THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: June 16, 2014

Sanctions Board Decision No. 68
(Sanctions Case No. 194)

IBRD Loan No. 4834-IND
Indonesia

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of reprimand on the respondent entity in Sanctions Case No. 194 (the "Respondent") by means of a formal letter of reprimand to be posted on the World Bank's website for a period of one (1) month beginning on the date of this decision. This sanction is imposed on the Respondent for fraudulent practices.

I. INTRODUCTION

1. The Sanctions Board held a plenary session on July 24, 2013, to review this case. The Sanctions Board was composed of L. Yves Fortier (Chair), Hassane Cissé, Ellen Gracie Northfleet, Catherine O'Regan, Denis Robitaille, Randi Ryterman, and J. James Spinner. Neither the Respondent nor the World Bank Group's Integrity Vice Presidency ("INT") requested a hearing. Nor did the Sanctions Board Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.[2]

2. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following:

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")[3] to the Respondent on May 7, 2012, and re-sent to the Respondent on November 1, 2012 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated March 28, 2012;

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[1] In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (the "Sanctions Procedures"), the term "World Bank Group" means, collectively, the International Bank for Reconstruction and Development ("IBRD"), the International Development Association ("IDA"), the International Finance Corporation ("IFC"), and the Multilateral Investment Guarantee Agency ("MIGA"). For the avoidance of doubt, the term "World Bank Group" includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes ("ICSID"). As in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section 1.01(a), n.1.

[2] See Sanctions Procedures at Section 6.01.

[3] Effective March 31, 2013, the EO's title changed to "IBRD/IDA Suspension and Debarment Officer" ("SDO"). For consistency with the Sanctions Procedures and the pleadings in this case, this decision refers to the former title.

ii. Explanation submitted by the Respondent to the EO on December 1, 2012 (the "Explanation"), together with supporting documents submitted by the Respondent to the EO on January 31, 2013;

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on April 3, 2013 (the "Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on April 29, 2013 (the "Reply").

3. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO initially recommended debarment with conditional release for the Respondent, together with any entity that is an Affiliate[4] directly or indirectly controlled by the Respondent. The EO recommended a minimum period of ineligibility of three (3) months, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that (i) it has taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned; and (ii) it has adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

4. As provided by Section 5.01(a) of the Sanctions Procedures, a respondent may contest INT's allegations and/or the EO's recommended sanction within ninety (90) days of the date on which the Notice is deemed to have been delivered to that respondent. Absent the Respondent's submission of a written response by the applicable due date, the EO issued a Notice of Uncontested Sanctions Proceedings and the Respondent was debarred on August 9, 2012, pursuant to Section 4.04 of the Sanctions Procedures.

5. On October 31, 2012, the EO received correspondence from the Respondent asserting that it had not had the opportunity to file an Explanation because the Notice had been delivered to the Respondent's legal department manager, who left the Respondent's employ in May 2012 and purportedly failed to communicate the fact of the Notice's issuance to other officers of the Respondent. Based on the Respondent's representation, the EO withdrew the Notice of Uncontested Sanctions Proceedings and removed the Respondent from the Bank's public debarment list; informed the Respondent of new deadlines to submit its Explanation and Response; and re-sent the Notice to the Respondent on November 1, 2012.

6. Upon review of the Respondent's Explanation, the EO found additional mitigating factors and revised the recommended sanction to a letter of reprimand to be posted on the

[4] The term "Affiliate" means "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." Sanctions Procedures at Section 1.02(a).

Bank's public website for a period of three (3) months. The Respondent filed a Response on April 3, 2013, contesting the revised recommended sanction.[5]

II. GENERAL BACKGROUND

7. This case arises in the context of the Strategic Roads Infrastructure Project (the "Project") in Indonesia. On September 13, 2007, IBRD and the Republic of Indonesia entered into a loan agreement (the "Loan Agreement") to provide US$208 million to finance the Project. The Project, which is currently scheduled to close on June 30, 2014, seeks to improve Indonesia's economic competitiveness by improving the capacity and quality of certain strategic national roads; improving road safety; and increasing the efficiency, quality, and transparency of works procurement and implementation in the Ministry of Public Works.

