

**Forestry Development Authority**  
**Regulation No. 104-07**  
**Regulation on Tender, Award, and Administration of**  
**Forest Management Contracts, Timber Sale Contracts, and**  
**Major Forest Use Permits**

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, a prerequisite for meeting these goals is a clear process for tendering, awarding, and administering Forest Resources Licenses that is administered professionally, transparently, and in a non-discriminatory manner, without personal interest or aim of self-enrichment; and

WHEREAS, the Public Procurement and Concessions Act provides a fair and transparent framework under which contracts for significant Forest Resources Licenses must be tendered to the public; 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)), including regulations that govern contracting and permitting (Section 19.1(c)), and regulations that establish bonding requirements (Section 5.1(e));

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

**PART ONE: GENERAL PROVISIONS**

**Section 1. Policy**

When allocating commercial access to Forest Resources, the Authority and its staff aim to:

- (a) Act as trustee of a national asset, in a professional, transparent, and non-discriminatory manner, without personal interest or aim of self-enrichment.
- (b) Provide social and economic benefits for forest-dependent communities and the nation as a whole.
- (c) Assure sustainable development and conservation of the forests.

**Section 2. Definitions**

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

- (a) Affected Community: A community comprising less than a statutory district (including chiefdoms, clans, townships, towns, villages, and all human settlements) whose interests are likely to be affected by Operations carried out under a Forest Resources License. “Interests”

for purposes of this definition may be of an economic, environmental, health, livelihood, aesthetic, cultural, spiritual, or religious nature.

(b) Authority: Forestry Development Authority.

(c) Board: Board of Directors of the Forestry Development Authority.

(d) FMC: Forest Management Contract, a long-term license issued by 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 to harvest or use Forest Products.

(e) Forest Resources: Anything of practical, commercial, social, religious, spiritual, recreational, educational, scientific, subsistence, or other potential use to humans that exists in the forest environment, not limited to flora, fauna, or micro-organisms.

(f) Government: The Government of the Republic of Liberia and all its branches, subdivisions, instrumentalities, authorities, and agencies.

(g) Managing Director: The Managing Director of the Forestry Development Authority.

(h) 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. “Use” in this context means the harvest or consumption of Forest Resources, but does not include observation or study of Forest Resources, or non-exclusive occupation of land.

(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) Proposed Protected Area: An area that the Authority has identified as suitable for designation as a Protected Area in an approved National Forest Management Strategy under Chapter 4 of the National Forestry Reform Law of 2006.

(k) Protected Areas Ordinarily Closed to Commercial Use: Nature Reserves, National Parks, Strict Nature Reserves, and other special areas set aside for non-extractive uses under Chapter 9 of the National Forestry Reform Law of 2006.

(l) 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 3. General Guidelines**

In offering and administering FMCs, TSCs, and Major FUPs, the Authority shall follow the standards and procedures found in the Public Procurement and Concessions Act, as amended;

the National Forestry Reform Law of 2006, as amended; the regulations, codes, manuals, and guidelines of the Authority; and any other applicable law.

#### **Section 4. Debarment**

If the Authority receives credible information that a Person should be debarred from public contracting under Section 44 of the Public Procurement and Concessions Act, as amended, the Managing Director shall ask the Public Procurement and Concessions Commission to debar the Person.

#### **Sections 5 to 20. Reserved**

### **PART TWO: PRELIMINARY MATTERS**

#### **Section 21. Selection of Areas to Offer for FMCs and TSCs**

(a) Procedural prerequisites. The Authority shall only seek to offer FMCs or TSCs on areas that meet all three of the following criteria:

- (1) The area has been identified in the National Forest Management Strategy as suitable for Commercial Use, under Section 4.4(d)(i) of the National Forestry Reform Law of 2006 and any applicable regulations;
- (2) The Authority has validated the area locally, under Section 4.5 of the National Forestry Reform Law of 2006 and any applicable regulations; and
- (3) The Authority has found the area suitable for offering in a pre-feasibility assessment, under Section 103 of the Public Procurement and Concessions Act, involving forest inventories, biological studies, and socio-economic assessment of the area.

