EXHIBIT 3

LAW OFFICES
FRIEDLANDER MISLER, PLLC
1101 17th STREET, NW,
SUITE 700
WASHINGTON, DC

(202) 872-0800

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

IN THE MATTER OF THE ARBITRATION BETWEEN

THE SANDI GROUP, INC. on behalf of itself and derivatively on behalf of INTERNATIONAL PROTECTIVE SERVICES, INC. Claimant, - and - PROTECTION STRATEGIES INCORPORATED Respondent.	)	Case No. 16 132 Y 00830 09

AWARD OF ARBITRATORS

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the Arbitration Agreement entered into by The Sandi Group, Inc. ("TSG"), Dreshak International North America LLC ("DINA"), and Protection Strategies Incorporated ("PSI"), dated May 28, 2009, and having been duly sworn and having duly heard the proofs and allegations of the parties, do hereby FIND, CONCLUDE and AWARD as follows:

Background

The Sandi Group, Inc. ("TSG"), Dreshak International North America LLC ("DINA") and ViaGlobal, LLC ("ViaGlobal") formed a joint venture named International Protective Services, LLC ("IPS" or the "JV") in early 2009 for the purpose of submitting a proposal to the U.S. Joint Contracting Command Iraq for the Theater Wide Internal Security Services II (TWISS

II") procurement. The solicitation, in pertinent part, required proposals to provide and manage, in Iraq, a guard force of local country nationals ("LCN's") who are Iraqi citizens, expatriates ("expatriates") who are U.S. citizens, and third country nationals ("TCN's") who are personnel from other than the United States, the United Kingdom, or Australia. Potential contractors also had to have a Secret Level Facility Clearance ("FCL") and various licenses.

The JV submitted its TWISS II proposal on April 6, 2009. The proposal consisted of four volumes: Volume I – Technical/Management Approach, Volume II – Past Performance, Volume III – Local National Socioeconomic Participation, and Volume IV – Price. TSG Ex. 21, 22. The proposal highlighted TSG's experience in providing LCN's and DINA's experience in providing expatriates and TCN's on the predecessor TWISS I contract, and ViaGlobal's possession of an FCL. Volumes I and IV of the TWISS II proposal were primarily prepared by DINA with input from TSG. Tr. Zeitvogel 1297, 1305, 1307, 1526-28. Volume II included past performance information on DINA and TSG. Volume III was prepared by TSG. Tr. Karslioglu 208. It was understood at that time, at least by TSG, that a joint venture would be compliant with the requirement for an FCL at the prime contractor level if any member of the joint venture had an FCL. Tr. Karslioglu 260.

ViaGlobal dropped out of the JV after the proposal was submitted. Since neither of the other parties had an FCL, PSI, which did have such a clearance, was recruited to replace ViaGlobal. Tr. Karslioglu 145. On May 28, 2009, TSG, DINA, and PSI executed a Joint Venture Agreement (the "JVA"). PSI Ex. 12. On that same date, TSG and PSI executed a Non-Disclosure/Non-Circumvention Agreement (the "ND/NCA"). TSG Ex. 17.

Section 1.a of the JVA stated that it was for the purpose of responding to and performing the TWISS II project. The parties were to cooperate in proposal preparation and not team with

any other party to pursue TWISS II except as agreed among the parties. The parties were prohibited from competing with the JV on any solicitation or individual task orders in connection with TWISS II. Each of the parties was to bear its own costs in connection with preparation of the TWISS II proposal. Upon award, the JV was to be incorporated and applicable costs captioned [sic] within the JV per the (as yet unformed) Operating Agreement. Section 1.a also provided that "If the contract is not awarded to the JV, this Agreement shall dissolve within 48 hours following contract award, unless by mutual agreement, all Parties deem it beneficial and advantageous to incorporate."

Section 1.b of the JVA stated that each party would owe the other parties a duty of good faith and fair dealing in performance of the JVA and the contract if awarded, and prohibited each party from engaging in any activity or omission that deprives the other of the benefit of the JVA.

Section 12 of the JVA stated that it would remain in effect until such time as any of various events should occur, including "the award of the Contract to another contractor other than the Parties to this JV."

Section 14 of the JVA was entitled "Confidentiality, Non-Competition, Non-Solicitation & Non-Circumvention." Under Section 14.a, for a period of three years from the date of the JVA, the parties were prohibited from using or disclosing for other purposes the proprietary and/or confidential information disclosed by another party to the JVA. Each party also agreed not to use such information of another party to benefit itself or damage the disclosing party. Under Section 14.d, during the term of the JVA and for three years thereafter, the parties were subject to non-circumvention/non-interference obligations with respect to certain persons and existing relationships disclosed by another JV party.