8. In July 2007, Indonesia's implementing agency for the Project issued separate bidding documents (the "Bidding Documents") for a new road construction contract and a road improvement contract (the "Contracts"). The Bidding Documents required that the bid for each of the Contracts be accompanied by a bid security. On October 22 and 23, 2007, respectively, the Respondent and two other firms (together, the "JO") jointly submitted bids for each of the Contracts (the "Bids"). Each of the Bids appended a bid security (together, the "Bid Securities") purportedly issued by a certain bank (the "Purported Issuer"). On October 25, 2007, the bid evaluation committee for each of the Contracts (the "BECs") sought the Purported Issuer's verification of the Bid Securities' authenticity. On October 26 and 29, 2007, respectively, the Purported Issuer denied in writing that it had issued the Bid Securities. The implementing agency for the Project subsequently rejected the Bids, and informed the Bank in March 2008 that it would debar the Respondent and the other JO members from participating in certain procurement activities.

9. On June 5, 2009, INT issued separate show-cause letters to each member of the JO with respect to the Contracts. Each JO member, including the Respondent, stated in its reply to INT that the JO had assigned responsibility for obtaining bid securities to the Respondent, and that the Respondent had obtained the Bid Securities through a brokerage firm (the "Broker"). INT alleges that the Respondent engaged in fraudulent practices by submitting the Bids with the forged Bid Securities.

III. APPLICABLE STANDARDS OF REVIEW

10. Pursuant to Section 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is "more likely than not" that the respondent engaged in a sanctionable practice. Section 8.02(b)(i) defines "more likely than not" to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the

[5] A respondent shall be temporarily suspended in cases where the EO recommends a sanction including a minimum period of debarment exceeding six months. See Sanctions Procedures at Section 4.02(a). In the present case, the Respondent was not temporarily suspended as the EO's original and revised recommended sanctions did not exceed that period.

respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

11. Under Section 8.02(b)(ii) of the Sanctions Procedures, INT bears the initial burden of proof to present evidence sufficient to establish that it is more likely than not that a respondent engaged in a sanctionable practice. Upon such a showing by INT, the burden of proof shifts to the respondent to demonstrate that it is more likely than not that the respondent's conduct did not amount to a sanctionable practice.

12. The Loan Agreement provided that the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) would govern the Project's procurement, but the Bidding Documents defined sanctionable practices in accordance with the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (January 1995, revised in January and August 1996, September 1997, and January 1999) (the "January 1999 Procurement Guidelines"). In accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the applicable standards in the event of such conflict shall be those agreed between the borrowing country and the respondent as governing the particular contracts at issue, rather than the standards agreed between the borrowing country and the Bank.[6] Therefore, the alleged sanctionable practices in this case have the meaning set forth in the January 1999 Procurement Guidelines.

13. Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines defines the term "fraudulent practice" as a "misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower." This definition does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward.[7] However, the legislative history of the Bank's various definitions of "fraudulent practice" reflects that the October 2006 incorporation of the "knowing or reckless" standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.[8] Accordingly, the Sanctions Board has held that the "knowing or reckless" standard may be implied under the pre-October 2006 definitions.[9]

[6] See Sanctions Board Decision No. 59 (2013) at para. 11.

[7] See, e.g., Guidelines: Procurement Under IBRD Loans And IDA Credits (May 2004, rev. October 2006) at para. 1.14(a)(ii) (defining "fraudulent practice" as "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation") (emphasis added).

[8] See Sanctions Board Decision No. 41 (2010) at para. 75.

[9] Id.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

14. INT submits that it is more likely than not that the Respondent engaged in fraudulent practices by submitting two bids containing false bid securities in order to influence the procurement process. INT asserts that the Purported Issuer informed the BECs that it had not issued the Bid Securities, and that the Bid Securities are therefore forgeries. INT also asserts that the Respondent acted recklessly and/or was willfully blind in submitting the Bid Securities, because it did not act to verify the legitimacy of the Broker or the authenticity of the Bid Securities, despite the "serious red flag" that the Broker was the sole company able to provide a bid security within five days. According to INT, the Respondent must be held responsible for the actions of the Broker. Finally, INT contends that the Respondent's submission of the Bid Securities was intended to influence the procurement process by misleading the BECs into believing that the Bids complied with all bidding requirements; and caused detriment to the member country concerned by depriving it of the benefit of a fair procurement process and causing it to use its resources to evaluate bids containing false documents.