(b) Substantive prerequisites. In addition to the requirements found in the National Forestry Reform Law of 2006, the Authority shall only seek to offer FMCs and TSCs on areas that have all of the following characteristics:

- (1) The area is reasonably contiguous.
- (2) The area is large enough to sustain the commercial purposes of the contract.
- (3) The area is small enough to be practically managed by a single contract Holder.
- (4) The area excludes lands in Protected Areas Ordinarily Closed to Commercial Use or Proposed Protected Areas, unless the Authority makes a written finding explaining why the Commercial Use would be compatible with the lands' protected status.
- (5) The area excludes lands where the Authority does not have the power to grant permission to harvest Forest Resources.

(6) As far as practical, the area excludes lands that are unsuited to the commercial purposes of the contract.

(c) Additional Standard for TSCs.

(1) The Authority shall only offer TSCs on Forest Lands whose prior use, present condition, or planned future use makes them unsuitable for management under FMCs.

(2) The Authority shall not offer TSCs covering more than 5,000 hectares.

## **Section 22. Identification of Affected Communities; Pre-Implementation Community Consultations**

(a) Before seeking a Certificate for Concession with respect to an area, the Authority shall conduct preliminary consultations with Affected Communities pursuant to this Section.

(b) The Authority shall give notice of its intent to conduct consultations with representatives of Affected Communities by:

(1) Publication of a notice in a newspaper of general circulation in the area, if one exists; publication of a notice in a newspaper of general circulation in Monrovia; and announcement on national radio stations and community radio stations with coverage in the area; and

(2) Sending written notice to Persons on any forest management stakeholder list maintained under Authority Regulation No. 101-07, concerning public participation.

(c) The Authority shall identify as an Affected Community each community—

(1) Located within the geographic area that will be subject to the Forest Resources License;

(2) Located adjacent to the geographic area that will be subject to the Forest Resources License;

(3) Whose members use Natural Resources located in the geographic area that will be subject to the Forest Resources License;

(4) Determined to be affected through the local validation process established by Part Six of Authority Regulation No. 102-07, concerning forest land use planning; or

(5) That, for any other reason, the Authority reasonably believes will be affected by activities conducted under the Forest Resources License.

(d) The Authority shall maintain a list of Affected Communities for each area subject to an FMC, a TSC, or a Major FUP.

(e) Any individual who believes that the Authority should have identified the individual's community may ask the Board to review the decision of the Authority not to include the community.

(1) Following receipt of a request under this Subsection, the Board shall determine whether the community satisfies the definition of an Affected Community set forth in Section 1(a) of this Regulation.

(2) The Board shall issue any determination made under this Subsection in writing.

(f) For purposes of conducting preliminary consultations with Affected Communities under this Section, the Authority shall consult with Community Forestry Development Committees that satisfy the requirements of Part Six of Authority Regulation No. 105-07, concerning major pre-felling operations, or with an interim representative selected under Subsection (g)(2) of this Section.

(g) If the Authority determines that one or more Affected Communities is not represented by a Community Forestry Development Committee, the Authority shall use its best efforts to ensure that the unrepresented Affected Communities are brought under the representation of existing or new Community Forestry Development Committees.

(1) The Authority may take steps to facilitate the prompt establishment of a new Community Forestry Development Committee to represent an unrepresented Affected Community.

(2) The Authority may, in coordination with civil society organizations, facilitate a process of participatory selection of an interim representative for an unrepresented Affected Community, until that Affected Community can be represented by a Community Forestry Development Committee.

(h) The Authority shall maintain a list of Community Forestry Development Committees representing Affected Communities subject to each potential FMC, TSC, or Major FUP.

