SANCTIONS CASE No. SN/2017/02

Sanctions Decision No. 08, issued on July 20, 2017

Fraudulent Practice in connection with a prequalification process for a tender for road construction works.

Respondent: CHONGQING INTERNATIONAL CONSTRUCTION CORPORATION

In 2013, the African Development Fund, an entity of the African Development Bank Group (the “Bank Group” or the “Bank”) decided to grant a Loan to the Republic of Uganda, to finance part of the foreign and local currency costs of the Road Sector Support Project IV (the “Project”). The main objective of the Project was to improve road access to social-economic facilities and the quality of transport services, thus contributing to improved standards of living, regional integration and cross border trade in the Great Lakes Region. One of the component of the Project involves the upgrading of an existing gravel surface road to bitumen standard. In November 2012, the Project implementation agency (“PIA”), had conducted a prequalification process for the construction works. CHONGQING INTERNATIONAL CONSTRUCTION CORPORATION (Respondent “CICO”) participated in the process and succeeded. All prequalified candidates were invited to bid in July 2013. Respondent CICO emerged as the lowest bidder and the PIA recommended in March 2014 that the contract be awarded to the firm.

While the Bid Evaluation Report was in a procurement review process, the Bank Office in Uganda received in May 2014, several anonymous complaints claiming various improprieties in the context of the tendering process. The PIA transmitted the Bid Evaluation and Due Diligence Report to the Bank in February 2015, with the recommendation that the contract be awarded to the second lowest bidder, CICO having failed to provide all the required documents to support the projects submitted for prequalification. The Report was transmitted to the Bank’s Integrity and Anti-Corruption Department (IACD) which decided to investigate the matter. The investigation revealed that in its Prequalification Application, CICO provided as references six past projects and that the information provided with regard to five of the projects was materially false. IACD concluded to the existence of a fraudulent practice. In responding to the allegation, CICO asserted mistakes and oversight on the part of the previous Branch Manager, who had already been dismissed. Till mid-January 2017, IACD and Respondent CICO exchanged various correspondences with regard to the facts of the case, settlement proposals and counter-offers. The settlement negotiations finally failed and IACD presented a Findings of Sanctionable Practices (the FoSP) to the Sanctions Office on February 14, 2017.

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 Respondent on April 6, 2017. The Respondent was informed of it right to contest the FoSP within sixty (60) days of receipt.

On June 9, 2017, Legal Counsel for the Respondent submitted a Response refuting IACD’s findings. Firstly, Respondent CICO contended that it had no knowledge or role in the misconduct of the country Manager, who acted in violation of the firm’s Code of Ethics, and was subsequently dismissed. Secondly, the Respondent asserted that three contracts references fell within the parameters of the criteria for experience set by the Prequalification Document and questioned the interpretation of the scope and extent of the said criteria. Thirdly, the Respondent claimed fundamental flaws in the prequalification and evaluation process due to failure by the PIA and the Bank to ensure compliance with the terms and conditions of the Prequalification Document.
After giving due consideration to the case, the Sanctions Commissioner determined that it is more likely than not that the Respondent CICO engaged in the alleged fraudulent practice. The Sanctions Commissioner rejected the aggravating circumstance identified by IACD, i.e., the harm to the Project and to the public welfare resulting from the delay in the implementation of the Project, finding that it cannot be attributed only to the Respondent due to many intervening factors. As regards the mitigating circumstances, the Sanctions Commissioner considered the dismissal of the employee, cooperation with the investigation, governance measures and absence of any record of past misconduct history and as a consequence, decided to reduce the baseline sanction of three (3) years debarment.

The Sanctions Commissioner therefore imposed a one (1) year debarment with conditional release. The Respondent will be released at the end of the debarment period, upon the implementation of an integrity compliance program and cooperation with law enforcement agencies and regulatory authorities of the Bank Member Countries in any investigation of Respondent CICO, its former or present officials, subcontractors and consultants.

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