15. INT submits that aggravation is warranted for the Respondent's repeated submission of false bid securities, and that it has found no mitigating factors in this case.

B. The Respondent's Principal Contentions in the Explanation and Response

16. In response to INT's allegations, the Respondent explains that its finance officer procured the services of the Broker on the instruction of the Respondent's deputy finance director, who was trying to obtain the requisite bid securities within five days as a public holiday was approaching. The Respondent asserts that its "Board of Management" investigated the alleged misconduct, and concluded that "there was no intention of fraud, corruption or other misconduct, but more . . . the negligence of the staff," who failed to follow the Respondent's standard operating procedures. The Respondent also asserts that a police investigation of the Respondent's managing director found "absolutely no criminal evidence" against either the Respondent or its managing director.

17. The Respondent appears to assert various mitigating factors, including voluntary corrective actions and the implementation of an "Integrated Compliance Program," as grounds for a lesser or no sanction.

C. INT's Principal Contentions in the Reply

18. Noting that the Respondent did not dispute that the Bid Securities are forgeries, INT asserts that the Respondent is vicariously liable for its employees' reckless submission of the forged Bid Securities under the doctrine of respondeat superior, and that a mere showing that an employee did not follow an existing policy is insufficient to avoid liability. INT also asserts that under basic principles of agency, the Respondent should be held liable for the Broker's "acts of forgery."

19. INT submits that the Respondent's steps to conduct an internal investigation and implement a compliance program constitute mitigating factors.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

20. The Sanctions Board will first consider whether the record supports a finding that it is more likely than not that the Respondent engaged in fraudulent practices. The Sanctions Board will then determine what sanctions, if any, should be imposed on the Respondent.

A. Evidence of Fraudulent Practices

21. In accordance with the definition of fraudulent practice under the January 1999 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) made a misrepresentation of facts (ii) that was knowing or reckless (iii) in order to influence the procurement process (iv) to the detriment of the Borrower.

1. Misrepresentation of facts

22. In past decisions finding that respondents had submitted forged bid documents, the Sanctions Board relied primarily on written statements from the parties named in or supposedly issuing the allegedly fraudulent documents, as well as the respondents' own admissions.[10] In the present case, the record includes two letters from the Purported Issuer indicating that the Bid Securities were falsified. Each letter relates to one of the two Bid Securities, and states that the Purported Issuer did not issue, and has no record of, the bid security in question. Additionally, the Respondent implicitly acknowledges that the Bid Securities were falsified by describing itself as a "crime victim" of the Broker, and stating that it reported the Broker to the police. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Bids contained misrepresentations in the form of the forged Bid Securities.

2. Made knowingly or recklessly

23. INT alleges that the Respondent acted "at least recklessly" in submitting the Bids containing the false Bid Securities. In assessing recklessness, the Sanctions Board may consider whether circumstantial evidence indicates that a respondent was aware of, but disregarded, a substantial risk – such as harm to the integrity of the Bank's procurement process due to false or misleading bid documents.[11] Where circumstantial evidence may be insufficient to infer subjective awareness of risk, the Sanctions Board may measure a

[10] See, e.g., Sanctions Board Decision No. 2 (2008) at para. 4 (stating that the Sanctions Board "relied primarily" on a written statement from the purported issuer of the documents at issue that the documents had been forged, as well as the respondent's oral and written admissions, in finding that the respondent had engaged in fraudulent practices by forging documents); see also Sanctions Board Decision No. 61 (2013) at para. 21 (considering the written denials of authenticity by the purported issuers and signatories of the documents at issue, as well as the additional indicia of falsity on the face of the documents and the respondents' tacit acknowledgement that the documents are inauthentic, in finding that the documents were forged).

[11] Sanctions Board Decision No. 51 (2012) at para. 33.

respondent's conduct against the common "due care" standard of the degree of care the proverbial "reasonable person" would exercise under the circumstances.[12] In other words, the question is whether the respondent knew or should have known of the substantial risk presented.[13] In the context of Bank-Financed Projects,[14] the standard of care should be informed by the Bank's procurement policies, as articulated in the applicable Procurement or Consultant Guidelines and the standard bidding documents for the contract at issue.[15] Industry standards or customary or firm-specific business policies, procedures, or practices may also be relevant in certain cases.[16]

