

L.L. 1721 Timber Resources Management (Amendment) Regulations, 2003

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In exercise of the powers conferred on the Minister responsible for Forestry by section 18 of the Timber Resources Management Act, 1997 (Act 547) and on the recommendations of the Forestry Commission these Regulations are made this day of February, 2003.

Part II of L.L. 1649 substituted

1. The Timber Resources Management 1998 (L.L. 1649) referred to in these Regulations as the "principal enactment", are amended by the substitution for Part II of the following:

"Part II - PROCEDURE FOR COMPETITIVE BIDDING FOR GRANT OF TIMBER RIGHTS

Manner of bidding

9. (1) Competitive bidding shall be the basis of allocation of timber rights, and shall be conducted serially through two stages, namely, a pre-qualification process and a bidding for timber rights process.

(2) Only pre-qualified applicants shall be eligible for invitation to bid.

Pre-qualification applications forms

10. (1) An applicant seeking pre-qualification for grant of timber rights shall obtain an application form for completion from the Commission upon payment of such fee as the Minister in consultation with the Commission may determine.

(2) On completion of an application form, the applicant shall submit the application to the Chief Executive of the Commission who shall lay the application before the Timber Rights Evaluation Committee.

(3) Information provided by an applicant shall be treated as confidential.

Pre-qualification requirements

11. Without prejudice to section 3(3) of the Act, the applicant shall submit with the application, information which includes:

- (a) evidence of ownership or membership of the registered company or partnership relevant to forestry with a commercial business certificate attached;
- (b) evidence of full payment of any forest levies where applicable;
- (c) income tax, VAT and social security clearance certificates;
- (d) where applicable, evidence of value-added processing to maximize income; and
- (e) a statement of all timber rights, including sizes, held by the applicant at the time of the application.

Evaluation

12. (1) The Timber Rights Evaluation Committee shall evaluate all applications to determine those pre-qualified for the grant of timber rights.

(2) The Evaluation Committee shall in its evaluation take into account the completeness and substance of the information submitted by each applicant and may make use of any official records to verify an applicant's past compliance with any laws or regulations relating to the timber industry.

(3) The Evaluation Commission shall stamp as "PRE-QUALIFIED" applications that meet the requirements; and stamp as "DISQUALIFIED" applications that fail to meet the requirements; and notify all applicants in writing of the Committee's decision and the reasons for the decision within five working days of the decision.

(4) Any applicant who is disqualified may rectify any shortcomings as stated in the Evaluation Committee's notification and re-apply for pre-qualification within 14 days of receipt of notification; except that the Evaluation Committee may bar re-application by any applicant whom it has disqualified on the grounds of previous gross violation of laws or regulations relating to the timber industry.

Bidding procedures

13. (1) Where the Evaluation Committee considers that it is appropriate to grant timber rights in an identified area, the Evaluation Committee shall cause to be published in the Lands Concession Bulletin and in at least two national daily newspapers, an advertisement inviting pre-qualified applicants to bid for the grant of timber rights in respect of areas specified in the advertisement.

(2) For each area proposed for grant of timber rights, the Chief Executive of the Commission shall, on the basis of the timber inventory and other relevant information, specify

- (a) a timber harvest schedule for the area;
- (b) the amount of Performance Bond to be posted by the person to whom timber rights to the area may be granted;
- (c) the amount of a Reserve Bid below which the grant of timber rights for the area will not be made;
- (d) any management requirements and restrictions specific to the contract;
- (e) the time and place at which the bids will be opened; and

(3) any other information relevant to the grant and exercise of the timber rights.

(5) Except in respect of Reserved Bids which shall be kept confidential, the information supplied to the Evaluation Committee may be used to prepare a prospectus of information about the area to which the advertisement relates and this shall be available to prospective bidders.

(4) Any pre-qualified applicant may bid for timber rights in any area within the category as provided for in schedule 1 of these Regulations for which that applicant has pre-qualified, provided the addition of that area to the total area under timber rights held by that applicant does not exceed the upper limit for the scale of operations of that applicant as provided for under section 6A of the Timber Resources Management (amendment) Act 2002 (Act 617).

(5) A pre-qualified applicant who wishes to bid for timber rights for an area must purchase bidding forms which shall provide instructions necessary for completing bid and a prospectus specific to that area from the Commission and pay a non-refundable fee to be determined by the Minister in consultation with the Commission.

(6) Each bidder must deliver its bid in sealed envelope at the time and place and in accordance with instructions set out in the bidding forms.

(7) The Evaluation Committee shall convene at the time and place specified in the bidding forms; and the secretary to the Evaluation Committee shall record each bid received. Any bid not received within the period specified in the bidding forms shall not be accepted by the Evaluation Committee and shall be returned unopened to the bidder.

(8) The Chairman of the Evaluation Committee shall open the bids in the presence of the other members of the Evaluation Committee, the bidders or their authorized representatives and any member of the public who wishes to attend.

(9) The timber rights covering the area subject to bidding shall be awarded to the bidder who offers to pay the highest annual timber rights fee, provided that if the bid is lower than the Reserve Bid, the area shall be awarded to the bidder who agrees to match the Reserve Bid.

