

**2009 INTEGRITY OVERSIGHT COMMITTEE
SYNOPSIS OF CASES DISCUSSED**

23 FEBRUARY 2009

Case 1

1. OAGI found that two companies had submitted similar bids for the supply and delivery of furniture equipment under an ADB-financed project in Uzbekistan. The two firms had proposed the same furniture, at different prices. The IOC found that it was more likely than not that one of the two firms manipulated both bid submissions. The IOC imposed a sanction of 7 years on one firm. The IOC also imposed a sanction on the firm's officer who signed the bid submission, as an individual.

2. The IOC decided to defer its consideration of OAGI's recommendation to impose sanctions on one firm and one individual, and recommended to OAGI that

- (i) A findings letter in Russian be sent to the firm; and
- (ii) OAGI conduct further inquiries to establish the existence of the individual, who appears as the signatory of firm's bid.

Case 2

3. OAGI found that four companies submitted false information in their bids for construction services in an infrastructure project in the People's Republic of China. The misrepresentations mainly included information regarding the professional qualifications and experience of their proposed project staff, and the possession of the necessary construction equipment.

4. The bid documents submitted by those companies included a forged qualification certificate, and forged equipment invoices. One firm even misrepresented the identity of its proposed Project Manager by submitting a forged national ID.

5. The IOC imposed sanctions against those companies ranging from 3 to 7 years, taking into consideration mitigating and aggravating factors related to (i) the falsifications involved, and (ii) the companies' attitude towards OAGI during the investigation. The companies' representatives who took responsibility for the submission of the bids were similarly sanctioned as individuals.

Case 3

6. OAGI investigated concerns that a firm provided falsified qualifying documents of its appointed supplier in two proposals for the supply and installation of electrical equipment. OAGI verified that the qualifying documents were supplied to the bidder by its appointed manufacturer and had been accepted in good faith. The bidder included the documents in its bid proposals without verifying the authenticity of the documents.

7. OAGI's investigations determined that two of the said qualifying documents were false and the IOC imposed a sanction of 7 years on the supplier. The IOC requested OAGI to issue a letter of caution was issued to the bidder to warn it to act more diligently in future tenders and to verify the authenticity of qualifying documents obtained from manufacturers prior to submission of tenders.

5 MARCH 2009

Case 4

8. OAGI conducted an investigation into consultancy services which were provided to ADB in 2005. The firm (Firm A) engaged by ADB for this purpose was awarded the contract on the representation that it would render the services in association with another firm (Firm B). However, OAGI determined that, subsequently to the award of the contract, a group of officers from Firm B, including the individual who committed Firm B to this association with Firm A, left Firm B to form a new company (Firm C), which misappropriated the role of Firm B by rendering the services Firm B had been contracted for, and receiving the related consultancy fees, without the knowledge of Firm B. The IOC reprimanded two firms and two individuals.

Cases 5 and 6

9. In 2007, an executing agency found that a firm had misrepresented its litigation history in a proposal for an ADB-financed contract. OAGI subsequently found that the firm also misrepresented its litigation history in a bid for a different ADB loan project submitted in a joint venture with another firm. The firm further provided contradictory information on its litigation history in a third bid under yet another ADB loan project. The IOC debarred the firm, the joint venture partner, and the signatories for each bid for a minimum of 2 years

22 APRIL 2009

Case 7

10. OAGI found that two companies had submitted similar bids for the supply and delivery of furniture equipment under an ADB-financed project in Uzbekistan. The two firms had proposed the same furniture, at different prices. The IOC found that there was preponderance of evidence to show that that the two firms colluded in the preparation of their bids. The IOC imposed a sanction of 7 years on both firms. The IOC also imposed a similar sanction on the firms' representatives who signed the bid submissions, as individuals (the same case in para. 1). At this rehearing of the case, the IOC imposed a 7-year sanction to the firm and a 7-year sanction and disclosure of its sanction on ADB's website to the individual.

