

Date of issuance: June 23, 2014

**Sanctions Board Decision No. 69
(Sanctions Case No. 204)**

**IBRD Loan No. 7117-LE
Lebanon**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 204 (the “Respondent”), together with any entity that is an Affiliate² directly or indirectly controlled by the Respondent, with a minimum period of ineligibility of five (5) years and six (6) months, beginning on the date of this decision. This sanction is imposed on the Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on May 28, 2013, at the World Bank’s headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of L. Yves Fortier (Chair), Hassane Cissé, Ellen Gracie Northfleet, Catherine O’Regan, Denis Robitaille, 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.³

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”)⁴ to the Respondent on August 15, 2012 (the

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 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).

³ See Sanctions Procedures at Section 6.01.

⁴ 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.

“Notice”), appending the Statement of Accusations and Evidence (the “SAE”) presented to the EO by INT, dated June 25, 2012;

- ii. Explanation submitted by the Respondent to the EO on September 24, 2012 (the “Explanation”);
- iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on November 20, 2012 (the “Response”); and
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on January 10, 2013 (the “Reply”).

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

4. Effective August 15, 2012, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;⁵ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁶ of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any project or program financed by the Bank and governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to

⁵ For the avoidance of doubt, the scope of ineligibility to be awarded a contract will include, without limitation, (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. See Sanctions Procedures at Section 9.01(c)(i), n.16.

⁶ A nominated sub-contractor, consultant, manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. See Sanctions Procedures at Section 9.01(c)(ii), n.17.

collectively as “Bank-Financed Projects”)⁷ pending the final outcome of the sanctions proceedings.

II. GENERAL BACKGROUND

5. This case arises in the context of the Ba’albeck Water and Wastewater Project (the “Project”) in Lebanon. On September 26, 2002, IBRD and the Lebanese Republic entered into a loan agreement to provide US\$43,530,000 to finance the Project. On the same day, IBRD entered into a project agreement with Lebanon’s implementing agency for the Project (the “Project Agreement”). The Project sought to (i) develop and strengthen the institutional capacity of specified city water authorities, (ii) improve access to satisfactory water supply and wastewater services, (iii) involve the private sector in the operation and maintenance of the water and wastewater facilities, and (iv) rationalize the use of water through the introduction of water meters.

6. In May 2010, the implementing agency for the Project issued bidding documents for a contract for the operation and maintenance of water and sewerage works (the “Contract”). The bidding documents required each bidder to provide documentation of, *inter alia*, experience within the preceding ten years as a prime contractor of at least two potable water or wastewater infrastructure projects, each of them being either (i) an operation and management project with a minimum contract value of US\$1,000,000 per year, or (ii) a construction project with a minimum contract value of US\$5,000,000. For projects executed outside of Lebanon, the bidding documents required bidders to submit legally certified copies of project contracts and copies of bank guarantees to support their project references.

7. On July 5, 2010, the Respondent submitted a bid for the Contract (the “Bid”), which included a record of experience listing up to twenty-one sewer and water network projects. Of the listed projects, the largest by far was a contract for the construction of sewerage-related facilities in Ukraine, purportedly valued at US\$36,618,000, and executed between February 3, 2005, and August 3, 2008 (the “Ukraine Project”). The Bid appended three documents purportedly relating to the Respondent’s work on the Ukraine Project: an experience certificate, an unsigned project contract, and a performance bank guarantee (collectively, “the Experience Documents”). The Respondent submitted the Bid through its chairman and general manager (the “Chairman”), who was its authorized signatory for the Bid. The Respondent ultimately received and executed the Contract, which was valued at US\$2,120,000.

8. Between January 19, 2012, and March 16, 2012, INT contacted representatives of the purported issuers of the Experience Documents⁸ to check the authenticity of each document.

⁷ For the avoidance of doubt, the term “Bank-Financed Projects” includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section 1.01(c)(i), n.3.

⁸ For clarity, this decision refers to the purported counterparty to the unsigned project contract as a “purported issuer.”

Based on statements by the purported issuers, INT alleges that the Respondent engaged in fraudulent practices by knowingly or recklessly submitting forged documents with the Bid.

III. APPLICABLE STANDARDS OF REVIEW

9. 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 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.

10. 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 its conduct did not amount to a sanctionable practice.

