

January 12, 2009

Sanctions Board Case No. 3
Philippines NRIMP-1

Decision of the Sanctions Board declaring Respondents *E.C. de Luna Construction Corp.* and *Eduardo C. de Luna* ineligible indefinitely, to be awarded a contract under a World Bank Group-financed or -executed project, which ineligibility shall begin on the date of this decision, because of collusive practices constituting fraudulent practices as defined in Paragraph 1.15(a)(ii) of the World Bank's Guidelines: Procurement Under IBRD Loans and IDA Credits (Jan. 1995, rev. Jan. and Aug. 1996, Sept. 1997, and Jan. 1999).

Background

1. This case concerns alleged sanctionable practices by fourteen road construction companies and the founder/president of one of the companies in connection with the World Bank-financed First National Roads Improvement Management Project ("NRIMP-1") roads project in the Philippines. In addition to Respondents E.C. de Luna Construction Corp. ("E.C. de Luna") and Eduardo C. de Luna (collectively, "the Respondents"), these companies included Cavite Ideal International Construction and Development Corp., China Geo-Engineering Corp., China International Water & Electric Corp., China Road and Bridge Corp., China State Construction Engineering Corp., China Wu Yi Co. Ltd., C.M. Pancho Construction Inc., Daewoo Engineering & Construction Co. Ltd., EEI Corp., Hanjin Heavy Industries & Construction Co., Italian-Thai Development Public Co. Ltd., Sammi Construction Co. Ltd., and Shinsung Corporation General Contractors & Engineers.

2. The Notice of Sanctions Proceedings ("Notice") issued by the World Bank's Evaluation and Suspension Officer ("Evaluation Officer") on May 1, 2008 presents evidence that the Respondents had engaged in corrupt, collusive and other fraudulent practices in connection with multiple rounds of bidding for two road construction and rehabilitation contracts under this World Bank-financed project. The allegedly fraudulent practices include the misrepresentation of facts in order to influence the procurement process for one or more procurement packages. In addition, they include participation in a collusive scheme,¹ also involving politicians and government officials, whereby awards were directed to particular contractors in exchange for bribes, kickbacks and payments to

¹ The sanctionable practices alleged herein have the meanings set forth in the World Bank's Guidelines: Procurement Under IBRD Loans and IDA Credits (Jan. 1995, rev. Jan. and Aug. 1996, Sept. 1997 and Jan. 1999) ("Procurement Guidelines"), the version of the Procurement Guidelines applicable under NRIMP-1. Under paragraph 1.15(a)(ii) of these Procurement Guidelines, collusive practices are a form of fraudulent practices, which are defined as "a misrepresentation of facts in order to influence a procurement process or

designated losing bidders. On the basis of participation in this collusive scheme, the Notice alleges that each Respondent had additionally engaged in corrupt practices² either as a principal in a joint enterprise the intent of which was to offer bribes to public officials, or as a secondary party who "aided and abetted" the principals in the payment of such bribes.

3. The Notice relies on circumstantial and testimonial evidence of collusion in order to establish that the Respondents engaged in corrupt practices and collusive and other fraudulent practices in connection with the World Bank-financed project. The circumstantial evidence consists of alleged indicia of collusion, including high bid prices, symmetrical relationships among bids, bids containing significant errors, "clusters" of bids, "strange and unnatural" bid prices, submission of fraudulent bid securities, and inconsistent application of criteria within the prequalification process. The testimonial evidence is in the form of statements from multiple witnesses, some identified in the Notice, some anonymous, and others whose identity was withheld from the Respondents as confidential materials pursuant to a previous determination of a Panel of the Sanctions Board under Section 8(3) of the Sanctions Procedures.

The Proceeding

4. The Sanctions Board convened in a plenary session on November 5 and 6, 2008 to consider the evidence against Respondents E.C. de Luna Construction Corp. and Eduardo C. de Luna and reach its decision. The Sanctions Board was represented by Danny M. Leipziger (as Chair), Hassane Cisse, Cornelia Cova, Fathi Kemicha, and Hoonae Kim, these five members forming a quorum in accordance with Article VII of the Sanctions Board Statute.