The JVA specified, in Section 6, that disputes would be subject to binding arbitration according to the Commercial Arbitration Rules of the American Arbitration Association, and, in Section 18, that it would be construed in accordance with and governed by the laws of the District of Columbia. Section 6 also provided that "the prevailing Party shall be entitled to collect any and all costs or expenses relating to the dispute settlement including reasonable attorneys' fees from the non-prevailing Party."

The ND/NCA between TSG and PSI specifies a five-year term at a minimum (Section 8). It prohibits a party from interfering with the relationship of a party issuing confidential material with any person ever having a business relationship with the issuing party (Section 6). It also prohibits solicitation of employees of the other party (Section 17).

Amendment 9 to the TWISS II solicitation, issued on July 29, 2009, clarified the requirement for an FCL for joint ventures, stating that the joint venture itself had to have the FCL. A response was due from the JV by August 5, 2009. TSG Ex. 27 (Bates 01129). The JVA parties informally agreed that PSI would become the prime contract offeror, and an update to the proposal was submitted by PSI on August 5, 2009. Tr. Karslioglu 263-64; TSG Ex. 27. The portion of the amended proposal entitled "Program Management" shows PSI at the top, below which appears IPS. Under IPS are shown PSI, TSG, and DINA, with "project management" assigned only to PSI. TSG Ex. 27, at 8.

On August 25, 2009, PSI was notified by the Joint Contracting Command that its proposal was selected for award of an IDIQ (indefinite delivery/indefinite quantity) contract along with four other offerors. This meant that PSI would be entitled to compete for award of individual TWISS II task orders with a ceiling amount of $485 million. TSG Ex. 30; Tr. Karslioglu 238.

Shortly thereafter, PSI, TSG and DINA began to work on a joint venture agreement to supersede the JVA, as well as on an operating agreement. However, they were unable to agree on certain issues relating primarily to the project management role of PSI as prime contractor for the TWISS II contract, and by sometime around the middle of September 2009, they had reached an impasse. Tr. Karsloglu 432-33; Tr. Mollard 977; Tr. Henderson 1714.

On September 25, 2009, PSI submitted a proposal on the first TWISS II task order, which was for the Scania Forward Operating Base ("Scania"). TSG Ex. 53. Scania required the contractor to provide only expatriates and TCN's, not LCN's. Tr. Henderson 1615. The TWISS II contract awarded to PSI contained labor rates which the contractor could offer or reduce when responding to task order solicitations. Award of the TWISS II task orders was based on lowest price among technically acceptable offerors. PSI Ex. 86; Tr. Henderson 1622. PSI bid Scania at break-even. *Id.* 1615. Scania was the only TWISS II task order won by PSI, although it bid on about a dozen other task orders. PSI Ex. 86; Tr. Henderson 1621. PSI did not earn any profit on Scania. *Id.* 1624. PSI did not use TSG or DINA as sources for labor in performance of the Scania task order, nor did PSI propose to use TSG or DINA to provide labor on any of the task orders on which it unsuccessfully bid. PSI Ex. 64; Tr. Karslioglu 289.

Section 6 of the JVA specified that any unresolved controversy or dispute arising out of the JVA, the interpretation of its provisions, or the actions or inactions of the parties thereunder, would be subject to binding arbitration in this forum. On November 10, 2009 TSG filed its demand for arbitration and claim against PSI in the amount of $130,500,000.00. TSG's Statement of Claim included six counts: breach of contract, usurpation of corporate business opportunity (filed derivatively on behalf of IPS), tortious interference with existing and prospective contractual relationships for economic advantage, misappropriation of trade secrets

in violation of D.C. Code Ann. §36-401, *et seq.*, unfair competition, and unjust enrichment. TSG sought compensatory damages (including lost profits), punitive damages, interest, attorneys' fees, and arbitration costs. PSI opposed all of TSG's claims and filed a counterclaim for arbitration costs and attorneys' fees.

No objection was made by either party to the resolution of this dispute by the procedures established by this forum. By mutual agreement, the parties conducted written discovery and depositions. The parties filed a dozen motions, which were fully briefed and resulted in written rulings by the panel. Nine days of oral hearings were held, at which ten fact witnesses and three expert witnesses presented testimony and over 200 exhibits were admitted into evidence. Following the hearing the parties submitted post-hearing briefs and replies. The parties and the panel mutually agreed that the due date for issuance of the panel's Award in this matter would be 60 days from the submission of replies on April 22, 2011.

Breach of Contract

TSG's first count alleged breach of contract. TSG asserts that PSI breached the JVA by submitting the revised proposal as prime contractor in response to Amendment 9 of the TWISS II solicitation for PSI's own benefit, by executing a subcontract with a third party (BH Defense, LLC) on August 15, 2009 for in-country project management, and by performing the TWISS II contract independent of the JV. TSG also asserts that PSI breached the JVA by misappropriating TSG's trade secrets and that PSI breached the ND/NCA. TSG seeks lost profits and other compensatory and punitive damages for breach of contract by PSI. TSG Brief at 17-31.

