

## Pacific Environment • Center for Corporate Policy

September 18, 2008

James Lambright  
Chairman  
Export-Import Bank of the United States (Ex-Im Bank)  
811 Vermont NW  
Washington DC  
(Via Email)

### **RE: Guilty Plea on Bribery Charges at Nigeria LNG**

Chairman Lambright,

We write concerning Ex-Im Bank's apparent unwillingness to fulfil its obligation to combat corruption in light of the highly publicized federal prosecution of Albert "Jack" Stanley, a former President of Kellogg Brown and Root (KBR), of Houston, Texas. On September 3, 2008, Mr. Stanley pleaded guilty to helping orchestrate a scheme involving \$182 million in bribes paid to secure engineering, procurement and construction contracts for the Nigeria LNG project, Bonny Island, Nigeria.<sup>1</sup> According to public records, in 2002 Ex-Im Bank provided a \$135 million "comprehensive guarantee" for the Nigeria LNG project, listing KBR as the exporter.<sup>2</sup> Since then Ex-Im Bank has provided over a billion dollars in financing for other projects benefiting KBR.<sup>3,4</sup>

Non-governmental organizations including Pacific Environment wrote to Ex-Im Bank in 2004 to express our concern about allegations and investigations of bribery on the Nigeria LNG project. However, it is unclear what, if any, actions the Bank has taken since then to address these concerns. Ex-Im Bank's apparent lack of remedial action is disquieting, especially in light of the fact that the agency otherwise continues to portray its financing of the scandal-plagued Nigeria LNG project as a major achievement, citing a "Deal of the Year" award by Project Finance magazine.<sup>5</sup> Moreover, Ex-Im Bank's

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<sup>1</sup> US Department of Justice, "Former Officer and Director of Global Engineering and Construction Company pleads Guilty to Foreign Bribery and Kickback charges", 3 September 2008, [http://www.usdoj.gov/criminal/pr/press\\_releases/2008/09/09-03-08stanley-guilty.pdf](http://www.usdoj.gov/criminal/pr/press_releases/2008/09/09-03-08stanley-guilty.pdf).

<sup>2</sup> See, *inter alia*, EX-IM BANK APPROVES ITS LARGEST PRIVATE SECTOR FINANCING TO NIGERIA, \$135 MILLION IN US EXPORTS WILL HELP EXPAND NIGERIA LNG'S PRODUCTION, Ex-Im Bank press release, September 30, 2002, available at [http://www.exim.gov/pressrelease\\_print.cfm/B0615AD0-1032-5B0F-B86CBD9CE2FC0CA2/](http://www.exim.gov/pressrelease_print.cfm/B0615AD0-1032-5B0F-B86CBD9CE2FC0CA2/)

<sup>3</sup> Ex-Im Bank press release: EX-IM BANK \$930 MILLION GUARANTEE SUPPORTS U.S. EXPORTS TO BUILD LNG PLANT IN QATAR, available at <http://www.exim.gov/pressrelease.cfm/4D3D38DE-B5FA-32D1-EE651FF693391BBA/>

<sup>4</sup> Ex-Im Bank Press Release: EX-IM BANK \$229.8 MILLION GUARANTEE SUPPORTS U.S. EXPORTS TO BUILD AMMONIA PLANT IN SUEZ INDUSTRIAL ZONE IN EGYPT, available at [http://www.exim.gov/pressrelease\\_print.cfm/214807ED-D7B3-845D-8DA91C7397270EC2/](http://www.exim.gov/pressrelease_print.cfm/214807ED-D7B3-845D-8DA91C7397270EC2/)

<sup>5</sup> See Ex-Im Bank fact sheet on Project and Structured Finance, available at [http://www.exim.gov/products/guarantee/proj\\_finance.cfm](http://www.exim.gov/products/guarantee/proj_finance.cfm)

inaction is at odds with the agency's full-throated support for prosecution and sentencing of others accused, indicted and convicted of defrauding the Bank, including cases against individuals in California, Florida, Texas, Maryland, The Bahamas and The Philippines.<sup>6</sup>

What's worse, even after Ex-Im Bank was aware of the KBR corruption investigation, the Bank continued to provide additional financing for KBR, including \$930 million to support KBR exports to the Qatar Liquefied Gas Co. Ltd. II (Qatargas II) in November 2004, and \$229.8 million in financing to support KBR exports and part ownership of an ammonia plant in Egypt on February 16, 2005.