(i) The Authority shall consult with Community Forestry Development Committees representing the Affected Communities, concerning the Forest Resources License proposed for the area. The Authority shall use its best efforts to understand the priorities and concerns of all Affected Communities with respect to the proposed Forest Resources License.

(j) Social Agreements—

(1) The Authority shall not proceed with offering a proposed FMC or TSC unless the Authority has obtained free prior informed consent, in writing, from Community Forestry Development Committees representing all Affected Communities identified under this Section, to negotiate in good faith a social agreement with the winning bidder and subject themselves to independent arbitration should those negotiations not reach a satisfactory conclusion.

(2) If the Authority fails to obtain agreement under Paragraph (1) of this Subsection from Community Forestry Development Committees representing all Affected Communities, the Authority may reconsider the terms of the proposed FMC or TSC.

(k) Community Forestry Development Committees may seek the assistance of experts, legal counsel, civil society organizations, or any other Person to help them effectively represent the interests of Affected Communities in consultations under this Section.

## **Sections 23 to 30. Reserved**

# **PART THREE: OFFERING OF CONCESSIONS**

## **Section 31. Certificate of Concession**

In compliance with Section 87(3) of the Public Procurement and Concessions Act, as amended, prior to commencing any activity for the purpose of offering a specific concession, the Managing Director shall request the Minister responsible for Economic Affairs to issue a Certificate of Concession.

## **Section 32. Concession Procurement Plan**

The Authority shall prepare the Concession Procurement Plan required under Sections 77 and 79 of the Public Procurement and Concessions Act, as amended, and submit the Plan to the Public Procurement and Concessions Commission.

## **Section 33. Bidder Qualifications (Prequalification and Two-Envelope Bidding)**

Consistent with the requirements of Authority Regulation No. 103-07, the Authority shall assess bidder qualifications through a prequalification process and, in special cases, a two-envelope bidding system.

## **Section 34. Standard Contracts**

(a) In consultation with the Ministry of Justice, the Authority shall develop a standard contract for Timber-based FMCs and a standard contract for TSCs.

(b) In the concession bid documents required under Section 104 of the Public Procurement and Concessions Act, as amended, the Authority shall include all the additional specific provisions or conditions the Authority expects to include in the final contract, including provisions identifying the lands subject to the concession; requirements for the installation of wood processing facilities, if any; and requirements for forest certification, if any.

(c) As early as is practical in each bidding process, the Authority shall submit the appropriate contract, with the intended specific conditions, to the Inter-Ministerial Concessions Committee for endorsement under Section 117 of the Public Procurement and Concessions Act, as amended.

## **Section 35. Documents Related to Offering Concessions**

(a) The Authority shall prepare the concession bid documents required under Sections 104 and 105 of the Public Procurement and Concessions Act, as amended, which documents shall also include a concession prospectus outlining the forest quality and general expectations for the management of the area, and identifying known social issues.

(b) In addition to selling copies of these documents for fees set out in Authority Regulation No. 107-07, concerning certain forest fees, the Authority shall allow Persons to review copies of these documents without charge at the Authority's headquarters, Regional offices, and other places where the Authority elects to make public copies available for review.

### **Section 36. Notification**

In addition to the means of notification required under Sections 106 and 107 of the Public Procurement and Concessions Act, as amended, the Authority shall also provide General Notices of Investment Opportunity, Expressions of Interest, and Requests for Proposals to Persons on the forest management stakeholder list maintained under Authority Regulation No. 101-07, concerning public participation.

### **Sections 37 to 40. Reserved**

## **PART FOUR: INTERESTED PARTIES AND BIDDING**

### **Section 41. Investigation of Area by Interested Parties**

- (a) The Authority shall, without charge, allow any Person to enter and inspect the area that the Authority proposes to offer under an FMC or TSC.
- (b) As part of the invitation for bids for an FMC or TSC, the Authority may state reasonable inspection conditions to protect Forest Resources and the interests of communities in the area.
- (c) Compliance with inspection conditions is a criterion for award of the concession, and the Government shall not award a concession to a Person who violates the inspection conditions.