The panel finds that PSI did not breach the JVA by submitting, as prime contractor, the revised proposal on August 5, 2009. IPS was unable to qualify as a prime contractor in time for submission of a response after Amendment 9 was issued requiring the JV itself to hold an FCL.

Tr. Karslioglu 260-63. Neither TSG nor DINA had the required FCL in order to qualify as the prime contractor. All of the parties to the JV, including TSG, concurred in the submission of the response to Amendment 9 by PSI as prime contractor because the prime contractor had to have the FCL and only PSI had an FCL. *Id.* 262-64. All of the parties knew or should have known at the time of submission of the proposal revision by PSI as prime contractor that there was no possibility that award would be made to IPS or to the parties which formed IPS, rather than to PSI. *Id.* 260. While TSG objects on the basis that PSI submitted the proposal revision on its own behalf as prime contractor rather than on behalf of the JV, TSG has not demonstrated that the submission itself at the request of TSG and DINA breached any provision of the agreements to which PSI was a party.

PSI did not breach the JVA by executing a subcontract with BH Defense on August 15, 2009. After August 5, 2009, any award of a TWISS II contract and task order(s) to PSI would be to PSI as prime contractor. The August 5, 2009 submission to the Government by PSI as prime contractor, with the concurrence of TSG and DINA, indicates that PSI would have overall responsibility for program management. PSI's execution thereafter of a non-exclusive subcontract with BH Defense for services as PSI's agent on an as-needed basis as determined by PSI has not been shown to violate any provisions of the JVA or the ND/NCA. TSG Ex. 55. At the same time as PSI was contracting with BH Defense, TSG was contracting with an independent contractor (Paul Grimes), who had worked for DINA until some time in May 2009 on proposal preparation for TWISS II. TSG Ex. 121, 123. It appears that at least some of the tasks which PSI might assign to BH Defense under the subcontract between those entities would be similar to the tasks which TSG might assign to Grimes under their own subcontract.

Upon the award of a prime contract to PSI on August 25, 2009, or at least not later than August 27, 2009, the JVA was no longer in effect except for those specific provisions of the JVA which by law or by their terms survived the termination or dissolution of the JVA. In accordance with Section 1.a of the JVA, since the prime contract was not awarded to the JV, the JVA dissolved within 48 hours following the award and there was no agreement by the parties that it was beneficial and advantageous to incorporate the JV. No further action was required of the parties for dissolution of the JV to occur by August 27, 2009, in accordance with Section 1.a. Under Section 12.a, the term of the JVA would end upon "the award of the Contract to another contractor other than the Parties to this JV". This provision does not appear to recognize that multiple prime contract awards were contemplated by the TWISS II solicitation. However, "Parties" is a defined term in the first paragraph of the JVA to mean TSG, DINA and PSI collectively rather than individually. Awards were made to PSI and four other offerors. No award was made to the "Parties" as such. Therefore, under Section 12.a, the term of the JVA ended on August 25, 2009, and the JVA dissolved by its terms not later than August 27, 2009.

Except as indicated below, the parties had no further obligations relevant to this dispute under the JVA after it dissolved by August 27, 2009, except for those provisions which survived the dissolution or termination of the JVA. The parties' obligations under Sections 6 (as described below), 14.a and 14.d of the JVA survived dissolution of the JVA. Under Section 14.a each party was prohibited from use or disclosure of another party's proprietary and/or confidential information other than for purposes of responding to the solicitation and performing the TWISS II contract through the JV. Under Section 14.d each party was prohibited from actual or attempted circumvention or interference with certain persons and relationships. Sections 14.b and 14.c contained certain mutual non-compete and non-disparagement provisions, but these

provisions did not by their terms survive dissolution or termination of the JVA, and TSG has not demonstrated that PSI breached its obligations under Sections 14.b or 14.c prior to the dissolution or termination of the JVA. Obviously there was no performance of the TWISS II contract by PSI prior to the award of that contract. Upon award of that contract to PSI, the JVA dissolved or terminated (except for certain provisions relating to confidentiality and non-interference and (as described below) dispute resolution by arbitration). The same is true with regard to TSG's assertions that PSI breached the duty of good faith and fair dealing under Section 1.b of the JVA. Without more, performance by PSI of the TWISS II contract after the termination or dissolution of the JVA was not a breach of the JVA.