24. The record supports a finding that the Respondent should have been aware of a substantial risk that the Bid Securities might not be authentic for two primary reasons. First, the Respondent states that it was attempting to obtain bank guarantees within five days as a public holiday was approaching, and the Respondent's representatives reportedly stated that the Broker was the only company out of those that were contacted by the finance officer that had claimed to be able to provide a bank guarantee within that period. Notably, the record reveals that the Respondent was unable to obtain a direct commitment from the Purported Issuer to provide bank guarantees within that time frame. Second, the Respondent states that its employee was negligent in failing to follow the relevant standard operating procedures. Despite the Respondent's reported protocol of using only the intermediaries named in an official list of brokers registered with the Purported Issuer, INT's record of interview with the finance officer reports that he did not cross-check the official list of registered brokers for the Broker's name. Nor does the record reflect any other steps to verify the Broker's asserted standing or affiliation with the Purported Issuer. Considering that the Broker was the only intermediary that claimed to be able to procure bid securities within the requested time frame during a holiday season and that, in this context, the finance officer engaged the Broker without following the standard operating procedures or verifying the Broker's status, the Respondent should have been aware of a substantial risk that the Bid Securities could be forged.

25. The record reflects that the Respondent did not take precautions as such risk would have warranted. While the Respondent's representatives reportedly stated that "before the bid opening" the finance officer sought the Purported Issuer's confirmation as to the authenticity of the Bid Securities and that an employee of the Purported Issuer did confirm the authenticity of the Bid Securities by phone, the record contains no contemporaneous documentary

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[12] Id.

[13] Id.

[14] The term "Bank-Financed Projects" means "projects and programs financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines or Anti-Corruption Guidelines." Sanctions Procedures at Section 1.01(c)(i). This term includes activities financed through trust funds administered by the Bank to the extent governed by the applicable Guidelines. See Sanctions Procedures at Section 1.01(c)(i), n.3.

[15] Sanctions Board Decision No. 51 (2012) at para. 33.

[16] Id.

evidence of this confirmation – which the same employee of the Purported Issuer reportedly later denied giving.

26. Having determined that the Respondent should have been aware of a substantial risk that the Bid Securities might not be authentic and that the Respondent did not take adequate precautions despite such risk, the Sanctions Board concludes that the record supports a finding that the Respondent acted recklessly in submitting the falsified Bid Securities.

3. In order to influence the procurement process

27. The Sanctions Board has found sufficient evidence of intent to influence the procurement process where the record showed that the forged documents had been submitted in response to a tender requirement.[17] In the present case, the Bidding Documents required bids for each of the Contracts to be accompanied by a bid security for a specified amount and with a specified validity period. The Bidding Documents explicitly stated that bids submitted without an enforceable and compliant bid security would be rejected. The record supports a finding that the Respondent submitted the Bid Securities to satisfy these requirements and thereby enable the Respondent to avoid disqualification and win the tenders. Accordingly, the Sanctions Board finds that it is more likely than not that the misrepresentations were intended to influence the procurement processes for the Contracts.

4. To the detriment of the Borrower

28. The Sanctions Board has previously held that detriment to a borrowing country may include intangible as well as tangible or quantifiable harms, such as where a respondent's use of forged documents served to distort the selection process or caused the borrower to expend resources to review and evaluate an invalid bid.[18] As the record reveals that the BECs expended time and resources to review the invalid Bids and to seek to verify the authenticity of the Bid Securities, the Sanctions Board finds that the element of detriment has been established.

B. The Respondent's Liability for the Acts of its Employees

29. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.[19] Where a respondent entity has denied responsibility for the acts of its employees based on a rogue employee

[17] See, e.g., Sanctions Board Decision No. 54 (2012) at para. 28.

[18] See, e.g., Sanctions Board Decision No. 47 (2012) at para. 29.

[19] See, e.g., Sanctions Board Decision No. 55 (2013) at para. 51; Sanctions Board Decision No. 61 (2013) at para. 30.

defense, the Sanctions Board has assessed any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.[20]

30. In the present case, the Respondent's representatives reportedly informed INT that the deputy finance director was generally responsible for procuring bank guarantees for the Respondent, and that he was responsible for obtaining the Bid Securities in this instance. The Respondent also states that the deputy finance director instructed the finance officer to engage the Broker in order "to help [the Respondent] to get the Bank Guarantee for the tender in time." Thus, the record reflects that these employees acted within the scope of their employment and were motivated by a purpose to serve the Respondent when they procured the Bid Securities. While the Respondent asserts that its employees failed to follow the standard operating procedures contained in the Respondent's "quality manual," the record does not contain a copy of that manual or otherwise reveal what supervision or control measures, if any, the Respondent had in place to ensure compliance with appropriate bid preparation procedures.

