SANCTIONS CASE No. 1/REPORT/2

Sanctions Decision No. 02, issued on July 28, 2015

Fraudulent Practices – Submission of Forged Bank Guarantees

Respondents: LIBERTY CONSTRUCTION COMPANY LTD and Mr. Edmund MABIRO

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In November 2002, the African Development Fund, an entity of the African Development Bank (the “Bank Group” or the “Bank”) and the Republic of Uganda entered into a Loan Agreement to finance the Fisheries Development Project in Uganda (the Project). The Project sought to increase the incomes from fishing and to strengthen aquaculture research and development. The Project consisted of various components, including the construction of fishing landing centers for which the Executing Agency conducted a procurement process. For the purpose of submitting a bid to tender, Liberty Construction Company Limited (Respondent Liberty), represented by Mr. Edmund Mabiro, Managing Director, entered into a Joint-Venture Agreement with a company (named D.T.E. Ltd. for the purpose of this document). The Joint-Venture was awarded the contract in December 2007.

One of the contractual requirements was the production of an Advance Payment Guarantee and a Performance Guarantee. The Joint-Venture requested and obtained the necessary bank guarantees with a validity period of 18 months and 28 days. However, the Joint-Venture executed the contract with great difficulty and lagged behind the schedule. This inevitably resulted in a situation where the bank guarantees were to expire before the execution of the contract. The Executing Agency proceeded to ask the Joint-Venture to issue guarantees that would match the extension time of the contract. On behalf of the Joint-Venture, Respondent Mabiro supplied in July 2009, an Advance Payment and a Performance Guarantees purportedly issued by the Orient Bank. Upon enquiry from the Executing Agency, the Orient Bank confirmed that it never issued the Bank Guarantees. The case was referred to the Integrity and Anti-Corruption Department (IACD) of the Bank. After investigations, IACD concluded that the Respondents made a misrepresentation and presented forged bank guarantees in order to evade contractual obligations or save on fees and commissions to be paid to the guarantor, thus reducing its costs of executing the contract. IACD presented a Findings of Sanctionable Practices to the Sanctions Office (the FoSP) on March 14, 2014.

Upon review of the case, the Sanctions Commissioner determined that the FoSP contained *prima facie* evidence in support of the alleged fraud and therefore issued a Notice of Sanctions Proceedings to the Respondents on March 17, 2014. However, the FoSP could not be delivered and the Sanctions Commissioner issued another FoSP on February 26, 2015. The Respondents were informed of their right to contest the FoSP within sixty (60) days of receipt.

On April 9, 2015, the Counsels for the Respondents submitted a correspondence in which they made reference to ongoing proceedings before the High Court of Uganda in which they claimed to be contesting the termination of the works contract on the “same grounds” and stated that they are not going to participate in the Sanctions process. The ambiguous nature of the correspondence led to the Sanctions Commissioner issuing a Request for Clarifications to the Counsels on April 14, 2015. The Counsels responded with another correspondence, which betrays their misunderstanding of the administrative nature of the sanctions proceedings. The failure of the Counsels to address the issues raised in the FoSP was considered by the Sanctions Commissioner as a refusal to submit a Response.
After giving due consideration to the case, the Sanctions Commissioner determined that it is more likely than not that the Respondents engaged in a fraudulent practice. As a consequence, the Sanctions Commissioner imposed a sanction of three (3) year debarment with conditional release on July 28, 2015. The Respondents will be released at the end of the debarment period, upon implementation of an integrity compliance regime at Respondent Liberty, in a manner satisfactory to the Bank.

The Respondents referred the case to the Sanctions Appeals Board which concluded by an Order dated September 1st, 2016 that it does not have jurisdiction to review the matter as the Respondents failed to submit a valid appeal in compliance with time, substance and format requirements. The Sanctions Decision therefore became final and enforceable.