### **Section 42. Liberian Ownership and National and International Competitive Bidding**

- (a) For FMCs covering less than 100,000 hectares, and for all TSCs:
  - (1) The Authority shall apply the Liberian ownership requirements found in Sections 5.3(g) and 5.4(g) of the National Forestry Reform Law of 2006; and
  - (2) The Authority may award the contracts through national competitive bidding, unless Section 97 of the Public Procurement and Concessions Act, as amended, requires international competitive bidding.
- (b) The Authority shall offer FMCs covering more than 100,000 hectares through international competitive bidding.
- (c) If the Public Procurement and Concessions Commission has established criteria under Section 99 of the Public Procurement and Concessions Act to allow for a Margin of Preference for Domestic and Liberian Businesses, the Authority shall include a Margin of Preference in the criteria for examination or evaluation of bids.

(d) If Liberian ownership requirements, national competitive bidding, or a Margin of Preference for Domestic and Liberian Businesses apply to a concession:

(1) The Authority shall indicate that in the concession bid documents.

(2) Each bidder shall include with its bid a declaration, sworn or affirmed under penalty of perjury, stating whether the bidder qualifies under the applicable business ownership criteria.

### **Section 43. Bidder's Bond**

(a) A Person submitting a bid for an FMC or TSC shall include with the bid a bidder's bond, valid for at least 12 months, in the amount specified in Subsection (b) and of the kind specified in Subsection (c) of this Section.

(b) The amount of the bidder's bond for a particular contract is one sixth the annual area fee expected to be imposed under Section 33 of Authority Regulation No. 107-07, concerning certain forest fees, rounded up to the nearest thousand United States dollars.

(c) The following are acceptable as bonds:

(1) A bond, issued by a company authorized to issue sureties in Liberia.

(2) A letter of credit or manager's check from a reputable bank operating in Liberia, payable to the Government.

(d) The bidder shall also submit a name (of the bidder or the bidder's agent) and an address in Monrovia for the Authority to use when returning the bond.

(e) By the end of the second business day after the selection of a winning bidder, the Authority shall return the bonds of the unsuccessful bidders.

(f) Within 30 days after the selection of the winning bidder, the winning bidder may reclaim the original bond by depositing the bond amount in cash with the Central Bank of Liberia or other bank officially designated to hold the Authority's accounts and presenting the proof of deposit to the Authority.

(g) Upon timely presentation of proof of deposit under Subsection (f) of this Section, the Authority shall return the original bond to the winning bidder.

(h) If the winning bidder fails to offer proof of deposit within 30 days after selection, the Authority shall draw on the bond and deposit the funds with the Central Bank of Liberia or other bank officially designated to hold the Authority's accounts.

(i) If the winning bidder and the Government execute an FMC or TSC, the Authority shall arrange to credit the deposited funds towards any amounts the winning bidder owes the Government under the contract.



(j) If the winning bidder is not ready, willing, and able to execute a contract, the funds become the property of the Government as liquidated damages for the expenses incurred due to the failure to execute the contract.

(k) If the winning bidder is ready, willing, and able to execute a contract, but the Government fails to execute the contract, the Authority shall arrange to return the deposited funds to the winning bidder, upon the bidder's request.

#### **Section 44. Fair and Open Competition**

(a) No Person shall engage in behavior intended to suppress fair and open competition in bidding on a Forest Resources License, including:

(1) Bid rigging, in which a group of potential bidders arrange in advance who will submit the best bid among them, including:

(A) Bid suppression.

(B) Complementary bidding, where some Persons agree to submit bids that are known to be unacceptable.

(C) Bid rotation, where bidders agree to take turns being the successful bidder.

(2) Market division, where a group of bidders agree among themselves which of them will bid on particular contracts based on geographic area, predominant tree species, time, or other factors, and so reduce competition.