31. Applying the doctrine of respondeat superior to the circumstances presented, the Sanctions Board concludes that the Respondent is liable for the fraudulent practices alleged. Accordingly, the Sanctions Board need not consider an alternative theory of liability based on INT's additional assertions that the Broker forged the Bid Securities and that the Respondent is liable for the Broker's acts under principles of agency.

C. Sanctioning Analysis

1. General framework for determination of sanctions

32. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section 8.01(b) of the Sanctions Procedures requires the Sanctions Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section 9.01. The range of sanctions set out in Section 9.01 includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) restitution or remedy. As stated in Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.

33. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.[21] The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented in each case.[22]

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[20] See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at para. 53; Sanctions Board Decision No. 61 (2013) at para. 30.

[21] See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

[22] Sanctions Board Decision No. 44 (2011) at para. 56.

34. The Sanctions Board is required to consider the factors set forth in Section 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. The Sanctioning Guidelines further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after three years.

35. Should the Sanctions Board impose a sanction on a respondent, it may also, pursuant to Section 9.04(b) of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of the respondent.

2. Factors applicable in the present case

a. Severity of the misconduct

36. Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction. Section IV.A.1 of the Sanctioning Guidelines identifies a repeated pattern of conduct as an example of severity.

37. *Repeated pattern of conduct*: INT submits that the Respondent's submission of two false bid securities warrants aggravation. Considering that the Respondent submitted the forged Bid Securities with two separate bids for two Bank-financed contracts, the Sanctions Board finds that some aggravation is warranted under this factor.

b. Voluntary corrective action

38. Section 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party . . . took voluntary corrective action." Section V.B of the Sanctioning Guidelines identifies various examples of voluntary corrective action that may warrant mitigation, with the timing, scope, and quality of the action to be considered as potential indicia of the respondent's genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to show voluntary corrective action.[23]

39. *Internal action against responsible individuals*: Section V.B.2 of the Sanctioning Guidelines states that mitigation may be appropriate where "[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative." In the present case, the Respondent asserts that, prior to its interview with INT in March 2010, it issued "a warning letter" to the deputy finance director and the finance officer because they had not followed the standard operating procedures. However, the Respondent did not submit any evidence documenting this asserted internal action. Furthermore, while the Respondent's representatives reportedly stated that "the tender

[23] Sanctions Board Decision No. 45 (2011) at para. 72.

document was processed by the marketing staff" and that the Bid Securities were "processed by the finance staff," the record does not make clear whether any disciplinary measures may have been warranted or taken against staff other than the deputy finance director and the finance officer. Consistent with past precedent, the Sanctions Board does not find sufficient evidence to support mitigation under this factor.[24]

40. *Internal compliance program*: Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record reveals the "[e]stablishment or improvement, and implementation of a corporate compliance program" by a respondent. INT submits that the Respondent's implementation of a compliance program constitutes a mitigating factor. The Respondent lists several components of this program, including written instructions to "all Directors and related managers to carry out an initial comprehensive risk assessment" and the assignment of an internal auditor to implement a systemic approach to periodically monitor and review its compliance program. Additionally, the record includes evidence of the Respondent's "Good Corporate Governance Policy" and new standard operating procedures governing the preparation and submission of bid documents, which generally require written confirmation of bid securities with the issuer. On the basis of this record, the Sanctions Board finds mitigation warranted for the Respondent's compliance measures.

c. Cooperation

41. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C of the Sanctioning Guidelines identifies a respondent's assistance with INT's investigation, an internal investigation, and admission or acceptance of guilt or responsibility as some examples of cooperation.

42. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance with INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance" as well as "the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." The record reveals that the Respondent replied to INT's show-cause letters and subsequent request for additional information in a timely fashion, made four representatives available to meet with INT for an interview (reportedly consenting to a recording of the interview), and provided documents to INT. The Sanctions Board concludes that the Respondent's assistance with INT's investigation warrants mitigation.