11. The alleged sanctionable practice in this case has the meaning set forth in 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”), which the Project Agreement specified would govern the procurement of all goods and works required for the Project, and whose definition of fraudulent practice was replicated in the bidding documents for the Contract. Paragraph 1.15(a)(ii) of these 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.⁹ 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.¹⁰ Accordingly, the Sanctions Board has held that the “knowing or reckless” standard may be implied under the pre-October 2006 definitions.¹¹

⁹ 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).

¹⁰ See Sanctions Board Decision No. 41 (2010) at para. 75.

¹¹ Id.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

12. INT submits that it is more likely than not that the Respondent engaged in fraudulent practices by knowingly or recklessly submitting the forged Experience Documents with the Bid. INT asserts that the purported issuers of the Experience Documents confirmed that the documents were forgeries and identified indicia of falsity on the face of the documents. INT also asserts that the repetitive nature of the Respondent's manipulation and fabrication of documents shows that the Respondent acted knowingly or at least recklessly. Finally, INT contends that the Respondent's submission of the forged Experience Documents was intended to influence the procurement process by misleading the implementing agency for the Project into believing that the Bid complied with all bidding requirements; and caused detriment to the member country concerned by, *inter alia*, depriving it of the benefit of a fair procurement process.

13. INT submits that aggravation is warranted for the repetitive nature of the Respondent's fraudulent acts and the Respondent's failure to respond to INT's questions regarding the Experience Documents. INT asserts that no mitigating factors apply.

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

14. The Respondent requests a withdrawal of the Notice and termination of the temporary suspension. The Respondent asserts that it successfully executed the Contract in accordance with the purposes of the loan and with due diligence and efficiency, as the implementing agency for the Project confirmed. The Respondent contends that it acted with the utmost honesty and integrity and never misused funds associated with the Project, despite difficulties encountered because of the nature of the region, the work, and the local economic and political situation.

15. Although the Respondent does not directly address any sanctioning factors, it asserts that it fully and transparently cooperated with INT and provided the documents that INT had requested. The Respondent also claims that its general assembly of shareholders convened to adopt a code of ethics and endorse a compliance program in order to reconfirm its expectations of honest and ethical conduct and comply with the World Bank's standards. Finally, the Respondent states that it "feels sorry for the current situation" and wishes to avoid any misunderstanding with the Bank.

C. INT's Principal Contentions in the Reply

16. INT submits that despite the Respondent's request for withdrawal of the Notice, the Respondent has not disputed that it engaged in fraudulent practices and does not address INT's evidence of fraud. INT further contends that none of the Respondent's arguments provide a basis for withdrawal of the Notice or mitigation of the EO's recommended sanction. Specifically, INT asserts that the Respondent's asserted performance under the Contract is not a defense; the Respondent's code of ethics does not appear to address the Respondent's bidding practices or to be accompanied by sufficient controls; the Respondent provided only

limited cooperation with INT's investigation; and the Respondent's expression of remorse falls short of an admission of wrongdoing.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

17. The Sanctions Board will first consider whether the record supports a finding that it is more likely than not that the Respondent's Chairman engaged in fraudulent practices. The Sanctions Board will then consider whether the Respondent may be held liable for the Chairman's acts. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on the Respondent.

A. Evidence of Fraudulent Practice

18. 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 a procurement process or the execution of a contract (iv) to the detriment of the Borrower.

1. Misrepresentation of facts

19. In a number of 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.¹² Additional corroborating evidence in past cases has included various indicia of falsity on the face of the document in question.¹³ In the present case, the record contains written statements from representatives of the purported issuers of the Experience Documents denying the authenticity of the documents and asserting various indicia of falsity on the face of the documents. For example, the purported signatory of the experience certificate stated that the signature, letterhead, and registration details were inauthentic. With respect to the unsigned project contract, the representative of the purported issuer noted that the document identified him as the signatory at a time that predated his employment with the purported issuer, and also indicated an irregularity with regard to the stamping of the document. Finally, with respect to the performance bank guarantee, a letter co-signed by the purported signatory

¹² 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).