(3) Price fixing, in which a group of bidders attempt to lower, fix, or maintain the bid amount or other aspects of the concessions contract, including agreements to:

(A) Establish and adhere to certain bid amounts.

(B) Hold firm to particular positions in contract negotiations.

(C) Adopt a standard formula for arriving at bids.

(D) Maintain bid differentials reflecting species, resources, sizes, or quantities offered.

(E) Follow a maximum bid schedule.

(b) The Government shall not award an FMC or TSC to any Person who has violated the prohibition in Subsection (a) of this Section in the course of that particular bid, and the Authority shall terminate the existing permits and contracts of any Persons found to have violated the prohibition.

#### **Section 45. Reserve Bid**

(a) The Authority shall engage an independent third party to calculate and hold in confidence a reserve bid for each contract put up for public bid.

(b) The independent third party shall calculate the reserve bid according to a formula to be developed by the Authority and the independent third party.

(c) The independent third party shall guard the reserve bid from discovery by bidders, the Authority, and the public and shall first disclose the reserve bid at the place and time slated for bid opening under Section 110 of the Public Procurement and Concessions Act, as amended, after submission of all bids.

(d) Any action intended to disclose the reserve bid before the time specified in Subsection (c) of this Section constitutes the offense of economic sabotage under the Penal Code.

#### **Section 46. Assistance to Bidders**

From time to time the Authority shall organize workshops to train potential bidders on how to participate effectively in the tender system.

#### **Sections 47 to 50. Reserved**

### **PART FIVE: BID EVALUATION**

#### **Section 51. Bid Evaluation Criteria**

The Authority shall propose and the Government shall use only the following criteria for final evaluation of the bids:

(a) Whether the bidder is debarred, disqualified, or suspended from bidding, either under the provisions of the Public Procurement and Concessions Act, as amended, or under the provisions of Authority Regulation No. 103-07, concerning bidder qualifications; and if the bidder is not debarred, disqualified, or suspended—

(b) Whether the bidder is properly qualified pursuant to Authority Regulation No. 103-07 (as demonstrated by the bidder through presentation of a notarized copy of a valid prequalification certificate and, if the Authority is using a two-envelope bidding system for the bid, through the contents of the bidder's first envelope); and if so—

(c) Whether the bidder has met all other substantive and procedural requirements in the bidding competition, including the various requirements in Part Four of this Regulation; and if so—

(d) Whether the bid is equal to or greater than the reserve bid, set under Section 45 of this Regulation; and if so—

(e) The amount of the bid, adjusted using any applicable Margin of Preference for domestic bidders set by the Public Procurement and Concessions Commission.

#### **Sections 52 to 60. Reserved**

## **PART SIX: POST-EVALUATION MATTERS**

### **Section 61. Performance Bond**

(a) Successful bidders and Holders of FMCs and TSCs shall post an annual performance bond to assure payment of amounts due the Government, including taxes, fees, damages, and penalties.

(b) Successful bidders for FMCs shall post the initial performance bond within 90 days after successfully concluding negotiations for the bid with the Negotiation Team, and successful bidders for TSCs shall post the initial performance bond within 30 days after successfully concluding negotiations for the bid with the Negotiation Team.

(c) The Authority shall state the amount of the initial performance bond in the concession bid documents.

(d) The Authority shall set the performance bond according to the following formula:

(1) The Authority shall select a minimum level as follows:

(A) 25,000 United States dollars for TSCs;

(B) 150,000 United States dollars for FMCs covering less than 100,000 hectares; and

(C) 250,000 United States dollars for all other FMCs.

(2) The Authority shall estimate the expected annual Government revenue from the concession, not including the land rental fee, for the next full year of contract operation.

(3) The Authority shall multiply the expected annual Government revenue by 50 percent and round the resulting figure up to the nearest thousand.

(4) If the amount calculated under Paragraph (3) of this Subsection is more than 1,000,000 United States dollars, the performance bond is 1,000,000 United States dollars.