TSG's claim that PSI breached the JVA by disclosure and use of proprietary and/or confidential information of TSG under Section 14.a of the JVA depends upon proof that the information was proprietary and/or confidential information owned by TSG, and that the information was disclosed by PSI to an unauthorized person or used for an unauthorized purpose (*e.g.* to benefit PSI or to damage TSG). TSG asserts that PSI breached Section 14.a after award of the prime contract by disclosing to BH Defense and using for its own benefit TSG's and DINA's confidential and proprietary information.

TSG's claims for PSI having allegedly used or disclosed DINA proprietary and/or confidential information without DINA's authorization, either under the JVA or under the ND/NCA, are moot. DINA has declined to join in any action by TSG against PSI in this arbitration. The JVA does not define "proprietary and/or confidential information". The ND/NCA is not incorporated into the JVA and DINA is not a party to the ND/NCA. The ND/NCA in paragraph 1 defines "Confidential Information" as certain information which relates to or is disclosed as a result of discussions regarding TWISS II and "which should reasonably

have been understood by the Recipient... to be proprietary and confidential to the Issuing Party". The ND/NCA by its terms excludes from the definition of "Confidential Information" information received from non-parties to the ND/NCA (such as DINA). On February 8, 2011, TSG advised the panel and counsel for PSI in writing that TSG is not suing on behalf of IPS for use of TSG's confidential trade secrets and proprietary information, and that it is not claiming any trade secrets which may belong to DINA. Consequently, TSG's claim against PSI for breach of any confidentiality obligations does not allege violation of the rights of DINA or IPS.

TSG has not proven that that PSI used or disclosed, without authorization, information belonging to TSG. As discussed above, the August 5, 2009, submission of the revised proposal by PSI as prime contractor was done with the concurrence of TSG. Although TSG alleges in its brief that PSI "would necessarily have disclosed to BH Defense the confidential and proprietary information contained in both the April 6th Proposal and the August 5th Proposal Response documents", TSG has provided no proof of this allegation, nor of its allegation that PSI used TSG confidential and proprietary information after August 5, 2009. TSG Brief at 29. TSG's claim that PSI reached its contractual obligations concerning the use or disclosure of TSG proprietary and/or confidential information is further addressed below in connection with TSG's claim for misappropriation of trade secrets.

TSG has not shown that PSI breached the non-circumvention/non-interference provisions of the JVA or of the ND/NCA. TSG has not proven that PSI teamed with any other party to pursue TWISS II, or competed with IPS on any solicitation or task order in connection with TWISS II, contrary to Section 1.a of the JVA, before the JVA dissolved or terminated. It was not a breach of Section 1.a of the JVA for PSI to engage an agent in Iraq in the light of PSI's new status as prime contractor as described to the Government in the August 5, 2009, revised

proposal. Although the non-interference provisions in Section14.d of the JVA survived the dissolution or termination of the JVA, TSG has failed to articulate how PSI's agreement with BH Defense constitutes attempted or actual interference with any existing relationship in violation of that clause or of the ND/NCA.

PSI has argued that TSG's claim for breach of the JVA must be denied for the additional reason that the JVA was merely an "agreement to agree" and therefore was unenforceable under District of Columbia law, citing *Stephen R. Perles, Inc. v. Office Space Development Corp.*, 664 A.2d 1236, 1238 (D.C. 1995). As an example, PSI cites Section 7 of the JVA which calls for the JV to pay a monthly fixed fee to TSG for administrative services and back office support "off the top". The amount of this monthly fee was not specified in the JVA, but was to be mutually agreed by the parties and set forth in an operating agreement along with certain other important terms. No operating agreement was ever executed before the JVA dissolved or terminated. However, since the panel has determined that TSG has failed to prove that PSI breached the JVA, it is not necessary to further address whether the JVA was enforceable. TSG's first count is denied.

Usurpation of Corporate Business Opportunity

TSG's second count, filed derivatively on behalf of IPS, alleged usurpation of corporate business opportunity. TSG seeks recovery of IPS' lost profits. In support of this claim, TSG argues that the TWISS II opportunity was within IPS's line of business; that IPS had an interest or expectancy in the opportunity; that IPS was financially able to exploit the opportunity; and that by taking the opportunity for itself, PSI as a fiduciary placed itself in a position inimical to its duties to IPS. Specifically, TSG contends that usurpation occurred when PSI submitted the August 5, 2009 proposal revision on behalf of itself rather than on behalf of the JV, bid on

TWISS II task orders without TSG and DINA, executed a subcontract agreement with BH Defense, and negotiated with former DINA representatives for them to work on the TWISS II contract. TSG Brief at 41-42.

PSI opposes this count primarily on the grounds that IPS never had a reasonable expectancy in the form of an award of a TWISS II contract once the Government revised the solicitation to require that the prime contractor have an FCN. The panel concurs that IPS never had the requisite interest or reasonable expectancy to support the corporate opportunity doctrine. *Robinson v. R&R Publishing, Inc.*, 943 F. Supp. 18, 21 (D. D.C. 1996). TSG's second count is denied.

