

INTERIM REPORT

ON

PAYMENT OF JUDGMENT DEBTS

SINCE

JANUARY 7, 2009

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1. Background

In or about July, 2004, Ghana was awarded the right to host the 26th Cup of African Nations (CAN) 2008 football tournament. Among other things, the Confederation of African Football (CAF) specified that the tournament should be held in at least four (4) separate stadia but not more than six (6) stadia should be used. Again, CAF specified that the stadia to be used for the 16-nation, 32-match tournament should have a minimum capacity of 20,000 for the group matches while those to be used for the opening match, semi-final matches and final match should have at least the capacity 40,000.

Based upon this Government decided to rehabilitate the Accra (Ohehe Djan) and Kumasi (Baba Yara) Sports stadia and to build two new stadia at Sekondi-Takoradi and Tamale. Consequently in January 2005, adverts were published in the newspapers (such an advert appeared in the Daily Graphic of Thursday, January 6, 2005) with the main headline "EXPRESSION OF INTEREST" and a sub-headline "PROVISION OF CONSULTING, CONTRACTING AND FINANCIAL SERVICES FOR CAN 2008 GHANA". The advert was issued by CAN 2008 Ghana Local Organising Committee (LOC), on behalf of the Ministry of Education, Youth and Sports (MOEYS) and requested for suitably qualified firms and joint ventures for expression of interest for the consulting services, construction, supply of goods and related services (to be awarded on TURNKEY basis). The task was required to cover the following, among others:

- a. Accra Stadium - Upgrading
- b. Kumasi Stadium - Upgrading
- c. Sekondi-Takoradi Stadium - A new 20,000 all-seated capacity stadium to be developed
- d. Tamale Stadium - A new 20,000 all-seated capacity stadium to be developed
- e. Other specific products and services areas including project investors/financiers.

Among other things, the advert stated specifically that the expression of interest should be limited to (a) **Evidence of sourcing financial support for the project** and (b) any other relevant information.

The advert also stated clearly that the "Tendering will be governed by the rules and procedures of the Public procurement Act, 2003 of the Republic of Ghana" and that "..... only shortlisted applicants will be invited to submit **technical and financial proposals**".

The deadline for the expression of interest was "NOT LATER THAN THURSDAY, JANUARY 20, 2005". Although not specifically stated in the advert, no limitation was placed as to whether it was a local tender or international. Consequently, non-Ghanaian registered firms also expressed interest and the subsequent actions of the Tender Committee showed that the process was an international one since non-Ghanaian companies also submitted bids/proposals.

2. Bidding, Evaluation and Termination of Tender Process

(1) At the close of the deadline and out of the number of companies which expressed interest, twelve were eventually invited to present proposals for the design, procurement, and construction of the stadia. The twelve companies who were shortlisted were:

- a. Emsas Construction/Epiform Ghana Limited;
- b. British Engineering Services Group;
- c. Ballast Nedam Ghana BV
- d. Ghana Infrastructure Limited;
- e. Mpowapak Gmb/Vamed Engineering Gmbh & Co. KG.;
- f. Trump Construction Limited;
- g. Consortium CAIB GH2 Ltd. ; and
- h. Weightron International Limited.
- i. Interbeton
- j. E. H. Group & Associates;
- k. Excelsior Consortium Alliance; and
- l. Aarun BIS Company Limited.

(2) At 1600 hours GMT on July 4, 2005, the time submission of bids/proposals closed however, only eight (8) bids were received. Ballast Nedam Ghana BV and Interbeton, both of whom expressed interest independently, had put in a joint bid. The companies/groups which submitted bids/proposals therefore were:

- a. Emsas Construction/Epiform Ghana Limited;