(5) If the amount calculated under Paragraph (3) of this Subsection is less than the minimum level selected under Paragraph (1), the performance bond is the minimum level selected under Paragraph (1).

(6) In all other cases, the performance bond is the amount calculated under Paragraph (3) of this Subsection.

(e) The bidder or Holder may post the performance bond in any of the following forms:

(1) A letter of credit or manager's check from a bank licensed to do business in Liberia.

- (2) A bond issued by a company licensed to issue sureties in Liberia.
- (f) The Government may seek to collect on the performance bond if the bidder or Holder is in arrears in any amount owed to the Government.
- (g) If the bidder or Holder fails to post a performance bond, the Government shall not grant the bidder or Holder permission to use or harvest Forest Resources and shall suspend any existing permissions until the bidder or Holder posts the necessary bond.

## **Section 62. Signing the Contract and Granting Permission to Use or Harvest Forest Resources**

- (a) The Government shall not sign an FMC or a TSC until the winning bidder is in good standing regarding all taxes, fees, bonds, and other financial obligations to the Government.
- (b) The Authority shall not grant the Holder of an FMC permission to harvest Timber until all the following have occurred:
  - (1) Under Section 5.3(f) of the National Forestry Reform Law of 2006, the President has signed the contract and the Legislature has ratified it.
  - (2) The Holder has satisfied its obligations under Authority Regulation No. 105-07, concerning major pre-felling requirements.
  - (3) The Holder has signed the contract.
  - (4) The Holder has met all requirements for operational planning and environmental assessment.
- (c) The Authority shall not grant the Holder of a TSC permission to harvest Timber until all of the following have occurred:
  - (1) The Holder has satisfied its obligations under Authority Regulation No. 105-07, concerning major pre-felling requirements.
  - (2) The Holder and the Authority have signed the contract.
  - (3) The Holder has met all requirements for management or operational planning and environmental assessment.

## **Sections 63 to 70. Reserved**

## **PART SEVEN: ADMINISTRATION OF THE CONTRACT**

### **Section 71. Standards for Assignment of Contracts**

- (a) A Person shall not assign or transfer an FMC or TSC or any interest, rights, privileges, or obligations under such a contract without prior written approval from the Authority.

(b) Upon receiving a request for approval of an assignment or transfer, the Authority shall conduct a diligent investigation of the capacity and character of the proposed new Holder and shall direct the proposed new Holder to submit a business plan demonstrating financial and technical capacity to carry out the obligations under the FMC or TSC.

(c) If the proposed new Holder meets all the requirements for prequalification in Authority Regulation No. 103-07 (and if the Authority awarded the contract under a two-envelope bidding process, if the proposed new Holder also meets all the standards for first-envelope bids established by the Authority for the original award under that Regulation), and if the proposed new Holder meets all applicable Liberian ownership requirements, the Authority may approve the assignment or transfer.

(d) After an assignment or transfer, the new Holder is liable for all taxes, fees, debts, and obligations owed to the Government under the contract, including unpaid taxes, fees, debts, and obligations incurred by the previous Holders, and the previous Holders remain secondarily liable for all taxes, fees, debts, and obligations under the contract, including future obligations.

(e) For the purposes of this Section, the term “assign” includes the admission into partnership of any third party in the activities and operation of forest management or harvest under this contract, as well as the mortgaging of any rights, privileges, liabilities, or obligations granted or imposed by this contract.

(f) If the Authority initially awarded the FMC or TSC under a Margin of Preference for Domestic and Liberian Businesses and the new Holder is not eligible to claim the Margin of Preference, the Authority shall increase subsequent concession payments to remove the Margin of Preference.

## **Section 72. Conformity with Plans and Assessments**

(a) Except as provided in Subsections (c) and (d) of this Section, the Holder of an FMC or TSC shall undertake only activities under the contract that are described in forest management plans or annual operational plans approved by the Authority.