Tortious Interference

TSG's third count alleged tortious interference with existing and prospective contractual relationships for economic advantage. Evidence was presented that a representative of BH Defense on September 17, 2009, offered Paul Grimes a job (which he declined) and made disparaging remarks about TSG to Grimes. TSG Ex. 112, 123. TSG did not pursue the tortious interference count in its post-hearing brief or in its reply. The panel assumes that this count has been abandoned. To the extent that it has not been abandoned, it is denied.

Misappropriation of Trade Secrets

TSG's fourth count alleged misappropriation of trade secrets in violation of D.C. Code Ann. §36-401, *et seq.*, which TSG in its post-award brief combines with its fifth count for unfair competition. TSG states the elements of this cause of action to include (1) the existence of a trade secret; (2) acquisition of the trade secret as a result of the confidential relationship; and (3) the unauthorized use [or disclosure] of the secret resulting in loss or damages, citing *Catalyst & Chemical Services, Inc., v. Global Ground Support*, 350 F.Supp. 2d 1, 8 (D. D.C. 2004). Of

particular significance to these counts are determinations as to whether the alleged trade secrets belonged to TSG and whether PSI used or disclosed such trade secrets without authorization from TSG. TSG asserts rights to trade secret protection for LCN and expatriate pricing information, proposal Volume II past performance information concerning TSG, and Volume III information consisting of business strategies and a vetted vendor list. As damages, TSG seeks lost profits and proposal preparation related costs. TSG Brief at 31-39.

As previously discussed, PSI did not breach its obligations under the JVA or the ND/NCA by submitting the amended TWISS II proposal on August 5, 2009, as prime contractor with the concurrence of TSA and DINA.

Both parties presented extensive testimony at the hearing concerning the preparation of the pricing for the TWISS II proposal and best and final offer, and for the initial and subsequent task orders after award of the prime contract. TSG's primary witness concerning proposal preparation and trade secrets testified that she would normally have created the pricing and spreadsheets for such a proposal, but that TSG had three other major proposals due by the end of April 2009; therefore, she accepted the offer of DINA's then-general manager to prepare the pricing for TWISS II. Tr. Karslioglu 1811-13. That former DINA employee was PSI's primary witness concerning proposal preparation and facts underlying TSG's claim for misappropriation. She testified convincingly and with reference to numerous exhibits that she and others at DINA prepared the pricing, including the loaded labor rates and Other Direct Costs which were actually submitted to the Government, and which resulted in award of the prime contract to PSI. The testimony and other evidence does not support TSG's claim that any of the pricing in the proposal or best and final offer constituted trade secrets belonging to TSG. At most, the evidence shows that TSG provided a limited amount of pricing input (such as base rates for

certain LCN labor categories), which DINA checked against independent sources before using, and that TSG reviewed the pricing prepared by DINA. Tr. Buchanan 1185; Tr. Zeitvogel 1526-28; Tr. Karslioglu 1825; PSI Ex. 30, 39, 40. In addition, the final revised pricing (also referred to as "best and final offer"), upon which award was made to PSI, was drastically reduced from the pricing which was included in the original proposal. That final revised pricing was also prepared by DINA, based on direction from the Government that the original pricing was much too high. PSI Ex. 3, 7; Tr. Zeitvogel 1335-38.

Even assuming, *arguendo*, that the LCN base labor rates which TSG provided to DINA for preparation of the TWISS II pricing proposal, and which were not directly included in the proposal, were "used" by PSI without TSG's authorization, TSG has failed to prove that these rates were trade secrets. The market sets the base rates, which are widely known and readily available from multiple sources. Tr. Zeitvogel 1306-07, 1316, 1528.

Following award of the prime contract, PSI bid on the first task order, Scania. Under the terms of the prime contract, the rates contained therein represented the maximum pricing it could bid on task orders. Since task orders were awarded on lowest price among technically acceptable task order proposals, PSI won the Scania task order only by bidding at break-even prices, well below those in the prime contract. Tr. Henderson 1615, 1622-23. Scania did not involve the use of LCN labor, so even if TSG's claimed confidential LCN base rates were reflected in the prime contract, PSI did not need to use them on that task order. *Id.* Although PSI bid on other task orders, none of these other bids were successful, and TSG has not shown that PSI used or disclosed TSG confidential or proprietary pricing information on any of these unsuccessful bids.

TSG has not demonstrated that PSI used the information in Volume III of the proposal (Local National Socioeconomic Participation), prepared by TSG, to bid on TWISS II task orders.

The only successful PSI TWISS II task order proposal was for Scania, which did not require the contractor to provide LCN's.