(10) Where there are two or more equal highest bids, the area shall be awarded to the bidder from amongst the equal highest bidder, who offer the highest price and in the case of continued equal highest bids, the award shall be finally decided by a lottery amongst those highest bids.

(11) The Evaluation Committee shall prepare minutes of the proceedings that shall include a summary of the bids, indicating the name of each bidder, the corresponding amount bid and the recommendation of the highest bidder to the Commission for the grant of timber rights.

(12) The Minister shall on the basis of the Commission's recommendation issue a Notice of Grant of timber right which shall specify activities that shall be completed by winner to the satisfaction of the Chief Executive of the Commission before the right is granted, including:

(a) the posting of Performance Bond as provided for under sub regulation (2)(b);

(b) the conclusion of a Social Responsibility Agreement with local communities, which shall include an undertaking by the winner of the bid to assist communities and inhabitants of the timber utilization areas with amenities, services or benefits, provided that the cost of the agreed amenities, services or benefits shall be 5% of the value of stumpage fee from the timber that is harvested;

(c) the completion of all planning activities as specified in the relevant Manual of Procedures; and

(d) the payment of the timber right fee for the first year of the contract.

(13) Where a winner of a bid fails to comply with the requirements provided for under these Regulations within a time specified in the Notice of Grant of timber right, the Minister shall nullify the grant.

(14) Where the grant of any timber right is nullified for failure of the winner to comply with the requirements, the area may at the Minister's discretion be re-advertised or withdrawn from offer".

Regulation 14 of L.L. 1649 substituted

2. The principal enactment is amended by the substitution for regulation 14 of the following:

"Terms and conditions of contracts and monitoring function of District Forest Officer

14. (1) A timber utilization contract entered into for the purposes of section 7(2) of the Act shall be in such form as the Attorney General shall determine and shall provide for the terms and conditions, including:

(a) the size and limits of the contract area;

(b) the period of operation of the contract;

(c) an undertaking by the holder of the timber right, among others:

(i) to pay promptly all timber right fees;

(ii) to maintain a Performance Bond in the amount specified;

(iii) to implement activities approved by the Chief Executive of the Commission subject to periodic review as required under section 8(g) of the Act;

(iv) to supply such information as the Commission may request for the purpose of monitoring the timber right holder's activities, including annual and other reports;

(v) to provide social facilities and amenities for the inhabitants of the contract area in accordance with the relevant Social Responsibility Agreement; and

(vi) to maintain such insurance coverage as is necessary to protect the Commission and its agents;

(d) acknowledgement of periodic review and audit of the operations by the Commission and its agents;

(e) specification of grounds for suspension, termination and surrender by the timber right holder of the Performance Bond;

(f) specification of a requirement for the holder to have at all times in respect of his operations a manager who shall be a professional forester; and

(g) an undertaking by the Minister to maintain intact the boundaries of the contract area; provided that any reduction of the area that the Minister may require in the national interest shall be accompanied with a corresponding reduction in the timber right fee and the Performance Bond and the Minister shall communicate in writing to the timber right holder the reason for so acting in the national interest.

(2) The District Forest Officer of an area in respect of which a timber utilization contract has been entered, shall regularly monitor the activities of the holders of timber rights to harvest timber within the district and shall report to the Chief Executive of the Commission any non-compliance with the terms of the relevant timber right contract.

(3) The Chief Executive shall, at intervals of not more than five years, assign an independent organization to undertake an audit of the activities of each holder of timber right to harvest timber and report any irregularities detected.

(4) The Chief Executive may upon receiving a report from a District Forest Officer or a qualified audit organization which indicates that damage to any asset, including timber, within a timber right area has occurred, require the holder of the timber right to surrender such portion of the Performance Bond as is necessary to compensate the owners for the loss in value to the asset."

Regulations 21 of L.F. 1649 substituted

3. The principal enactment is amended by the substitution of regulation 21 of the following:

"Stumpage fee

21.(1) The holder of a timber utilization contract who harvests timber shall pay stumpage fee which shall be calculated in accordance with the formula specified in Schedule 3.

(2) The stumpage rate shall be determined by the Minister in consultation with the Commission and the Administrator of Stool Lands, having regard to the market demand and inventory levels of timber species.

(3) For the purpose of the Act and these Regulations, stumpage fee represents royalties which provide a basic return to the landowner and contributes to the cost of forest management and timber regulation."

Consequential amendment

4. The principal enactment is amended in Schedule 3 by the deletion of the following "stumpage rate for each timber species is the percentage specified in Schedule 3 of these Regulations."

Revocation

5. The principal enactment is amended by the revocation of regulation 22 and Schedule 2.

Interpretation

6. In these Regulations unless the context otherwise requires, "Evaluation Committee" means the Timber Rights Evaluation Committee established under section 5 of the Act.

PROF. KASIM KASANGA

Minister responsible for Land and Forestry

Date of Gazette notification: 14th February, 2003.

Entry into force: 23rd April, 2003.