(b) Except as provided in Subsection (c) of this Section, the Holder of an FMC or TSC shall not take an action that it knows or reasonably should know carries a risk of significant environmental impact, unless the environmental impact has already been disclosed, discussed, and allowed under an environmental impact assessment approved by the Environmental Protection Agency.

(c) The prohibitions in this Section do not apply to emergency actions taken:

- (1) In response to fire or other significant threats to property;
- (2) To prevent or reduce a significant risk of damage to the environment; or
- (3) To prevent or abate a threat of significant injury or death to people.

(d) The prohibitions in Subsection (a) of this Section do not apply to activities undertaken before the Authority has approved a forest management plan or annual operations plan if both of the following are true:

(1) The activities do not include commercial harvest of Forest Resources.

(2) The Authority has consented to the activities in writing.

### **Section 73. Responsible Practices**

(a) The Holder of an FMC or TSC shall follow internationally recognized, modern safety precautions in all activities, as are used elsewhere by others under comparable conditions, and shall comply with safety instructions that the Government gives in writing.

(b) Unless otherwise agreed to by the Authority or local police in writing, when the Holder of an FMC or TSC conducts Operations adjacent to or on roads and trails open to public travel, the Holder shall maintain temporary traffic controls to assure safety, subject to Paragraphs (1) and (2) of this Subsection.

(1) The Holder shall maintain temporary traffic controls only in coordination with the Liberian National Police.

(2) The Holder shall not employ checkpoints of any kind.

(c) The Holder of an FMC or TSC shall employ internationally recognized, modern measures for the protection of general health and safety of its employees and all other Persons having legal access to the contract area, and shall comply with reasonable public health instructions given in writing by the Government.

(d) The Holder of an FMC or TSC shall give preference to competent and qualified ECOWAS citizens in the selection of employees to conduct its Operations, and shall not import unskilled labor from outside of the ECOWAS nations.

(e) The Holder of an FMC or TSC shall comply with all training and employment obligations required by law or regulation.

### **Section 74. Sustainable Practices**

(a) The Holder of an FMC or TSC shall conduct Timber harvests in accordance with generally accepted silvicultural practices and in accordance with all regulations, codes, and guidelines issued by the Authority.

(b) The Holder of an FMC or TSC shall cooperate with the Authority on technical studies and research to improve forest practices and increase knowledge about forests.

(c) The Holder of an FMC or TSC shall carry out Operations in accordance with the terms and conditions of the contract and in a manner that promotes the sustained development of Forest Resources and environmental protection for the common good of the people of Liberia, as provided for in applicable laws, statutes, rules, and regulations of Liberia.

## **Section 75. Recordkeeping and Inspections**

(a) By signing the contract, the Holder of an FMC or TSC consents to the Government conducting annual audits of operations and other reasonable inspections necessary to determine compliance with the contract conditions and all applicable laws.

(b) The Holder of an FMC or TSC shall retain all records necessary to demonstrate compliance with the contract during the duration of the contract and for five years after the contract terminates.

(1) The Holder shall take reasonable steps to safeguard the records necessary to demonstrate compliance, including, as appropriate, keeping duplicate copies in a separate location to guard against loss.

(2) The Holder shall not invoke an act of God or third parties to excuse a violation of recordkeeping requirements.

(c) The Holder of an FMC or TSC shall keep its business records and any other required records in the English language, with financial information expressed in United States dollars.

(d) This Section does not limit obligations for recordkeeping or inspection under other laws or regulations.

(e) The Holder may identify records containing confidential business information and request that the Government not make public the confidential business information, and the Government shall honor that request if the Authority finds that the information meets the requirements for protection in Section 18.15 of the National Forestry Reform Law of 2006.

## **Section 76. Restrictions on Use of Information from Internal Audits and Third Party Audits**

(a) This Section applies to internal audits and third party audits that a Person arranges to verify the Person's compliance with forest-related contract and legal requirements or with forest certification standards.