- b. British Engineering Services Group;
 - c. Ballast Nedam Ghana BV/ Interbeton (They put in a Joint bid although initially each of them answered the Expression of interest independently);
 - d. Ghana Infrastructure Limited;
 - e. Mpowapak Gmb/Vamed Engineering Gmbh & Co. KG.;
 - m. Trump Construction Limited;
 - n. Consortium CAIB GH 2 Ltd, ; and
 - o. Weightron International Limited.
- (3) The companies which did not put in bids were:
- a. E. H. Group & Associates;
 - b. Excelsior Consortium Alliance; and
 - c. Aarun BIS Company Limited.
- (4) The proposals which were submitted by the deadline were evaluated on the following parameters:
- a. offer proof of funding;
 - b. budget;
 - c. detailed drawings; and
 - d. programme of works.
- (5) After considering the proposals along the parameters determined in 2(4) above, the following firms were determined substantially responsive and were therefore qualified for detailed evaluation:
- a. Emsas Construction/Epiform Ghana Limited;
 - b. Ghana Infrastructure Limited;
 - c. Mpowapak Gmb/Vamed Engineering Gmbh & Co. KG.;
 - d. British Engineering Services Group;

- e. Weightron International Limited; and
- f. Ballast Nedam Ghana BV/ Interbeton.

Trump Construction was eliminated for being unable to submit a proposal although it indicated availability of funding while Consortium CAIB was eliminated for its inability to submit a work programme, and drawings. It also did not state the completion period.

The evidence shows that during the process of the tender, Vamed Engineering assigned its rights and responsibilities under the tender/bid to Waterville Holding (BVI) Ltd per the Vamed Engineering Letter 01-07 2005 and the acceptance letter issued by Waterville Holdings (BVI) Limited acknowledging the Vamed letter and accepting the responsibilities and rights. Accordingly, Waterville assumed the role of Vamed and was the party with which the MOES dealt in all practical terms and has contract with, if any.

(5) After the detailed evaluation of the bids, the Tender Committee recommended Vamed/mPowapak, Ballast Nedam/Interbeton, BES Group and Epiferm/EMSAS to be deemed to be financially responsive and for further negotiations pending the satisfaction of the remarks of the Financial Evaluation Committee made against each of them. The Financial Evaluation Committee comprised of Mr. Lionel Van Lare Dossoo, then Deputy Governor of the Bank of Ghana, Mr. Paul Asimenu, Director, Legal of the Ministry of Finance and Economic Planning (MOFEP), Mr. Michael Opoku Afari of the Research Department of the Bank of Ghana and Ms. Yvonne Quansah of the Aid and Debt Management Division of MOFEP.

The Finance Evaluation Committee submitted a report on July 22, 2005 in which it declared the financial proposals of Vamed/mPowapak as being the most responsive. The Committee however remarked that the processes to be met by both Government and Vamed will span between three and four months, thus a potential source of delay. Additionally, Vamed required the setting up of a Special Purpose Company by Government to facilitate transaction. The Committee therefore recommended that "Vamed Engineering is contacted immediately for further discussions in view of the lengthy processes required to secure the MIGA Guarantee. The Committee also recommends an alternative option where the Government of Ghana considers the possibility of securing its own line of funding".

The report of the Tender Evaluation Committee was passed on to the Central Tender Review Board (CTRB) for its concurrent approval.

(6) Abrogation

In a letter dated 5th August, 2005, the CTRB informed the Honourable Minister of Education & Sports of its concurrent approval of the CTRB. The CTRB however advised the Ministry to include documentation of all stages of the tendering process in subsequent tendering, particularly procurement Plan which the CTRB said would help in its forward planning. Evidence available shows that this was duly complied with.

After the CTRB conveyed its concurrent approval to the Ministry Of Education and Sports (MOES), there is no definite written document as evidence of communication of the success of Vamed/mPowapak in the tender to it. However in a letter dated 15th of August, 2005 and addressed to Hon. Osafo-Mafo, the then Hon. Minister, MOES, mPowerpak referred to two meetings at which mPowapak/Vamed was informed of its success. The first meeting according to the letter under reference, was held on Tuesday, 9th August, 2005 and was attended by the Hon. Minister himself, his deputy, Hon. O. B. Amoah, the Chief Director of MOES, Mr. Ato Asuman and representatives of mPowapak/Vamed in the person of Alfred Woyome. The second meeting referred to was supposed to have been held on Wednesday 10th August, 2005 attended by Hon. O. B. Amoah, the Deputy Minister of MOES, the Head of Procurement, MOES, and the Chief Director, Mr. Ato Asuman.

