

No. 01-02

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### FCPA Opinion Procedure Release 2001-02

The Department has reviewed the joint request of an American company and a foreign company that was submitted on April 13, 2001.

The foreign company, a diversified trading, manufacturing, contracting, service, and investment organization, and the American company, through an offshore company in which it has a 50% beneficial ownership interest, plan to enter into an agreement to form a Consortium that will bid on and perhaps engage in a prospective business relationship with the government of the foreign company's home country. The requestors have asked for a determination of the Department's present enforcement intention under the FCPA, given the circumstance that the chairman and shareholder of the foreign company acts as an advisor to one of his country's senior government officials and is a senior official in public education in that country.

The requestors, as well as the chairman of the foreign company himself, have signed the FCPA opinion request and have represented, among other things, that:

1. The foreign company's chairman's government duties do not involve him acting in any official capacity concerning the award of the relevant business project. According to a legal opinion of counsel from the foreign country, submitted by the requestors, the tender for the business project was issued by ministries or agencies that are not under the charge of the foreign company's chairman in his official government duties.
2. The foreign company's chairman will not initiate or attend any meetings with his country's government officials on behalf of the Consortium. His country's law prohibits it.
3. The foreign company's chairman will recuse himself and will not participate in his official capacity in any discussion or consideration of or decision about the award of the business project, which could be construed as promoting in any matter the activities and business of the Consortium, or any other interest or business of any company affiliated with a Consortium member. The Consortium's bid submissions have informed the relevant foreign government ministries, agencies, and officials of the foreign company's chairman's relationship with the Consortium and of his recusal on any matters relating to the business project that are brought before those ministries, agencies, and officials. Future Consortium bid submissions will do the same.
4. The foreign company's chairman's position as a senior official in public education cannot affect or influence his government's process of reviewing the Consortium's bid and grants him no influence over the business project.
5. According to the requestors, the foreign company's chairman, and the legal opinion of the requestors' foreign counsel, the Consortium's formation and contemplated activities do not violate the laws of the foreign country, despite the foreign company's chairman's position in the government and as a senior official in public education.
6. The Consortium agreement will provide that each member acknowledges its awareness and understanding of the applicability of the FCPA to the Consortium's bid on, and possible execution of, the business project, and each party will agree not to violate the FCPA. Any failure by a Consortium member to comply with this provision of the agreement automatically grants the non-breaching member the right to terminate the Consortium agreement.

Based upon all of the facts and circumstances, as represented by the requestors, the Department does not presently intend to take an enforcement action with respect to the prospective contractual relationship described in this request.

The FCPA Opinion Letter herein, and this release, have no binding application to any party which did not join in the request, and can be relied upon by the requesting parties only to the extent that the disclosure of facts and circumstances in their request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.