¹³ See, e.g., Sanctions Board Decision No. 52 (2012) at paras. 20-21 (finding a bid security to have been forged where the respondent admitted to using "false documentation" for the contract; and the bank that had purportedly issued the bid security confirmed in writing that it had not issued the document and also identified several errors, including the lack of a bid security number and specific bid code, as always included in its bid securities, and a different font size from the one regularly used).

and the purported issuer's chairman of the board stated that the purported issuer had never had any relationship with the Respondent, and identified various irregularities in the document's letterhead, seal, and format.

20. Considering the written statements from the purported issuers confirming that the Experience Documents were forged and identifying additional indicia of falsity on the face of the documents, which the Respondent does not directly address or counter, the Sanctions Board finds that it is more likely than not that the Experience Documents were forged and therefore constituted misrepresentations in the Bid.

2. Made knowingly or recklessly

21. INT alleges that the Respondent acted knowingly or at least recklessly in submitting the forged Experience Documents. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.¹⁴

22. The record here supports a finding that the Respondent's Chairman knowingly submitted the forged Experience Documents with the Bid. As noted above at Paragraph 19, representatives of the purported issuers of the Experience Documents confirmed that the documents were forged and identified indicia of falsity on the face of each document. With respect to the experience certificate, which ostensibly attested to the Respondent's performance of works on the purported issuer's facilities in connection with the Ukraine Project, the purported issuer specifically denied that the Respondent had carried out the work as claimed. Given the claimed value of the Respondent's work on the Ukraine Project, which far exceeded the value of the other claimed work experience cited in the Bid, the Respondent's management may be expected to have known of the scope of any actual work – or lack thereof – on the Ukraine Project. The Respondent does not contest the veracity or credibility of the statements of the purported issuers, deny that the documents were forged, or provide any evidence that it did execute the Ukraine Project. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent did not execute the Ukraine Project as claimed in the Experience Documents, and that it is therefore more likely than not that the Chairman was aware that the Experience Documents were forgeries. Accordingly, the Sanctions Board finds sufficient evidence to infer that the Chairman acted knowingly in submitting the forged Experience Documents with its Bid for the Contract.

3. In order to influence a procurement process

23. 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.¹⁵ In the present case, the bidding documents for the

¹⁴ Sanctions Procedures at Section 7.01.

¹⁵ See, e.g., Sanctions Board Decision No. 54 (2012) at 28.

Contract required bidders to have a certain minimum level of experience in order to qualify for the award of the Contract, and expressly required bidders to submit specific documents to support their stated experience. The record supports a finding that the Respondent's Chairman submitted the forged Experience Documents to satisfy this requirement and thereby enable the Respondent to avoid disqualification, bolster its apparent experience and competitiveness, and win the tender. Accordingly, the Sanctions Board finds that it is more likely than not that the misrepresentations were intended to influence the procurement process for the Contract.

4. To the detriment of the borrower

24. 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; caused the borrower to expend resources to review and evaluate an invalid bid; and, in those instances where the respondents ultimately received the contract, misled the borrowers to contract with a bidder willing to engage in unethical behavior.¹⁶ The record here reveals that the implementing agency for the Project expended time and resources to review the invalid Bid; and that the member country concerned was misled into contracting with a bidder that had engaged in unethical conduct. Accordingly, the Sanctions Board finds that it is more likely than not that the misrepresentations caused detriment to the member country concerned.

B. The Respondent's Liability for the Acts of the Chairman

25. The record reveals that the Chairman acted as the Respondent's authorized representative and in the course and scope of his duties in submitting the Bid containing the forged Experience Documents. The Sanctions Board thus finds the Respondent directly and/or vicariously liable for the Chairman's fraudulent practice in the submission of the Bid for the Contract.¹⁷

26. For the reasons set out above, the Sanctions Board concludes that the evidence shows that it is more likely than not that the Respondent engaged in a fraudulent practice. The Sanctions Board must therefore determine an appropriate sanction for the Respondent.

¹⁶ See, e.g., Sanctions Board Decision No. 41 (2010) at para. 71; Sanctions Board Decision No. 47 (2012) at para. 29.

¹⁷ See Sanctions Board Decision No. 41 (2010) at para. 85 (finding direct and/or vicarious liability for the respondent firm, which bore responsibility for the conduct of the individual respondent who was the firm's president, owner, and sole shareholder); Sanctions Board Decision No. 52 (2012) at para. 32 (finding the respondent firm directly and/or vicariously liable for its chief executive officer's submission of a bid containing a forged bid security).