Facts picked up from documents clearly indicate that the tender process was going on smoothly until Government intervened and abrogated the process.

The evidence shows that sometime before July 20, 2005, a decision was taken by Government to bring in the Shanghai Construction Group and award them the projects for the construction of stadia for CAN 2008. In a letter dated 22nd July, 2005 addressed to the Chairman, LOC, CAN 2008, acknowledgement was given of a letter dated July 20, 2005 which submitted the proposal of the Shanghai Construction Group. This letter under reference clearly informed the LOC of the difficulties the late attempt to introduce the Shanghai Construction Group will pose to the tender process and to the projects, given that the tender process started on the 6th of January, 2005 and also that the Public Procurement Act would be contravened. The letter was also concerned about the possible breach of deadlines for the project.

There is further documentary evidence that in spite of the concern expressed in the letter under reference, the Embassy of Ghana in Beijing by its letter dated 11th August, 2005, sent further particulars of the Shanghai Construction Group to the Chairman of LOC, and that subsequently after the abrogation of the tender process, the Shanghai Construction Group was awarded contracts to undertake the construction of the Tamale and Sekondi stadia.

The evidence shows that when the decision was to be taken by the Cabinet to abrogate the tender process, Hon. Osafo-Mafo, the then Minister of Education and Sports, in his memorandum to Cabinet dated July 27, 2005, warned the Cabinet of the fact that the Shanghai Construction Group did not qualify for the award because the Group had not taken part in the tender, had not been evaluated, had not provided any financial proposals and that the stage of the tender process had gotten to, it would be a breach of the Public Procurement Act to abrogate the process.

Mr. Osafo-Mafo told Cabinet further that "if on the other hand the recommendations arising out of the tender will be set aside, then we should marshal our forces and make a decision which we can defend nationally and internationally".

In his letter of 22nd August, 2005 however, Mr. Osafo-Mafo, the then Hon. Minister of Education and Sports, informed Vamed/Mpowapak of the termination of the tender process, the reasons being the "high financial commitments implied in the submissions, the inconclusive and the non-assuring nature of the financial submissions".

Subsequent to this letter, Waterville, per the letter written by its lawyer, Colin Russell, dated 27th August, 2006, protested against the termination, pointing out that the reasons given by MOES was not tenable and the termination illegal. He cited the Public Procurement Act to support Waterville's case.

Consequently, in MOU signed dated 30th of November 2005, Waterville was given the right to commence rehabilitation works on the Kumasi, Accra and El Wak stadia. The MOU stated that a formal contract should be signed within 45 days of the date of the MOU. Subsequently, per its letter of 6th February, 2006, MOES authorised Waterville to move to site pending the written contract which was eventually signed on 26th April 2006.

Documents studied so far indicate that these contracts were also terminated and Waterville put in a claim for a total amount of €21,569,946.71, for actual work done and financial engineering. Government then paid an amount of €11,935,706.55 for unexplained reasons, failed to pay the difference of €9,634,240.16. This amount was outstanding until the change of Administration in 2009, when Waterville, taking advantage of the dispute settlement clause of its contract with the Government went for mediation and was eventually awarded an amount of €25,000,000.00 to cover its outstanding amount and accumulated interest, among others. This amount was subsequently paid in 2010.

3. Alleged Official Support for Woyome's Claim

The evidence shows that on 4th May, 2005 the MOFEP, in a letter signed by Hon. Kwaku Agyeman-Manu, Deputy Minister, Vamed Engineering GmbH and Co. KG and Mr. Alfred Woyome were introduced to three (3) banks, namely Raiffeisen Zentral Bank, Osterreich AG, Bank Austria Creditanstalt AG and Exim Bank, Washington D.C. The banks were requested to assist Vamed and Mr. Woyome "to conclude the loan deal and a term sheet" presented to MOFEP for consideration. The letter however had a disclaimer that "this Ministry and Government of Ghana does not take any responsibility legal or otherwise for any deal, contractual or otherwise entered into by Mr. Alfred Woyome, Vamed Engineering GmbH & Co. KG do not represent this Ministry nor the Government of Ghana in any capacity whatsoever".