Case 8

11. Three firms colluded and manipulated bids in preparing and submitting their proposals for consideration for US\$ 1 million for a local government capacity building activity in 2007. The proposals submitted shared a number of striking similarities, including identical text and graphics, spelling and typographic errors, and birthdates for proposed personnel. The IOC imposed sanctions on three firms for 7 years and three individuals indefinitely.

Case 9

12. In 2007, a company bid on three infrastructure contracts totaling US\$140.23 million. In presenting its credentials, the company claimed to have built a tunnel 6.1 km long as part of a prior contract. This claim was supported by documentation in both the local language and in English confirming this activity. The EA, while reviewing the proposals, found that referenced road contained no tunnel. The EA referred the company to OAGI for investigation.

13. OAGI confirmed the facts of the proposal and the referenced tunnel and found that the firm had falsified documents and made material misrepresentations in order to meet contract award criteria. During the course of the investigation, the company disciplined the four directors and staff person responsible. The IOC sanctioned the firm and one its representative for 6 years and three of its representatives for 5 years for misrepresentation and falsification of documents.

Case 10

14. The EA in question called for bids to rehabilitate and resurface an identified section of road. The contract was eventually awarded for \$11 million. When evaluating the 12 bids submitted, the evaluation committee identified two bids which were remarkably similar. OAGI confirmed that one of those bids - submitted by two firms in a joint operation - essentially copied the bid documents of the rival bid and submitted these as their own. The header/title of several pages of the copied bid documents inadvertently included the name of the rival, and included identical typographical conventions, lists of equipment, prices and spelling errors. The lead firm was sanctioned for 7 years and its director indefinitely due to aggravating circumstances. The associate firm however, along with its director, was sanctioned for 4 years.

Case 11

15. OAGI received an allegation that a proposed expert's CV was included in a bid proposal without his permission. OAGI was unable to establish if such permission was granted or not. Nonetheless, it was clear that the version of the expert's CV as included in the bid document - *that had been re-formatted to comply with ADB's requirements and otherwise significantly enhanced* - had not been seen by the expert in question. In addition, the signature on the re-formatted CV was not a digital copy of the expert's signature from the stated source document, as claimed by the firm.

16. The IOC sanctioned the firm and its director and deputy director for a minimum of 3 years for misrepresentation.

19 MAY 2009**Case 12**

17. OAGI found that a construction company submitted falsified financial statements in four technical proposals for construction packages. According to those statements, the company would have achieved the minimum construction turnover and working capital required for bidding, whereas the company's official financial statements (lodged with the relevant authorities) showed that such requirements were not met. The IOC imposed a sanction of 7 years on the company as well as its holding company. The general manager of the company,

and the officer responsible for the submission of the bids, as individuals, were similarly sanctioned.

Case 13

18. OAGI received an anonymous complaint that an employee of a sanctioned firm A used a consulting Firm B as a front in submitting bid proposals to ADB. Firm B was awarded with two ADB consulting contracts and was in negotiations with ADB for another contract. Firm A was originally sanctioned for 4 years effective 29 October 2003. As a result of a subsequent violation, ADB reset the sanction for 10 years including all Firm A's affiliates and published their names on ADB's website.

19. During the course of the investigation, OAGI determined that Firm B is affiliated with the sanctioned Firm A and post Firm B on ADB's website as one of the Firm A's affiliates effective 23 September 2008. On the advice of OAGI, a new contract was not awarded to Firm B as the sanction imposed by IOC on Firm A applies to Firm B.

20. OAGI concluded that Mr. C, an employee of Firm A, misrepresented his employment with Firm A to a Project Director and represented Firm B to participate in ADB-financed activity in order to circumvent Firm A's sanction. The IOC extended the sanction for Firm A and all its affiliates indefinitely for repeated sanctions violations and endorsed the posting of the sanction on ADB's website. The IOC debarred Mr. C indefinitely for a fraudulent practice. The IOC also sanctioned Ms. D who is a key officer of Firm B responsible for transacting with Mr. C for the three ADB contracts indefinitely.

