

No. 81-01

Date: November 25, 1981

Foreign Corrupt Practices Act

Review Procedure Release

The Department has reviewed a joint review request from the Bechtel Group Inc. ("Bechtel"), a privately owned engineering, construction, and project management firm engaged in both domestic and international operations, and by the SGV Group ("SGV"), a multinational organization headquartered in the Republic of the Philippines and comprised of separate member firms in ten Asian nations and Saudi Arabia which provide auditing, management consulting, project management and tax advisory services. Bechtel and SGV plan to enter into contractual relationships whereby SGV will provide various services for Bechtel.

The parties' proposed contractual relationship has raised concerns about the application of the FCPA and both parties have requested a determination of the Department's present enforcement intention under the Act.

Bechtel and SGV have made the following representations, among others, with respect to their proposed contractual relationship:

All payments to SGV will be solely by check or bank transfer; no payment will be in cash or bearer instrument, and no payment will be made to any corporation or person other than an SGV member firm or any officer or employee of such firm. Furthermore, all payments will be made to SGV either in the Philippines or, upon written instruction to Bechtel, in any other country in which an SGV member firm shall render services.

Both requesters are familiar with the FCPA and its purposes; and that, in particular, they are familiar with that Act's prohibition of the payment or giving of anything of value, either directly or indirectly, by an American company to an official of a foreign government for the purpose of influencing an act or decision in his official capacity, or inducing him to use his influence with the foreign government, to assist a company in obtaining or retaining business for or with, or directing business to, any person.

SGV represents that none of its partners, owners, principals, and staff members are officials, officers, or representatives of any government or political party or candidates for political office and represents further that no part of its compensation will be used by SGV for any purpose, nor will it take any action, which would constitute a violation of any law of the various jurisdictions in which it performs services or of the United States, including the FCPA. For its part, Bechtel represents that it does not desire and will not request any service or action by SGV which would or might constitute any such violation.

SGV has agreed to obtain an opinion of local counsel to the effect that: (a) the entering into and performing the proposed agreement between Bechtel and SGV is permitted under the law of the Philippines; (b) no authorization or approval or other action and no notice to, or filing with, any governmental authority is required for the due execution and performance of that agreement; and (c) payment of travel and entertainment expenses for, or gifts to, government officials within the standards established by their agreement do not violate any law of the Philippines. SGV also represents that it shall furnish to Bechtel a similar opinion of local counsel in any other jurisdiction in which SGV may perform services, prior to the actual performance of any such services.

SGV will have no right to assign any portion of its rights to any third party without the prior written consent of Bechtel and, unless otherwise agreed by Bechtel in writing, the partners,

principals, and regular staff members of SGV or its member firms shall personally perform the services required by Bechtel.

SGV will not obligate Bechtel to third parties with whom SGV may make agreements or to whom SGV may direct payments, except as approved in writing by Bechtel. The requesters have further agreed and represent that by this they do not intend to authorize payments to any foreign official, government agency, political party, or political candidate, which payments would be prohibited by the FCPA, and SGV has acknowledged that no employee of Bechtel shall have authority to give any direction, either written or oral, relating to the making of any commitment by SGV to any third party in violation of the terms of the proposed agreement between SGV and Bechtel.

Both Bechtel and SGV will be entitled to terminate their agreement at any time, without further liability or obligation, if either believes, in good faith, that there has been a breach of its terms by the other party; any action which would or might constitute a violation of the FCPA, or a request for such action from a representative of either party, will result in immediate termination of the agreement. In addition, should SGV ever receive, directly or indirectly, from any Bechtel representative a request which SGV believes will or might constitute a violation of the Act, SGV represents that it will immediately notify Bechtel's general counsel of the request.

SGV has agreed that full disclosure of the existence and terms of its agreement with Bechtel, including the compensation provisions, may be made at any time and for any reason to whomever Bechtel's general counsel determines has a legitimate need to know such terms including, without limitation, the government of any country where services are being performed, the United States government, and/or other clients of Bechtel.

With respect to Bechtel's compensation of SGV for expenses incurred in connection with the rendering of services on Bechtel's behalf:

(a) Non-local travel expenses for representatives of Bechtel's clients or prospective clients will be reimbursed only when such expenses are permitted under the local laws and are incurred with Bechtel's prior written approval.

(b) Entertainment and meal expenses for representatives of Bechtel's clients or prospective clients will be reimbursed without prior approval of Bechtel only if the expenditure is permitted under the local laws, the entertainment or meal occurs on the same day as a substantial business meeting, and the expense is commensurate with the legitimate and generally accepted local custom for such expenses by private business persons in the country.

(c) Travel expenses, including expenditures for hotels, meals, airline tickets, taxis, etc., incurred by SGV's partners, principals, and regular staff members in the performance of services for Bechtel will be reimbursed only when such travel is approved by Bechtel in writing.

(d) Expenses for gifts or tangible objects of any kind incurred without Bechtel's prior written approval will be reimbursed only where such expenditures are permitted under the local laws, the ceremonial value of the item exceeds its intrinsic value, the cost of the gift does not exceed \$500 per person, and the expense is commensurate with the legitimate and generally accepted local custom for such expenses by private business persons in the country.

(e) Reimbursement of other expenses incurred only if Bechtel has given prior written approval.

(f) Prior to reimbursement, SGV shall submit to Bechtel for approval an invoice showing all compensation earned, a detailed report of the services rendered by SGV under the agreement,

and a certification that SGV has complied with all applicable laws in connection with rendering such services.

10. SGV and Bechtel have agreed that all compensation and expense reimbursements, whether as a result of specific or general prior Bechtel approval, are subject to audit by Bechtel. Bechtel intends to audit SGV's expenses and invoices when, from all the circumstances, it appears reasonable to do so, taking into consideration (1) the amount paid in relation to the total payments under their agreement; (2) the nature of the expense; (3) the SGV service rendered during the period; and (4) the Bechtel customers or potential customers with whom SGV had contacts. SGV understands that all services and expenditures will be described in detail and, upon notice of audit, SGV will make available to Bechtel all invoices, supporting receipts and detailed substantiation and original entry records for all hourly charges invoiced to Bechtel.

It has also been represented that Bechtel has considered several factors in selecting SGV as its consultant. Among these Bechtel has represented that it has considered (1) the number of years the firm has been in operation; (2) the size of the firm measured in terms of manpower and geographical coverage; (3) the substantial probability of SGV's continued growth; (4) the number and reputation of its clientele; (5) the qualifications of its professional staff; (6) the presence of technical experts and specialists; (7) the adequacy of its support staff; and (8) the firm's familiarity with and adherence to the principles embodied in the FCPA.

In addition to those factors, Bechtel represents that its decision to engage SGV was influenced by the fact that it has known the principals of SGV for a number of years and is confident of their professionalism and integrity. Since June 1977, SGV has been serving as a business consultant to Bechtel in the Philippines and Bechtel represents that it has found this relationship highly successful, both with respect to the quality of service rendered and the standard of ethics maintained.

Based upon all of the facts and circumstances, as represented by the requestors, the Department does not presently intend to take any enforcement action premised upon the proposed contractual relationship of Bechtel and SGV.

The FCPA Review Letter 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 the request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.