THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: October 24, 2014

Sanctions Board Decision No. 74
(Sanctions Case No. 201)

IDA Credit No. 4297-UG
Uganda

IDA Credit No. 4344-ET
Ethiopia

IDA Credit No. 4370-TA
Tanzania

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 201 (the "Respondent"), together with any entity that is an Affiliate[2] directly or indirectly controlled by the Respondent, with a minimum period of ineligibility of two (2) years 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 by virtual means on July 24, 2014, to review this case. The Sanctions Board was composed of L. Yves Fortier (Chair), 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 subsequently reached its decision based on the written record.[3]

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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] 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.

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 July 8, 2013 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated June 29, 2012;

ii. Response submitted by the Respondent to the Secretary to the Sanctions Board on October 9, 2013 (the "Response");

iii. Reply submitted by INT to the Secretary to the Sanctions Board on November 14, 2013 (the "Reply");

iv. Additional submission submitted to the Secretary to the Sanctions Board on August 15, 2014, by a firm that had reportedly acquired the Respondent; and

v. Comments submitted by INT to the Secretary to the Sanctions Board on August 28, 2014.

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 four (4) years, 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 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 July 8, 2013, 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-

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

[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, consultant, manufacturer or supplier, or service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section 9.01(c)(i), n.16.

contractor, consultant, manufacturer or supplier, or service provider[6] 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 collectively as "Bank-Financed Projects")[7] pending the final outcome of the sanctions proceedings.

5. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO also recommended in the Notice that the Respondent's owner and sole director at the time of the misconduct (the "Director") be debarred for a minimum period of four (4) years, subject to conditional release. Absent the submission of a written response to the Sanctions Board by the Director within ninety days of the EO's recorded delivery of the Notice, the EO's recommended sanction entered into effect, pursuant to Section 4.04 of the Sanctions Procedures, on October 10, 2013.

II. GENERAL BACKGROUND

6. The allegations in this case relate to three bids submitted by the Respondent for contracts under energy-sector projects in Uganda, Ethiopia, and Tanzania (all three contracts collectively referred to as the "Contracts"), as described below.

7. On May 28, 2007, IDA and the Republic of Uganda entered into a financing agreement valued at the equivalent of approximately US$300 million to finance the Uganda Power Sector Development Operation Project (the "Uganda Project"). The Uganda Project sought to reduce short-term power shortage, improve financing of Uganda's power sector, and facilitate long-term sustained power sector expansion. In May 2010, bidding documents were issued for the supply and installation of energy-efficient equipment for street lighting fixtures in Kampala City (the "Uganda Contract"). The bidding documents required each bidder to submit documentation of a minimum average annual turnover of US$1 million for the previous three years.

8. On July 13, 2007, IDA and the Federal Democratic Republic of Ethiopia entered into a financing agreement valued at the equivalent of approximately US$130 million to finance the Second Electricity Access (Rural) Expansion Project (the "Ethiopia Project"). The Ethiopia Project seeks to support sustainable expansion of access to electricity in rural villages and towns. In July 2010, the implementing agency for the Ethiopia Project issued bidding documents for the supply of system components and installation of photovoltaic systems (the "Ethiopia Contract"). The bidding documents required each bidder to submit documentation

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[6] A nominated sub-contractor, consultant, manufacturer or supplier, or 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. Sanctions Procedures at Section 9.01(c)(ii), n.17.

[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.

demonstrating that, in the previous two years, it had a minimum average annual turnover of at least twice the value of the total bid price submitted.

9. On January 31, 2008, IDA and the United Republic of Tanzania entered into a financing agreement valued at the equivalent of approximately US$105 million to finance the Tanzania Energy Development and Access Expansion Project (the "Tanzania Project"). The Tanzania Project seeks to improve the quality and efficiency of the provision of electricity service and establish a sustainable basis for energy access expansion. In August 2010, the implementing agency for the Tanzania Project issued bidding documents to supply various prepayment electricity meters (the "Tanzania Contract"). The bidding documents for the Tanzania Contract required each bidder to submit signed copies of audited financial reports for the previous five years.