Cases 14 to 16

21. In 2007, three companies bid on seven infrastructure contracts totaling US\$266.87 million. In presenting their credentials, the companies supported their false claims with documentation in both the local language and in English. One firm claimed to have executed a contract valued at five times its actual price. The second company claimed to have executed a contract at twice the actual price, and claimed to have executed a contract which was awarded to another firm. The third company claimed to have executed a contract valued at twice the actual cost in half the actual time. These discrepancies were identified by the EA's representative during review of proposals, who referred the companies to OAGI for investigation.

22. OAGI confirmed the facts of the proposals and found that the firms had falsified documents and made material misrepresentations in order to meet contract award criteria. All firms claim to have taken remedial action. The IOC sanctioned the two firms and three individuals for 7 years. The firms and individuals were sanctioned for misrepresentation, falsification of documents and bid manipulation.

Case 17

23. OAGI investigated concerns that a firm provided falsified qualifying documents of its appointed supplier in two proposals for the supply and installation of electrical equipment. OAGI verified that the qualifying documents were supplied to the bidder by its supplier and had been accepted in good faith. The bidder included the documents in its bid proposals without verifying the authenticity of the documents.

24. OAGI's investigations determined that two of the said qualifying documents were false and the IOC imposed a sanction of 7 years on the supplier as a firm. The IOC also imposed a sanction for an indefinite period on the firm's representative who provided the false documents to the bidder and posting of the firm's representative's name on ADB's website for evasion of service and failure to cooperate with OAGI's investigation. A letter of caution was issued to the bidder warning it to act more diligently in future tenders and to verify the authenticity of qualifying documents obtained from manufacturers prior to submission of tenders.

29 MAY 2009

Case 18

25. In 2007, OAGI received an allegation that a large electrical construction firm, which had recently been contracted to construct a 28 km power transmission line, had falsified its previous international work experience in order to meet the technical requirements for the contract. The contract was valued in excess of US\$2,400,000.

26. OAGI obtained and examined the end-user certificate which stated that the firm in question was the sole contractor for a 96 km power transmission line in Africa. OAGI and one of its retained investigations firms conducted extensive inquiries into the authenticity of the end-user certificate and the veracity of the claims. OAGI determined that the end-user certificate itself was a fabrication and found that the firm had not constructed the power transmission line in Africa as was claimed in the technical proposal.

27. The IOC debarred the company for misrepresentation amounting to fraudulent practice for a minimum period of 7 years.

Case 19

28. In 2007, a company bid on three construction contracts totaling US\$105.39 million. In presenting its credentials, the company provided financial information which presented the company as having adequate working capital to meet eligibility for contract award. In review of the proposal, the EA noted that the financial information presented did not properly compute and referred the company to OAGI for investigation.

29. OAGI confirmed the facts of the proposal and the presented financial information and found that rather than meeting eligibility criteria for award, the company had negative working capital and thus failed to meet the stated criteria. The IOC imposed sanctions of 7 years to the company and two officials responsible for the proposal for misrepresenting the firm's financial information.

5 JUNE 2009

Case 20

30. Over an 18-month period, ADB awarded a total of eight contracts totaling US\$2.25 million to a series of companies registered locally, in Hong Kong and in the British Virgin Islands. The individuals involved, and the firms they represented, engaged in fraudulent practices through their misrepresentation to ADB about their status, history and composition. The IOC found that they also colluded with each other and a former ADB staff to receive these

contracts. The IOC sanctioned 10 individuals and 12 firms for their individual and collective roles in this fraud, for periods between 2 years and indefinitely.

17 JULY 2009

Case 21

31. OAGI received an allegation that a consulting firm had been exclusively provided with the names of preferred consultants for an ADB RETA under processing. This gave the consulting firm an unfair competitive advantage in the procurement process for the contract to supply consulting services under this project.