43. *Internal investigation*: Section V.C.2 of the Sanctioning Guidelines states that cooperation may be found where a respondent has "conducted its own effective internal investigation of the misconduct and relevant facts relating to the misconduct for which it is to

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[24] See, e.g., Sanctions Board Decision No. 44 (2011) at paras. 71-72 (declining to apply mitigation where the respondent failed to substantiate its stated measures against responsible staff); Sanctions Board Decision No. 56 (2013) at para. 67 (declining to apply mitigation where the respondent provided limited evidence of action against only one of the responsible individuals).

be sanctioned and shared results with INT." The Respondent asserts that it conducted a careful investigation into "the matter," and INT submits that mitigation is warranted under this factor. However, the record does not indicate whether, as the Sanctions Board has previously considered in assessing this factor, the internal investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience;[25] or whether the results of the investigation were shared with INT.[26] For example, while the Respondent indicates that the investigation was conducted by the "Board of Management," it does not clarify the composition of this board or speak to its independence. Accordingly, the Sanctions Board finds insufficient evidence to apply mitigation under this factor.

44. *Admission or acceptance of guilt or responsibility*: Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent's admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance should be given more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. The Respondent has implicitly acknowledged from the time of the investigation through the sanctions proceedings that the Bid Securities were false, and has stated in its written pleadings that its employees acted negligently in failing to follow relevant standard operating procedures when procuring the Bid Securities. However, the Sanctions Board notes that the Respondent has not admitted or accepted responsibility or culpability for knowingly or recklessly misrepresenting facts in a manner that constitutes fraudulent practices. Accordingly, the Sanctions Board finds that only partial mitigation is warranted.[27]

d. Other considerations

45. Under Section 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider "any other factor" it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice."

46. *Period of debarment already served*: As noted above at Paragraphs 4-5, the Respondent was publicly debarred for nearly three months from August 9, 2012, until October 31, 2012, as a result of the Respondent's failure to respond to the Notice as initially delivered. The Sanctions Board considers the period of debarment already served to be a significant mitigating factor.

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[25] See, e.g., Sanctions Board Decision No. 50 (2012) at para. 67; Sanctions Board Decision No. 55 (2013) at para. 81.

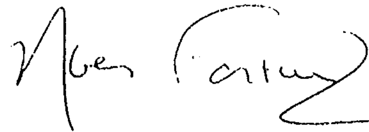
[26] See, e.g., Sanctions Board Decision No. 56 (2013) at paras. 74-75 (declining mitigating credit where the respondent did not share the results of its internal investigations either with INT during its investigation or as part of the proceedings before the Sanctions Board).

[27] See Sanctions Board Decision No. 60 (2013) at para. 134 (applying limited mitigation for the respondents' early admissions, as assessed in light of their later denials of culpability in the course of sanctions proceedings); Sanctions Board Decision No. 63 (2014) at para. 113 (applying partial mitigation for a respondent firm's early and detailed admissions concerning its employees' involvement in the corrupt scheme, limited by the firm's later denials of culpability or responsibility for corrupt practices in the course of sanctions proceedings).

47. *Passage of time*: The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.[28] This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents.[29] At the time of the EO's issuance of the Notice in May 2012, more than four and a half years had elapsed since the misconduct occurred in October 2007; and more than four years had elapsed since the Bank first became aware of the potential fraudulent practices in March 2008. The Sanctions Board therefore applies mitigation on this ground.

D. Determination of Liability and Appropriate Sanction

48. Considering the full record and all the factors discussed above, the Sanctions Board issues a formal letter of reprimand to the Respondent, which letter shall be posted on the World Bank's website for a period of one (1) month, beginning on the date of this decision, without prejudice to the Respondent's eligibility to participate in Bank-Financed Projects. This sanction is imposed on the Respondent for fraudulent practices as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines.



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

L. Yves Fortier
Hassane Cissé
Ellen Gracie Northfleet
Catherine O'Regan
Denis Robitaille
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J. James Spinner

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[28] See, e.g., Sanctions Board Decision No. 48 (2012) at para. 48 (applying mitigation where sanctions proceedings were initiated almost three years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where sanctions proceedings were initiated more than five (and up to nine) years after the misconduct, and more than five (and up to eight) years after the Bank's awareness of the potential sanctionable practices).

[29] See Sanctions Board Decision No. 50 (2012) at para. 71.