managing Director FEMCO Enterprise
2. Letter N0.237/L/MINFOF/RDFOF/SWR/08 of the Regional Delegate rejecting FEMCO's award proposal by the Board
3. Complete Report on the Evaluation and Analysis of Bids for Tender N0.006/2014/PSMNR/MCNP
4. Letter of Invite to the Restricted Call for Tender to the Managing Director of FEMCO Enterprise from the RD/MINFOF
5. Note of Proposed List of Contractors to Tender for the Construction of KUKU KUMBU and LYKOKO Water Points
6. Provisional Reception Report for the Construction of BOMANA WATER SUPPLY PROJECT
7. Letter of Rejection on Proposed Bid by RD/MINFOF to Managing Director FEMCO Enterprise

Focal Integrity Team Cameroon

S. www.fitcameroon.org

E. asek@igi-integrity.com