C. Sanctioning Analysis

1. General framework for determination of sanctions

27. 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.

28. 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.¹⁸ 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.¹⁹

29. 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.

30. 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

31. Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct, sophisticated means, and management's role in the misconduct as examples of severity.

32. *Repeated pattern of conduct*: INT asserts that the Respondent's submission of three forged documents merits aggravating treatment. Consistent with past precedent declining to apply aggravation for the one-time submission of multiple forged documents intended to comply with a particular bid requirement under one contract, the Sanctions Board does not

¹⁸ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

¹⁹ Sanctions Board Decision No. 44 (2011) at para. 56.

find that the Respondent's simultaneous submission of the forged Experience Documents with its Bid for the Contract – all relating to the Respondent's purported experience with the Ukraine Project – constitutes an aggravating factor.²⁰

33. *Sophisticated means*: Section IV.A.2 of the Sanctioning Guidelines states that aggravation may be warranted for sophisticated means based on, *inter alia*, “the complexity of the misconduct (e.g., degree of planning, diversity of techniques applied, level of concealment)” and the number and type of people or organizations involved. The record shows that the Respondent forged three different types of official business documents, which were clearly drafted in an effort to avoid detection, including through the use of an inauthentic embassy stamp and forged signatures and seals. The Sanctions Board finds that aggravation is warranted on the basis of the record, which reveals considerable forethought and planning.

34. *Management's role in the misconduct*: Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply “[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct.” The Sanctions Board finds that aggravation is warranted for the involvement of the Respondent's Chairman, who signed and submitted the Bid attaching the forged Experience Documents.

b. Magnitude of harm

35. Section 9.02(b) of the Sanctions Procedures requires consideration of the magnitude of the harm caused by the misconduct in determining a sanction. As examples of such harm, Section IV.B of the Sanctioning Guidelines refers to poor contract implementation and delay, as well as harm to public safety or welfare. In the present case, the Respondent used the forged Experience Documents to circumvent an explicit bidding requirement designed to exclude unqualified contractors and identify bidders' relevant construction experience, and thereby exposed the member country concerned to serious operational and reputational risks in regard to the Project. Consistent with past precedent, the Sanctions Board finds that aggravation is warranted, notwithstanding the Respondent's claim that it applied best practices in implementing the Contract.²¹

c. Interference in the Bank's investigation

36. Section 9.02(c) of the Sanctions Procedures requires that the Sanctions Board consider “interference by the sanctioned party in the Bank's investigation.” Section IV.C.1 of the Sanctioning Guidelines describes this factor as including “[d]eliberately destroying, falsifying, altering, or concealing evidence material to the investigation or making false statements to

²⁰ See, e.g., Sanctions Board Decision No. 55 (2013) at para. 62 (declining to apply aggravation for the respondent's simultaneous submission of multiple forged certificates all attesting to the respondent's prior satisfactory performance in manufacturing and supplying ultrasound scanners).

²¹ See Sanctions Board Decision No. 44 (2011) at para. 63 (applying aggravation for magnitude of harm where the respondent's misconduct caused substantial delays, risk of structural damage to contract works, and waste of the borrower's time and resources, even though the record showed that the respondent ultimately satisfied its contractual requirements).

investigators in order to materially impede a Bank investigation,” as well as “acts intended to materially impede the exercise of the Bank’s contractual rights of audit or access to information.”

37. INT asserts that the Respondent’s failure to respond to its questions regarding the Experience Documents is an aggravating factor. INT submits that it met with the Respondent’s representatives on three separate occasions and that they repeatedly refused to respond to INT’s questions about the Experience Documents; and that the Respondent’s counsel failed to follow up with information as promised. However, INT does not allege that the Respondent engaged in any overt acts that interfered with INT’s investigation, which are the types of acts that the Sanctioning Guidelines suggest would warrant aggravation under this factor. Moreover, the record reveals at least a certain degree of responsiveness on the part of the Respondent. For instance, in response to INT’s interview questions, the Respondent’s representatives confirmed that the Respondent had submitted the experience certificate and performance bank guarantee with the Bid. With regard to document requests, INT’s record of the third interview shows that the Respondent’s representative provided INT “with three binders containing the documents requested by INT and listed in INT’s audit letter” and that the representative “walked INT through the documents.” However, the record does not reveal whether these documents relate to the misconduct at issue in this case, or to other topics addressed in INT’s interviews. The Sanctions Board does not find aggravation warranted in these circumstances.