(b) If those audits bring to light evidence of unlawful activities, the records of the audits are not admissible in court as evidence supporting imposition of penalties so long as the Person audited and the audit meet all the following conditions:

(1) The audit was a private effort conducted in the ordinary course of business—that is, no arm of the Government initiated or participated in the audit, and the audit was part of an ongoing program to assure quality control, environmental performance, or compliance with legal or certification requirements.

(2) The Person did not institute the program in bad faith to avoid prosecution or to give a false impression of the quality or lawfulness of the Person's actions.

(3) The unlawful activity occurred despite the Person's good-faith effort to comply with the contract or the law.

(4) The Person reported the unlawful activity to the Authority promptly after becoming aware of it.

(5) The Person made the report as a matter of voluntary, good-faith cooperation with the Authority—that is, the report was not otherwise required by law and was not prompted by knowledge of a forthcoming or ongoing inspection, investigation, enforcement action, or lawsuit.

(6) The Person cooperated with the Authority in any investigation carried out subsequent to the report.

(7) The Person took timely steps to halt the unlawful activity, repair or give compensation for any injury done by the unlawful activity, and prevent the unlawful activity from recurring.

(8) The Person does not have a history of engaging in repeated unlawful activity of this type.

## **Section 77. Changing Circumstances**

(a) During the duration of an FMC or TSC, the Holder shall continue to meet the prequalification requirements set out in Schedule I of Authority Regulation No. 103-07, concerning bidder qualifications (and in the case of an FMC or TSC awarded through a two-envelope bidding system, the Holder shall also continue to meet the requirements that the Authority set out for first-envelope bids under that Regulation).

(b) In addition to direct non-compliance with those requirements, and non-compliance caused by a change in circumstance (including a change in management or ownership), if any individual violates a pledge made in support of prequalification or a bid, or if any sworn document in support of prequalification or a bid is inaccurate or incomplete, the Holder is deemed to be out of compliance with those requirements.

(c) If a Holder is out of compliance with those requirements, the Holder shall report the non-compliance to the Authority within five business days after the Holder discovers, or reasonably should have discovered, the non-compliance.

(d) If the Holder is unable to come into compliance within 30 days after the Holder discovers, or reasonably should have discovered, the non-compliance, or if the Holder fails to report the non-compliance in a timely fashion, the Authority may suspend or terminate the license.

## **Sections 78 to 80. Reserved**

# **PART EIGHT: MAJOR FOREST USE PERMITS**

## **Section 81. Treatment of Major FUPs**

(a) The Authority shall award Major FUPs through a concessions process.



(b) In awarding and administering Major FUPs, the Authority shall apply the procedural and substantive requirements in this Regulation that apply to TSCs, except for the following:

(1) The Authority may use forms of contract other than the standard contract for TSCs required under Section 34 of this Regulation.

(2) Bidders for Major FUPs do not need to post bidder's bonds under Section 43 of this Regulation.

(3) Winners of Major FUPs do not need to post performance bonds under Section 61 of this Regulation.

(4) Holders of Major FUPs shall follow health and safety practices identified by the Authority in the permit as practical and within the economic reach of the Holder, instead of the internationally recognized standards required of Holders of TSCs and FMCs under Section 73 of this Regulation.

(5) The area covered under a Major FUP allowing exclusive rights for Timber harvest must be less than 1,000 hectares, instead of the 5,000-hectare limit for TSCs under Section 21(c)(2) of this Regulation.

(c) The Authority shall not offer multiple Forest Use Permits as a substitute for a single Major FUP, a TSC, or an FMC, in an effort to avoid requirements that this Regulation or other regulations or laws place on Major FUPs, TSCs, or FMCs.

**Sections 82 to 90. Reserved**

## **PART NINE: REPEALS AND EFFECTIVE DATE**

### **Section 91. Repeals**

This Regulation repeals no existing regulations.

### **Section 92. 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**