Further, there is documentary evidence which supports the fact that on the 5th of July, 2005, the MOES per its letter introduced mPowapak to The Department of Commerce, Washington D.C. as representatives of Vamed Engineering, and went ahead to confirm to the Department of Commerce that the expected date of completion of the bid process was by 15th July, 2005, after which "any firm which is awarded the contract and has shown

proof of funding for the projects will conclude negotiations with the relevant Ministries after value for money audit has been conducted by an independent international body, for implementation on a supply contract basis”.

4. Role of Attorney General's Department and Ministry of Finance & Economic Planning Since January 7, 2009

The evidence shows that upon hearing that Waterville had put in a claim to be paid money owed and due to it as a result of the CAN 2008 work on stadia, Mr. Alfred Woyome, per his letter dated 18/08/2009 informed the Hon. Minister for Youth and Sports of the interest of his consortium in the matter. According to Mr. Woyome, the consortium comprised of M-Powapak, Austro Invest and himself. Mr. Woyome also stated that the aggregate sum of **€33 million** being demanded then by Waterville was “grossly exaggerated”. He went on further to state that he was the one who engineered the whole CAN 2008 concept and “pursued it through”. He narrated what he claimed to be the process leading up to the financial engineering for the CAN 2008 project and further added that “in conclusion, I ask that the negotiation between the Attorney General's Department and Waterville BVI is ceased while I put forward the chronological evidence, carefully documented for your information and necessary action.

I use this opportunity to formally demand on my own behalf and on behalf of Austro Invest, M-Powapak and Alexandra Van Cleef the sum of **Euro 6 million** in lieu of the CAN 2008 stadia construction bid that was cancelled by the Cabinet of the Government of Ghana illegally when it was clear that the consortium had won.....”

Upon receipt of a copy of the letter under reference, Waterville caused its lawyers, Messrs. Kwame Tetteh & Co. to write to the Hon. Attorney General reacting to claims made by Mr. Woyome. In the said letter dated 20th November, 2009, Waterville claimed to have engaged the services of M-Powapak to *“provide Waterville with financial engineering services but the relationship was terminated by a Termination Agreement dated 25th November 2006..... M-Powapak's claims against Waterville were fully settled and acknowledged in the Agreement. Therefore neither M-Powapak nor Woyome has any claim against Waterville.....We must add that the stadia contracts were contracted between Waterville and the Government of Ghana...; neither M-Powapak nor Woyome was a party. It is therefore wrongful for Mr. Woyome or M-Powapak to make a claim in a contract of which neither is a party”.*

In reply to this letter from Kwame Tetteh & Co., Mr. Woyome wrote another letter dated 11th January, 2010 to the Hon. Attorney General, stating that it seemed Kwame Tetteh & Co. did not appreciate “fully what all these entails..... In my letter of 18th August 2009, I never stated that Waterville owes Mr. Woyome. I rather disputed the claim of Waterville on Government and introduced my claim which should have been part (joint) of Waterville's claim on Government”. Mr. Woyome proposed a meeting to be attended by BIC, Mr. Rex Danquah of CAN 2008 LOC, the Ministry of Youth and Sports (MOYS) and the Legal Department of MOFEP.

The evidence shows further that subsequently, the Hon. Attorney General called a meeting to which the Director (F&A) of MOYS- Alhaji Yakubu Abdulai, Director of Legal of MOFEP – Mr. Paul Asimenu, Mr. S. Kwami Tetteh –Tetteh & Co., Mr. Andrea Orlandi of Waterville Holdings, Mr. Rex Danquah of LOC-CAN 2008, Mr. Albert Asamoah of BIC and Mr. Alfred Woyome were invited. Although no minutes of the meeting has been seen, evidence shows that Mr. Woyome was told to present a petition stating his claim and Waterville was also told to do same when the meeting came to a conclusion that the two of them were making different claims.

