SANCTIONS CASE No. SN/2015/02

Sanctions Decision No. 05, issued on January 29, 2016

Fraudulent Practice - Submission of false references in a procurement process in order to meet the bid requirement and win a contract the supply of training-related catering tools and equipment

Respondents: SPRING EMPIRE CONTRACTS and Ms. Ohenewaa Akosua NYARKU

In December 2007, the African Development Fund, an entity of the African Development Bank Group (the “Bank Group” or the “Bank”) entered into a loan and a grant agreements with the Republic of Ghana to finance part of the foreign currency costs and part of the local currency costs of a project aimed at contributing to gender equitable socio-economic development (the Project). The Project consisted of various components including the supply of training-related catering tools and equipment for which the executing agency conducted a selection process. Respondent Spring Empire Contracts (Respondent Spring), a firm represented by Ms. Ohenewaa Akosua Nyarku (Respondent Nyarku), won the bid and was awarded the contract.

On July 4, 2013, the Bank’s Integrity and Anti-Corruption Department (IACD) received an allegation that contracts under the Project were awarded to unqualified companies and thus, decided to investigate to matter. Under the Bidding Documents, bidders were requested to submit specific documents including a list of three clients who had purchased similar goods in the previous two years. IACD uncovered that Respondent Spring, represented by Respondent Nyarku stated in its bid, that it provided similar goods to five listed schools and training institutes. However, during the interview, Respondent Nyarku admitted that the goods were not sold to the institutions but only to students of these institutions. IACD concluded that Respondent Spring, represented by Respondent Nyarku, misrepresented the facts in order to meet the bid requirements and improve its chance to win the tender. This misrepresentation constitutes a fraudulent act which is subject to sanction under the Bank’s Procurement Rules and the Bidding Documents. IACD presented a Findings of Sanctionable Practices to the Sanctions Office (the FoSP), on May 22, 2015.

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 November 12, 1015. The Respondents were informed of their right to contest the FoSP within sixty (60) days of receipt. The Respondents did not 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 fraudulent practice.

The Sanctions Commissioner considered that the admission by Respondent Nyarku during the interview, of the false nature of the references provided, was a mitigating factor. As a consequence, the Sanctions Commissioner decided to reduce the baseline sanction of three (3) years of debarment prescribed by the Sanctioning Guidelines and imposed a one (1) year and six (6) months of debarment with conditional release, on January 29, 2016. The Respondents will be released at the end of the debarment period, upon implementation of an integrity compliance regime at Respondent Spring, satisfactory to the Bank.

The Sanctions Decision was not contested before the Sanctions Appeals Board and therefore became final and enforceable.