Both parties offered the testimony of expert witnesses concerning TSG's claim for misappropriation of trade secrets. TSG's first expert witness, David Cohen, testified that unit prices designated confidential when proposed to the Government and which result in an award will generally be withheld from public release by the Government when they might be used to the contractor's detriment by competitors in the future. Tr. Cohen 920-21, 925-26. TSG's second expert witness, Sue Shaper, testified that the owners of trade secrets do not lose their proprietary rights when that information is combined with trade secrets of others through collaboration of efforts in preparation of a proposal. Tr. Shaper 700. This is consistent with JVA Section 14.a.iii. Neither Mr. Cohen nor Ms. Shaper gave an opinion as to whether the specific items of information claimed as trade secrets by TSG in this case were in fact trade secrets of TSG. PSI's expert, John Pachter, testified that in his experience it is the practice of the Joint Contracting Command for Iraq and Afghanistan to release contract unit prices. Tr. Pachter 1410. The panel does not base its findings concerning TSG's claim for misappropriation of trade secrets on any expert testimony presented in this case.

The panel finds that the TWISS II contract pricing was primarily prepared by DINA, not TSG, using input from multiple sources (including TSG) for base labor rates. The competitive value, if any, of the contract pricing was primarily in the reduced loaded rates used in the best and final offer and in the further reduced loaded rates used to win the Scania task order. The panel further finds that TSG has not demonstrated that PSI misappropriated TSG trade secrets. TSG's counts for misappropriation of trade secrets and unfair competition for unauthorized use and misappropriation are denied.

Unjust Enrichment

The sixth count in TSG's Statement of Claim asserted that PSI conspired with DINA and others to take for themselves the TWISS II contract which was to go to IPS and TSG. In its post-hearing brief TSG argues that, even assuming that the JVA dissolved, TSG must be compensated to prevent unjust enrichment to PSI for having retained the benefit of TSG's contracting knowledge, TSG's proprietary information, the TWISS II proposal submissions and the opportunity to bid on TWISS II. As damages for the alleged unjust enrichment, TSG claims $195,191 for proposal preparation costs, as well as $551,862.98 representing the amounts paid to BH Defense to be PSI's in-country manager and to a third party (USIS, which included former DINA representatives) for work on the Scania task order. TSG Brief at 42-44.

Whether or not it was enforceable, the JVA was a written agreement between TSG, DINA and PSI which was in effect from May 28, 2009, until it dissolved or terminated upon award of the TWISS II contract, and which contained certain provisions which survived and continue to survive the dissolution. TSG's claim for proposal preparation costs includes amounts for costs incurred prior to submission of the proposal, prior to submission of the best and final offer, and prior to submission of the response to Amendment 9, as well as for costs incurred during negotiations for a new or revised agreement after the JVA dissolved or terminated. TSG Ex. 119, 120.

Unjust enrichment is not a valid basis for recovery under circumstances where an express contract existed or was being negotiated. *Schiff v. AARP*, 697 A 2d 1193, 94 (D.C. 1997); *Sabin v. Regardie & Bartow*, 770 F. Supp. 5, 10 (D. D.C. 1991). The claim for proposal preparation costs itself, whether or not it may appear to be reasonable in amount, is lacking in specifics and unsupported in the record. The claim for restitution in the amount of the payments made by PSI

to BH Defense and USIS is also without merit. Restitution, if warranted, properly measured by PSI's gain would not include payments made by PSI to subcontractors such as BH Defense and USIS for work performed by PSI at a loss. *Peart v. District of Columbia Housing Authority*, 972 A. 2d 810, 820 (D.C. 2009). TSG's claim for unjust enrichment is denied.

Comment on Damages

Although the panel has fully considered the evidence and the arguments of the parties and has denied each of TSG's counts (including one derivative count on behalf of IPS), there was extensive discussion on the record and in the briefs concerning damages which the panel believes is deserving of comment.

It appears from TSG's post-hearing brief that TSG's claimed damages are in the total amount of $9,208,780 if the panel were to find merit in TSG's claim for breach of contract, misappropriation of trade secrets, unfair competition, and/or the derivative claim for usurpation of corporate opportunity. This figure represents twice the amount of alleged TSG lost profits, based on its claim for punitive damages. TSG Brief at 45-50.

It also appears that TSG's alternative claim for unjust enrichment, in the event that its other counts are denied, is in the amount of $1,494,107.96. This figure represents twice the sum of (1) TSG's claim for proposal preparation and other activities relating to the dealings between the parties plus (2) the amounts paid to BH Defense for its work on behalf of PSI and to USIS as a subcontractor on the Scania task order, again based on a claim for punitive damages. *Id.*

TSG's lost profits calculation is based upon 20% of the actual amount of task orders issued to all of the TWISS II contractors ($465,089,933), multiplied by the 11% profit margin built into in the TWISS II proposal, multiplied by TSG's 45% ownership share set forth in the JVA. The panel does not believe that this method would produce a fair and reasonable

approximation of damages, even if liability were demonstrated. The 20% estimate is speculative and not based upon the TWISS II facts. Tr. Henderson 1629; PSI Ex. 88. The 11% profit margin is speculative as well, considering the fact that it was necessary to drastically cut the contract prices in order to win any competitive task orders. However, these volume share and profit margin factors are compounded in TSG's lost profits claim, leading to a speculative result which is not a proper basis for calculation of damages.