d. 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.²²

39. *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. While the Respondent asserts that it convened a shareholders’ meeting to adopt a code of ethics and to endorse a compliance program, it provides no details or corroborating evidence to support a finding that the asserted measures were designed or implemented so as to improve the Respondent’s bidding practices and controls, and prevent recurrence of the type of misconduct presented here.²³ Without prejudice to any future assessment that the World Bank Group’s Integrity Compliance Officer may conduct to more fully evaluate the adequacy of the

²² Sanctions Board Decision No. 45 (2011) at para. 72.

²³ See generally Summary of World Bank Group Integrity Compliance Guidelines, available at: http://siteresources.worldbank.org/INTDOII/Resources/IntegrityComplianceGuidelines_2_1_11web.pdf.

Respondent's integrity compliance measures, the Sanctions Board declines to apply mitigating credit for the asserted compliance measures on the record presented.²⁴

e. Cooperation

40. 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 and admission or acceptance of guilt or responsibility as some examples of cooperation.

41. *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 Respondent submits that it fully and transparently cooperated with INT. The record reveals that the Respondent made high-level staff available for three interviews and provided INT with requested documents. As discussed above at Paragraph 37, the record reveals a certain degree of responsiveness on the part of the Respondent at its interviews, though it is not clear whether the documents that the Respondent provided to INT relate to these sanctions proceedings. The Sanctions Board finds that the record does not show sufficient cooperation to warrant mitigation.

42. *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 expresses general remorse "for the current situation," but does not specifically refer to the misrepresentations in the Bid or accept responsibility for any fraudulent practices. The Sanctions Board thus declines to apply mitigation under this factor.²⁵

f. Period of temporary suspension

43. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent's temporary suspension since the EO's issuance of the Notice on August 15, 2012.

²⁴ See Sanctions Board Decision No. 61 (2013) at para. 42 (declining to apply mitigation for the respondents' asserted improvements to their bid preparation process where the respondents provided no detailed description or corroborating evidence to support a finding that the asserted measures were adopted and implemented).

²⁵ See Sanctions Board Decision No. 52 (2012) at para. 43 (declining to apply mitigation where the respondent acknowledged that it submitted a false bid security, expressed apologies and regrets for the inconvenience its misrepresentation may have caused the Bank, but failed to accept responsibility for the fraudulent practices, instead asserting that it was an innocent victim of circumstance).

g. Other consideration

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

45. *Non-cooperation in sanctions proceedings*: The Sanctions Board finds that the Respondent’s failure to acknowledge any responsibility for or knowledge of the fraudulent practice, despite credible evidence indicating that the Respondent did not execute the Ukraine Project as claimed in the forged Experience Documents, demonstrates a lack of candor in these sanctions proceedings that warrants aggravation.²⁶

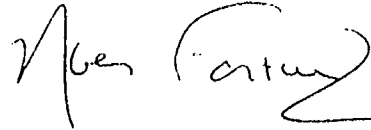
D. Determination of Liability and Appropriate Sanction

46. Considering the full record and all of the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of five (5) years and six (6) months, the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent for a fraudulent practice as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines.

47. The ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of this declaration of ineligibility to the other multilateral development banks (“MDBs”) that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the “Cross-Debarment Agreement”) so that they may determine whether to enforce the declaration of ineligibility with respect to their own operations in

²⁶ See Sanctions Board Decision No. 63 (2014) at para. 121 (applying aggravation for two respondents’ persistent and implausible denials of any responsibility for or knowledge of the corrupt scheme, despite substantial evidence to the contrary).

accordance with the Cross-Debarment Agreement and their own policies and procedures.²⁷
The period of ineligibility shall begin on the date this decision issues.



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
J. James Spinner

²⁷ At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The Cross-Debarment Agreement provides that, subject to the prerequisite conditions set forth in the Cross-Debarment Agreement, unless a participating MDB (i) believes that any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the "opt out" clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank's website (<http://go.worldbank.org/B699B73Q00>).