Consequently, Waterville invoked the dispute settlement clause in its Agreement of April 26, 2006 and called for mediation. The mediator agreed upon between the Government and Waterville was Mr. Ekow Awoonor and the claim presented by Waterville was for the following reliefs, among others:

- “.....b. An order for the payment of **Euro 9,634,240.15** being the balance due on the works certified by the Government Project consultant as value of work executed by Waterville (BVI) Ltd as at the date of termination, i.e. 1st August 2006;
- c. Payment for the sum of **Euro 3,123,754.56** being accrued interest at the rate of Eurobor plus 3 points as at June, 2010;
- d. Interest on the sum of **Euro 9,634,240.15** at Eurobor plus 3 points from 16th June, 2010 up to date of final payment.
- e. Payment of the sum of **Euro 13,426,261.28** being loss of profits occasioned by the termination of the contract.
- f. Interest on the sum of **Euro 13,426,261.28** at Eurobor plus 3 points from 16th June, 2010 up to date of final payment.
- g. **Euro 1,200,000.00** being legal fees.
- h. **Euro 20,000,000.00** as general damages for breach of contract.....”

Eventually however, the parties agreed that Waterville be paid an amount of €25 million in full and final settlement of all its claims against Government in the matter of the termination of the stadia contracts. This figure was converted into Ghana Cedis and finally settled/paid in 2011.

The Woyome Claim

In his petition dated 18th February, 2010, Mr. Woyome gave a long narration of his involvement in the process of Ghana winning the bid for CAN 2008 from about 2001/2002 when the late Mr. Osei Kwaku, was the Minister of Youth and Sports up until the time of abrogation of the contract of Waterville in 2006.

Mr. Woyome then put in his claim by "formally demanding from the Government of Ghana the payment for the Financial Arrangement Cost which is 2% of all legally offered amounts by Bank Austria to the Government of Ghana amounting to €1,106,470,587.00 equaling €22,129,411.74 as contained in the last page of Waterville's document entitled 'Report for discussion with Government of Ghana about termination of contract'..... The per centum in this circumstance is normally 4% but Waterville negotiated it to 2% with the previous regime. Half of this amount is due our external partners: Austro Invest. The other half of €11,064,705.87 I claim on my behalf".

Upon receiving this petition, the Attorney General in a letter of 16th March, 2010, she caused to be written for her, wrote to BIC for its comments and copied Mr. Rex Danquah, the Ex-COO of LOC. The AG also wrote to the Hon. Minister for Youth and Sports for his comments. The Hon. Minister for Youth and Sports caused a reply dated 28th April, 2009 to be sent to the AG in which he stated that he was not at post at the time of the execution of the contract and also that correspondence on the matter could not be traced at the then Ministry of Education, Science and Sports when enquiries were made there. The Minister however caused a copy of 'responses from the consultants to be sent to the AG which he said 'would greatly assist' in the resolution of the matter.

In his reaction to the same letter from the AG dated 16th March, 2010, Mr. Rex Danquah stated that he "was aware of various discussions and submissions made by all shortlisted companies and individuals in respect of the project, including discussions and submissions made by Mr. Alfred Woyome for and on behalf of the Bank Austria Creditanstalt and Waterville Holdings (BVI) Limited in respect of their technical and Financial bids and subsequent negotiations held with the then Ministry of Education, Science and Sports..... However on the legitimacy or otherwise of the financial engineering claims, as well as the appropriateness or otherwise of the quantum of claims, any member of the 3-member Evaluation Committee for financial proposals should be able to provide credible commentary and advice on the matter within the context of the existing conventions based on international best practice and to bring final closure to this outstanding issue".

On the 17th of March, 2010, The AG cause a letter to be written to the Hon. Minister, MOFEP in which she forwarded a copy of the advice of BIC to MOFEP and asked for "advice with regard to the claims and the opinion expressed by BIC Ltd. to enable a final decision to be made regarding payment".

It is instructive to note that in its said advice, BIC computed the work which was done by Waterville Holding (BVI) Ltd on 23rd August, 2006 as follows:

Ohene Djan	-	-	€9,061,359.53
El-Wak	-	-	€1,842,192.79
Baba Yara	-	-	€9,587,897.05.