32. The Integrity Oversight Committee determined that, although the firm concerned was not initially aware that it was being provided with this information exclusively, a senior officer with the firm subsequently realized that this was the case. Given this officer's extensive experience in working with ADB projects, it was evident that the officer realized that this situation was contrary to proper ADB procurement practice.

33. The IOC determined that by not bringing this situation to the attention of the appropriate authorities within ADB once it became aware that information was being provided exclusively, the firm and the officer had technically engaged in a collusive practice.

34. Given the circumstances, the IOC instructed OAGI to issue a reprimand to both the firm and the officer. A reprimand is considered to be an aggravating circumstance for the imposition of sanctions if either the firm or the officer concerned violates ADB's anticorruption policy in the future.

28 AUGUST 2009

Case 22

35. OAGI recently completed an investigation into allegations of bribery under an ADB project loan. OAGI found that the former project director at the EA had received kickbacks from a firm which was awarded a contract to provide project implementation consultancy services. The kickback was to be paid through monthly installments by the consultancy firm using a subcontractor as an intermediary.

36. The Integrity Oversight Committee (IOC) determined that both the consultancy firm and the representative responsible for the bribery as an individual, engaged in corrupt practices. Consequently, the consultancy firm was sanctioned for a minimum period of 7 years, where the individual concerned was sanctioned indefinitely.

37. OAGI also found that the whistleblower -- i.e., the individual who prompted the investigation by reporting bribery allegations -- was himself involved in the kickback scheme. The IOC determined that the whistleblower would receive a reprimand letter but would not be subject to a debarment sanction.

Case 23

38. During procurement of UPS batteries for one of ADB's Resident Missions (RM), it was noted that the vendor (Company A) invoiced the RM on the basis of a cancelled PO awarded to

another firm (Company B). Inquiries into the situation found that Company B provided quotations on letterheads of other companies and colluded with Company C to manufacture quotations for the RM. Company C was awarded the majority of all IT Purchase Orders awarded by the RM between 2002 and 2006. Company C purchased this equipment from Company B. Company C and its director were sanctioned by the IOC in July 2008. The IOC has now sanctioned Company B and its owner for collusion and misrepresentation.

39. The IOC also sanctioned Company A for material misrepresentations made during the course of the investigation.

40. To date, the IOC has sanctioned seven companies and eight individuals for collusion and misrepresentation related to procurements within this RM.

15 SEPTEMBER 2009

Case 24

41. An audit of a resident mission (RM) in 2006 found significant “red flags” involving institutional procurement for the RM. The audit found that quotations provided for printing services and office supplies between 2002 and 2006 shared striking similarities, including identical signatures provided on behalf of a number of different companies, similarities in letterheads and co-location of the firms. Ninety-nine percent of all printing contracts were awarded to one company. The IOC sanctioned three firms for 7 years and three individuals indefinitely for collusion, fraud (misrepresentation and fabrication of bids) and conflicts of interest.

Case 25

42. From 2006 to 2008, OAGI received numerous reports of agents of an organization and its representative falsely using ADB’s name to conduct real estate transactions and to recruit members through promises of financial assistance. OAGI found that ADB was variously being presented as the buyer, financier, or conduit of funds in proposed land transactions around the Philippines. ADB was also being presented as financing the assistance promised to prospective members. The IOC sanctioned the firm for 7 years and the representative indefinitely.

Case 26

43. OAGI received numerous complaints from Firm B that the two experts, Messrs. C and D, had never authorized Firm A to include their CVs in Firm A’s proposal.

44. OAGI investigated the matter and determined that Messrs. C and D prepared false affidavits and misleading statements indicating that they did not give their consent to be included in the proposal submitted by the winning Firm A. The false affidavits and misleading statements were sent to the Project Office and ADB repeatedly, attempting to get Firm A disqualified. OAGI was unable to establish on a balance of probabilities that Firm B had filed complaints with the Project Office and ADB in bad faith.

