

Terms of Reference.
Review of Available Information – Underpaid Construction Workers, Uganda
Consulting Assignment

Background

Bujagali Energy Limited (“BEL” or the “Company”) owns and operates a 250 MW run of river hydropower project (“BHPP”) on the Nile River, at Dumbbell Island, 8 kilometers north (downstream) of the existing Nalubaale (previously known as Owen Falls) and Kiira (Owen Falls Extension) power plants, in Uganda (the “Project” or the “Bujagali Project”). BEL sells all the power it generates to the Uganda Electricity Transmission Company Limited (“UETCL”), a Government owned company, under a 30-year power purchase agreement (“PPA”) starting from the Project’s Commercial Operation Date (“COD”) date of August 1, 2012.

BEL awarded the engineer, construct, and procure contract (the “EPC”) to Salini Costruttori Sp.A. (“Salini”) in 2007. As part of the EPC, Salini undertook the construction of expatriate staff housing outside the main project site and retained Boschcon Civil and Electrical Construction Company (“Boschcon”) as one of the subcontractors to complete the work.

The detailed sequence of events regarding the relationship between Salini and Boschcon can be found from court records.¹ In a nutshell, Boschcon had submitted its bid for the work exclusive of any taxes and Salini refused to add the VAT costs to its payments to Boschcon. Boschcon began to have financial difficulties which it claimed was due to the Ugandan tax authorities imposing a value-added tax (VAT) on Boschcon construction supplies, that Salini refused to cover. In May 2008, following different unsuccessful attempts to resolve the issue between the parties, Boschcon informed Salini that it would stop work until certain invoices were paid, and the next day Salini told Boschcon that its contract was terminated. Salini then took over the construction of the housing and completed the work.

The Issue

In March 2008, before the Boschcon’s contract termination by Salini, Boschcon’s workers went on strike, claiming underpayment of wages. In a claim made to the Mukono² District Labour Office (the “Office”) in April 2008, the workers indicated that there had been two months in which they were underpaid, November 2007 and March 2008. According to the Office complaint, Boschcon was requested to bring pay slips and other documents in April 2009 to a meeting with the Office that included Salini and BEL, but to our knowledge did not bring the requested documents.

On April 9, 2009, the World Bank office in Kampala received a complaint from the Boschcon workers, which included the documents provided in the complaint made to the Office. The World Bank recommended that the workers bring their complaint to BEL workers complaint mechanism and to the Government of Uganda (GoU) sponsored Bujagali Monitoring Committee (BMC).

¹ Boschcon Civil & Electrical Construction Co. (U) Ltd v Salini Costruttori SPA (CIVIL SUIT NO. 151 OF 2008) [2012] UGCOMMC 133 (7 November 2012)

² Mukono District was split in two later in 2009, and the western part of the project is now in Buikwe District.

In its 2009 3rd Quarter Environmental and Social Report, BEL related that it had met with the Office in the matter of the Boschcon workers' pay and were informed that the Office had not been able to locate the principal of Boschcon, Len Bosch. BEL informed the Office that Mr. Bosch had been seen in Jinja and that there was a civil court case between Boschcon and Salini over a payment issue between the two parties following the contract termination.

In November 2012, the High Court of Uganda (the "Court") decided that the termination of the contract by Salini was unjustified and unlawful and granted indemnities to Boschcon as well as some amount due to Salini related to the material. The Court included in its comments the issue of the wages not paid by Boschcon (underpaid and not paid), and did not specifically address the wages payment in its conclusions.

In March 2013, a group of the Boschcon former workers filed a complaint with the Compliance Advisor Ombudsman (CAO) for the IFC and MIGA. The CAO Compliance published findings including that the Boschcon workers should be covered by the E&S requirements. Although IFC's management concluded that any underpayment of workers is a commercial matter not covered by the IFC's Sustainability Framework, IFC's management also realizes that the Boschcon workers' claims may never have been fully evaluated.

The Task

IFC seeks a consultant to find conclusive documentation with respect to the claim of the former Boschcon workers regarding wages and other benefits potentially due to the workers for the period from November 1, 2007 to May 21, 2008. Management is seeking to determine whether the claims can be validated. A primary concern is whether sufficient evidence is available, given the passage of time between the events of November 2007 and March 2008 and the present day. A determination of the validity of the claims and any amounts due is a necessary first step in considering how any claims might be solved.

One known source of information is the complaint made by the former Boschcon workers to the World Bank office on April 9, 2009. This claim details the amounts claimed by individual workers. This complaint will be provided to the consultant.

Other possible sources of information to be explored may be found at the following places (some of which may or may not still exist):

- The Buikwe District Labour Office (successor to the Mukono District Labour Office)
- Legal Aid Project of Uganda (Uganda Law Society)
- Bujagali Monitoring Committee
- High Court of Uganda in Jinja (in relation to evidence in the aforementioned case of Boschcon vs. Salini)
- Such other sources of information that may be found either in Uganda or elsewhere as identified by the consultant and agreed to by the IFC, e.g., the records of Boschcon and/or Salini.

Qualifications

- At least 10 years of experience in forensic accounting with knowledge of international accounting standards

- At least 15 years of experience researching and analyzing documents pertaining to wages and benefits required under Ugandan labour law in order to locate the relevant necessary documents for the period of 2007-2008
- Experience in legal research

Timeline and Deliverables

The overall timeline for the assignment is expected to take three months. The timing of specific activities and deliverables is expected to proceed as follows starting from the acceptance of the assignment.

Two weeks– Provide IFC with a workplan for information search in Uganda.

Four weeks – Begin information search within Uganda. Expected duration is 5-10 working days.

Two months – Preliminary list of information sources and data provided to IFC following search in Uganda and any follow-up conversations with entities outside of Uganda.

Three months – Draft report provided to IFC.

One week after IFC receives draft report – IFC provides comments on draft report.

Four months after start of assignment – Final version of report provided to IFC