The damages claim for unjust enrichment, assuming that liability had been found, was inadequately supported and was calculated using the wrong standard, as discussed above.

Having determined that TSG has failed to prove PSI's liability or TSG's entitlement to any actual damages, the panel also denies TSG's claim for punitive damages.

Attorneys' Fees and Expenses

Both parties are seeking recovery of attorneys' fees and arbitration costs in this matter. TSG bases its claim on Section 6.d of the JVA which provides that "the prevailing Party shall be entitled to collect any and all costs or expenses relating to the dispute settlement including reasonable attorneys' fees from the non-prevailing Party", and on D.C. Code §36-401, *et seq.* which permits award of attorneys' fees for willful and malicious misappropriation. PSI bases its counterclaim on Section 6.d of the JVA, on D.C. Code §36-404, which permits recovery of attorneys' fees by the prevailing party on a claim of misappropriation made in bad faith, and on case law which allows recovery when a case has been brought or litigated in bad faith.

The record does not support a finding of misappropriation of TSG trade secrets by PSI, willful and malicious or otherwise, and we do not agree with PSI's contention that this case was brought or arbitrated in bad faith.

Under D.C. Code §16-4421(b), in pertinent part, an arbitrator may award reasonable attorneys' fees and other reasonable expenses of arbitration if such award "is authorized by the agreement of the parties to the arbitration proceeding". Both parties have cited in support of their respective claims for attorneys' fees and costs Section 6 of the JVA. Subsection 6.b of the JVA provides for binding arbitration of disputes under the Commercial Arbitration Rules of the American Arbitration Association. Rule 43(d)(ii) of the Commercial Arbitration Rules states that the arbitrators' award may include attorneys' fees if all parties have requested such an award or it is authorized by law or by their arbitration agreement. Subsection 6.d of the JVA states: "Costs for arbitration shall be paid for by initiating Party and prevailing Party shall be entitled to collect any and all costs and expenses relating to the dispute settlement including reasonable attorneys' fees from the non-prevailing Party." We therefore conclude that award of attorneys' fees and arbitration costs in this matter is permitted by D.C. Code §16-4421(b) and Rule 43(d)(ii), and that award of attorneys' fees and arbitration costs is mandated by Section 6.d of the JVA.

That conclusion is not impacted by our determination that the JVA terminated or dissolved in August 2009. The arbitration clause of the JVA is not one of the provisions of the JVA which explicitly survives the dissolution or termination of the JVA. However, we conclude, as a matter of law, that it does survive the dissolution or termination of the JVA, since the arbitration provision is severable from the remainder of the JVA. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006) at 445 (enforcing arbitration clause contained in payday loan agreement alleged to be void *ab initio* and holding that "as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract" and "this arbitration law applies in state as well as federal courts"); *Prima Paint Corp. v. Flood & Conklin*

Mfg. Co., 388 U.S. 395 (1967) (arbitration clause was "severable" and enforceable even though the contract containing it was allegedly fraudulently induced). "[T]he basis of the underlying challenge to the contract does not alter the severability principle." *Unionmutual Stock Life Insurance Company of America v. Beneficial Life Insurance Company*, 774 F.2d 524 (1st Cir. 1985) at 529. The law of the District of Columbia is consistent with these principles. *See, e.g., Wolff v. Westwood Management, LLC*, 558 F.3d 517, 520-21 (D.C. Cir. 2009) (arbitration clause survived expiration of joint venture agreement which contained the arbitration clause).

The panel recognizes that PSI has argued that the JVA was merely an agreement to agree which was unenforceable under District of Columbia law. However, the parties here had a severable arbitration agreement mandating arbitration in which the non-prevailing party pays attorneys' fees and costs. In any event, neither party has filed any objections to the arbitration of this dispute or to the application of the Commercial Arbitration Rules of the American Arbitration Association to this arbitration. Therefore, even in the absence of an arbitration clause surviving the dissolution or termination of the JVA, the agreement of the parties to proceed under those Rules in this arbitration would be sufficient authorization for the panel to award attorneys' fees and costs under D.C. Code §16-4421(b). The Association's Rules make this explicit. Rule 7(b) states:

> The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

Therefore, whether we rely upon the arbitration clause of the JVA, which is severable as a matter of law from the remainder of the JVA and which mandates the award of attorneys fees and costs of the arbitration to the prevailing party in this arbitration, or upon the agreement of the parties to arbitrate their dispute under the Commercial Arbitration Rules of the American Arbitration Association which explicitly permits the award of such fees and costs if all parties have requested such an award, an award of attorneys' fees and arbitration costs is appropriate in this case.