45. The IOC sanctioned Messrs C and D for 3 and 7 years, respectively, taking into consideration that Mr. D lied to OAGI during the investigation as an aggravating factor.

Case 27

46. OAGI investigated concerns that a firm provided a falsified license to meet tender requirements for the construction of a sanitary landfill site. When queried about the authenticity of the license, the firm responded by claiming to have been granted an upgraded license and provided a copy of the said upgraded license.

47. OAGI's investigations determined that both the first license and the upgraded license were false and the IOC imposed a sanction of 7 years on the firm. The firm's authorized representative, who was responsible for knowingly and recklessly submitting false licenses on two occasions was sanctioned for an indefinite period. Neither the firm nor its representative cooperated with OAGI's investigation.

14 DECEMBER 2009**Case 28 and 29**

48. In 2005, an individual was sanctioned indefinitely by ADB. The sanction covered all firms in which the individual had or may have a principal interest. Despite the sanction, a firm 50% owned by the individual and in which he was president signed a contract in an ADB-financed project. OAI learned about the violation in the course of a review which uncovered the firm's connection to the sanctioned individual. It contacted the firm and the individual for explanations, but got no response. The IOC sanctioned the firm for 10 years, and the sanctions on the individual and the firm will be published on ADB's website. ADB staff handling the award of contract could not have known that the firm was covered by the initial sanction as the firm was not named on the sanctions list.

49. OAI thanks IRM for its efficiency in providing the necessary records and information for this investigation.

Case 30

50. In 2008, the Executing Agency notified ADB of the submission of a fake bank guarantee by the winning firm under an ADB-financed project. The guarantee was to cover mobilization fees, and required as part of the terms and conditions of the contract.

51. OAI found that, on the balance of probabilities, a trusted employee was responsible for procuring and submitting the fake bank guarantee - a fraudulent practice under ADB's Anticorruption Policy - in order to steal the funds meant for collateral. While indications point to a solo operation by the employee, OAI concluded that, at a very minimum, the firm and its proprietor were likewise responsible, failing to exercise due care in the conduct of the firm's operations, thus enabling the fraud to be perpetrated. This is in accordance with ADB's Integrity Principles and Guidelines, paragraph 53, which considers employers responsible for the actions of their employees.

52. The IOC sanctioned the firm and its proprietor for the minimum sanction period of one year. The employee was sanctioned indefinitely. The IOC requested OAI to continue its investigation to determine if it could uncover more evidence to ascertain if the employee truly acted alone, including the possibility that the firm and the proprietor colluded with the employee or was otherwise complicit in the perpetration of this fraud. The IOC reserved the right to extend sanctions imposed here pending the outcome of this extended investigation.

53. OAI wishes to acknowledge its appreciation to the EA for bringing this to ADB's attention promptly.

Case 31

54. In 2006, OAG conducted an audit of procurement within a Resident Mission. OAG found striking similarities between letterheads, signatures, and addresses of competing firms, and found that despite apparent competition, the same firms were awarded purchase orders for a decade.

55. In the course of the investigation, OAI found that local firms engaged in the following practices, in violation of ADB's Anticorruption Policy:

- preparation by one firm of multiple bids for a single procurement, including quotations prepared by different firms, collected and submitted by one firm and/or if the quotations are prepared and submitted by one firm;
- preparation of quotations on behalf of a company with which the firm or its management has no affiliation;
- unauthorized use of another firms' letterhead;
- signing someone else's name to a document (forgery);
- misrepresentation of a company's address or other information;
- submission of quotations in competition with companies with whom the firm or its management has a financial interest (i.e., competing with another company with similar proprietorship or a sister concern); and
- discussion/pre-negotiation of prices with competing companies.

56. The IOC found that six firms and two individuals were complicit in the above practices, in violations of ADB's Anticorruption Policy.

57. OAI thanks OAG for the referral and CTL for the assistance rendered in the course of the investigation.