5. In accordance with Section 9 of the Sanctions Procedures, the record before the Sanctions Board included the Notice of Sanctions Proceedings as well as the Respondents' respective Responses to this Notice, and the Reply of INT in support of the Notice, and it also included the Explanation in Opposition to Temporary Suspension submitted by each Respondent, as those written submissions are defined in the Sanctions Procedures.

the execution of a contract to the detriment of the Borrower, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition."

² "Corrupt practices" as alleged herein have the meaning set forth in paragraph 1.15(a)(i) of the applicable Procurement Guidelines, meaning "the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution."

Decision

6. The Sanctions Board reviewed this record on the basis of Section 15(2) of the Sanctions Procedures to determine whether the evidence presented by INT, as refuted by each Respondent, supported the conclusion that it is more likely than not that that Respondent engaged in each of the alleged sanctionable practices. Based on its consideration of the record in the case, the Sanctions Board concluded with respect to Respondents E.C. de Luna, and Mr. Eduardo C. de Luna that it was more likely than not that these Respondents had engaged in collusive practices in connection with the World Bank-financed NRIMP-1 project. In reaching this conclusion, the Sanctions Board considered as compelling the statements of certain confidential and nonconfidential witnesses.

7. However, the Sanctions Board also concluded that the evidence did not establish that it was more likely than not that the Respondents had engaged in fraudulent practices separate from the collusion (considered as a form of fraudulent practices under the applicable definition in the Procurement Guidelines). In addition, the Sanctions Board concluded that INT had not presented evidence sufficient to establish that it was more likely than not that these Respondents had engaged in corrupt practices. In reaching this conclusion, the Sanctions Board did not consider that INT could meet its burden of presenting evidence of corruption solely through application of theories of culpability as a principal or secondary party participating in a collusive scheme, without providing sufficient evidence to support its claim that the Respondents had engaged in corrupt practices under the applicable definition in the Procurement Guidelines.

Appropriate Sanctions

8. In the case of Respondents E.C. de Luna and Eduardo C. de Luna, the Sanctions Board determined that the appropriate sanction would be debarment for an indefinite period. In determining this sanction, the Sanctions Board took into account, inter alia, E.C. de Luna's position as designated winner in the collusive scheme and also the multiple witness statements identifying E.C. de Luna and Mr. Eduardo C. de Luna as ringleaders in this scheme. The Sanctions Board considered as a further aggravating factor that these Respondents had engaged in multiple instances of misconduct, concluding that this conduct was sufficiently egregious as to warrant the most severe sanction.

9. During the course of its deliberations, the Sanctions Board noted that INT in its Reply to Respondents E.C. de Luna and Mr. Eduardo C. de Luna had conditionally requested a hearing before the Sanctions Board "only if the Sanctions Board intends to impose a sanction on the Respondent that is less than the sanction recommended by the [Evaluation Officer]," and unless the Sanctions Board "should . . . come to the conclusion that INT's above conditional application is not permissible under the Sanctions

CONFIDENTIAL


Procedures, [in which case] INT hereby requests a hearing in this matter.” The Sanctions Board concluded that this conditional application did not constitute a request for hearing for purposes of Section 10 of the Sanctions Procedures, which requires that, “[s]hould the Respondent or INT desire that the Sanctions Board hold a hearing on the allegations against the Respondent, such request shall be made in the Respondent’s Response or in INT’s Reply.” Accordingly, it is the Sanctions Board’s decision that INT’s conditional application cannot be entertained under the Sanctions Procedures.

CONFIDENTIAL

Date 1/12/2009

SANCTION

By decision of the World Bank Group's Sanctions Board, E.C. de Luna Construction Corp. (together with any firm which E.C. de Luna Construction Corp. directly or indirectly controls) and Mr. Eduardo C. de Luna (together with any firm which Mr. Eduardo C. de Luna directly or indirectly controls) are hereby declared ineligible indefinitely to be awarded a contract under a World Bank Group-financed or -executed project.



Danny M. Leipziger (Chair)

On behalf of the Sanctions Board
Danny M. Leipziger
Hassane Cisse
Cornelia Cova
Fathi Kemicha
Hoonae Kim