We find that PSI is the prevailing party in this arbitration. The panel has reviewed PSI's claim for attorneys' fees and costs in the amount of $375,131.85 and finds that it is supported by appropriate documentation and reasonable in amount under all of the facts and circumstances of this matter. PSI's claim for attorneys' fees is comparable to, and somewhat less than, the amount claimed by TSG exclusive of costs and expenses such as Association fees, deposits for arbitrator compensation, and court reporter fees which TSG as the initiating party advanced in accordance with Section 6.d of the JVA. In its reply, TSG did not include any objections to the reasonableness of the amount or to the calculation of the claim for attorneys' fees and expenses set forth in PSI's post-hearing brief. PSI's counterclaim for attorneys' fees and expenses is granted.

AWARD

Accordingly, we AWARD as follows:

1. Each of the claims brought by Claimant The Sandi Group, Inc. in this arbitration, whether brought on behalf of itself or brought on behalf of International Protective Services, is hereby denied.

2. The administrative filing and case services fees of the American Arbitration Association, totaling $30,550.00, and the other administrative fees of the AAA, totaling $1,350.00, shall be borne entirely by Claimant The Sandi Group, Inc. The fees and expenses of the arbitrators, totaling $181,410.46, shall be borne entirely by Claimant The Sandi Group, Inc.

3. The counterclaim of Respondent Protection Strategies Incorporated for attorneys' fees and expenses is granted. Claimant The Sandi Group, Inc. shall pay to Respondent Protection Strategies Incorporated the sum of THREE HUNDRED SEVENTY- FIVE THOUSAND ONE HUNDRED THIRTY- ONE DOLLARS AND EIGHTY- FIVE CENTS ($375, 131.85) for attorneys' fees and expenses incurred by Respondent in this matter within thirty (30) days hereof.

4. This Award is in full settlement of all claims and counterclaims submitted to this arbitration. All claims and counterclaims not expressly granted in this Award are hereby denied.

5. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

6/15/11
Date

Gerard F. Doyle
Arbitrator

Date

Alan H. Kent
Arbitrator

Date

Barbara S. Kinosky
Arbitrator

2. The administrative filing and case services fees of the American Arbitration Association, totaling $30,550.00, and the other administrative fees of the AAA, totaling $1,350.00, shall be borne entirely by Claimant The Sandi Group, Inc. The fees and expenses of the arbitrators, totaling $181,410.46, shall be borne entirely by Claimant The Sandi Group, Inc.

3. The counterclaim of Respondent Protection Strategies Incorporated for attorneys' fees and expenses is granted. Claimant The Sandi Group, Inc. shall pay to Respondent Protection Strategies Incorporated the sum of THREE HUNDRED SEVENTY- FIVE THOUSAND ONE HUNDRED THIRTY- ONE DOLLARS AND EIGHTY- FIVE CENTS ($375, 131.85) for attorneys' fees and expenses incurred by Respondent in this matter within thirty (30) days hereof.

4. This Award is in full settlement of all claims and counterclaims submitted to this arbitration. All claims and counterclaims not expressly granted in this Award are hereby denied.

5. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

Gerard F. Doyle
Arbitrator

June 15, 2011
Date

Alan H. Kent
Arbitrator

Date

Barbara S. Kinosky
Arbitrator

2. The administrative filing and case services fees of the American Arbitration Association, totaling $30,550.00, and the other administrative fees of the AAA, totaling $1,350.00, shall be borne entirely by Claimant The Sandi Group, Inc. The fees and expenses of the arbitrators, totaling $181,410.46, shall be borne entirely by Claimant The Sandi Group, Inc.

3. The counterclaim of Respondent Protection Strategies Incorporated for attorneys' fees and expenses is granted. Claimant The Sandi Group, Inc. shall pay to Respondent Protection Strategies Incorporated the sum of THREE HUNDRED SEVENTY- FIVE THOUSAND ONE HUNDRED THIRTY- ONE DOLLARS AND EIGHTY- FIVE CENTS ($375, 131.85) for attorneys' fees and expenses incurred by Respondent in this matter within thirty (30) days hereof.

4. This Award is in full settlement of all claims and counterclaims submitted to this arbitration. All claims and counterclaims not expressly granted in this Award are hereby denied.

5. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date

Gerard F. Doyle
Arbitrator

Date

Alan H. Kent
Arbitrator

6/15/11
Date

Barbara S. Kinosky
Arbitrator