We believe that Mr. Stanley's guilty plea presents a test case of Ex-Im Bank's willingness to do its part to implement the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and to fulfil its commitments under the OECD Action Statement on Bribery and Officially Supported Export Credits. This case is also a test of how Ex-Im Bank's anti-corruption procedures are working in practice. We believe, for instance, that all of the companies in receipt of export credit backing on this project signed a 'no-bribery' warranty with their respective export credit agencies, including Ex-Im Bank, ECGD, SACE and NCM. This case demonstrates that Ex-Im Bank must do more to hold companies accountable to those warranties.

In response to a January, 2008 survey from the Working Party on Export Credits and Credit Guarantees, Ex-Im Bank stated that in instances in which, after credit, cover and other support has been approved, it is proved that bribery was involved in the award of an export contract for a transaction:

*"...Ex-Im will also work with the Department of Justice to pursue possible civil lawsuits under the False Claims Act; under this Act, the U.S. government can recover up to treble damages from the entity that engaged in the unlawful bribery and concealed it from Ex-Im Bank. Where appropriate, Ex-Im Bank will also exercise its authority to debar the entity that engaged in bribery from future transactions with the United States government."*<sup>7</sup>

Meanwhile, this case raises issues of whether the Ex-Im Bank and other export credit agencies that backed this project undertook adequate due diligence with regard to corruption. We note that export credit support for the contract was finalised in December 2002. This was two months *after* a Paris prosecutor is understood to have opened an investigation into the alleged bribes, in October 2002.

In addition, question marks remain over the procurement procedures relating to the contracts awarded to TSKJ (the Nigeria LNG project company which includes KBR).

<sup>6</sup> See *inter alia*, Ex-Im Bank press releases on these cases

<sup>7</sup> "EXPORT CREDITS AND BRIBERY: REVISED ANNEX TO THE REVIEW OF RESPONSES TO THE 2006 SURVEY ON MEASURES TAKEN TO COMBAT BRIBERY IN OFFICIALLY SUPPORTED EXPORT CREDITS," WORKING PARTY ON EXPORT CREDITS AND CREDIT GUARANTEES, 25 January, 2008, available at [https://mail.pacificenvironment.org/exchange/dnorlen/Inbox/Re:%20Probe%20Extends%20Beyond%20KBR.EML/1\\_multipart\\_xF8FF\\_2\\_OECD%20Annex%20of%20ECA%20%20Responses.PDF/C58EA28C-18C0-4a97-9AF2-036E93DDAFB3/OECD%20Annex%20of%20ECA%20%20Responses.PDF?attach=1](https://mail.pacificenvironment.org/exchange/dnorlen/Inbox/Re:%20Probe%20Extends%20Beyond%20KBR.EML/1_multipart_xF8FF_2_OECD%20Annex%20of%20ECA%20%20Responses.PDF/C58EA28C-18C0-4a97-9AF2-036E93DDAFB3/OECD%20Annex%20of%20ECA%20%20Responses.PDF?attach=1)

Neither the first expansion of Nigeria LNG at Bonny Island in March 1999, nor the Nigeria LNG Plus project (trains 4&5) were subject to competitive tender. Furthermore, it appears that in April 2001 TSKJ was awarded the “project specification contract” to provide documentation that would form the basis for the awarding of the full Engineering, Procurement and Construction (EPC) contract for Nigeria LNG Plus. Then in October 2001, TSKJ was awarded a preliminary letter of intent for the EPC contract for trains 4&5. This appears to be inconsistent with, if not in contravention of, normal procurement procedures.

Given that the original contract for this project was awarded under a military dictatorship which was renowned for corrupt practices, and that there was no open tender for the contract on Nigeria LNG Plus, Ex-Im Bank and other export credit agencies should have taken extra precautionary measures in their due diligence for the project. It appears however that this did not happen. It is all the more disturbing that, even after Ex-Im Bank learned of the corruption investigation involving KBR, the Bank rewarded KBR with more financing rather than taking remedial action.

We therefore call on Ex-Im Bank to do the following:

- Exercise Ex-Im Bank’s authority to debar KBR and its parent company at the time, Halliburton, from any involvement in future Ex-Im Bank-supported projects for a minimum of five years;
- Pursue legal action under the False Claims Act in order to recover damages;
- Cancel Ex-Im Bank’s guarantee for the Nigeria LNG project;
- Conduct an internal investigation resulting in a publicly disclosed report that details how Ex-Im Bank’s due diligence failed to detect chronic bribery on this project and what Ex-Im Bank will do to prevent this occurrence on future projects.

We would like to request a response at your earliest convenience.

Yours sincerely,

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Policy Director  
Pacific Environment

Charlie Cray  
Director  
Center for Corporate Policy