10. In June and September 2010, the Director submitted, on behalf of the Respondent, bids for the Uganda Contract (the "Uganda Bid"), the Ethiopia Contract (the "Ethiopia Bid"), and the Tanzania Contract (the "Tanzania Bid") (all three bids collectively referred to as the "Bids"). The record reveals that the Respondent was subsequently awarded the Uganda and Tanzania Contracts. INT alleges that the Respondent engaged in fraudulent practices by submitting, with its Bids, financial records belonging to a third party (the "Third Party") in order to comply with requirements listed in the bidding documents.

III. APPLICABLE STANDARDS OF REVIEW

11. 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.

12. 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.

13. The financing agreements for the Uganda and Tanzania Projects provided that the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 2006) (the "October 2006 Procurement Guidelines") would apply, and the bidding documents for the Uganda and Tanzania Contracts defined sanctionable practices in accordance with the same Guidelines. Therefore, the alleged sanctionable practices relating to these contracts have the meaning set forth in Paragraph 1.14(a)(ii) of the October 2006 Procurement Guidelines, which defines the term "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."

14. While the financing agreement for the Ethiopia Project also provided that the October 2006 Procurement Guidelines would apply, the bidding documents for the Ethiopia Contract defined sanctionable practices in accordance with the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) (the "May 2004 Procurement Guidelines"). In accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the standards applicable in the event of such conflict shall be those agreed between the borrowing or recipient country and the respondent as governing the particular contract at issue, rather than the standards agreed between the borrowing or recipient country and the Bank.[8] Therefore, the alleged sanctionable practice relating to the Ethiopia Contract has the meaning set forth in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines, which defines the term "fraudulent practice" as "a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract." 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. 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.[9] Accordingly, the Sanctions Board has held that the "knowing or reckless" standard may be implied under the pre-October 2006 definitions.[10]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES AND ADDITIONAL WRITTEN SUBMISSIONS

A. INT's Principal Contentions in the SAE

15. INT alleges that it is more likely than not that the Respondent knowingly engaged in fraudulent practices by submitting misleading financial documents in the Bids. Relying on contemporaneous evidence and the transcript of INT's interview with the Director, INT submits that the financial documents included in the Bids did not belong to the Respondent, but to the Third Party, and therefore constituted misrepresentations of facts. According to INT, the Director admitted that she had knowingly included the Third Party's financial records with the Respondent's Ethiopia Bid, and circumstantial evidence demonstrates that the Director knew that the Tanzania and Uganda Bids also contained the Third Party's financial records. Based on the tender requirements for the Contracts and on the Director's statement that the Respondent's Ethiopia Bid would have been non-responsive if it had contained the Respondent's own financial records, INT asserts that the misrepresentations were intended to mislead project officials in order to win the Contracts.

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

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

[10] Id.

16. INT asserts as aggravating factors that the Respondent's alleged misconduct related to three bids in three tenders in three different countries, and involved the Director as the Respondent's then-owner and managing director. INT states that the Director's cooperation with INT and candid admission of the misconduct warrant mitigation.

B. The Respondent's Principal Contentions in the Response

17. The Response was filed on the Respondent's behalf by an individual not previously named in the record, who introduces himself in the Response as the owner and director of a holding company that acquired the Respondent (the "Parent Company") and as the Respondent's new sole director. The Respondent seeks reconsideration of "the appropriate – if any – sanction" in view of the Parent Company's "complete structural reorganization" of the Respondent. In particular, the Respondent asserts that the Director took full responsibility for the misconduct, agreed to resign, and has left the company; all shareholders of the Respondent have been replaced; the Respondent has successfully implemented an effective integrity compliance program; and the Respondent has voluntarily refrained from bidding on Bank-financed projects "with immediate effect" until the receipt of the final decision in this case. In addition, the Response states that the Parent Company carried out an internal investigation, which revealed that no one other than the Director had been involved in the misconduct. The Response states that the Parent Company is eager to cooperate and engage further in the sanctions proceedings if INT or the Sanctions Board Chair would find it helpful.

18. According to the Response, the Parent Company's acquisition of the Respondent was executed subject to a right of withdrawal in the event that the Respondent is sanctioned in these proceedings.

C. INT's Principal Contentions in the Reply

19. INT states that the Respondent does not deny the allegations contained in the SAE. INT further asserts that the Response was not accompanied by any documents or evidence to illustrate its assertions with respect to the Respondent's acquisition or claimed corrective measures. INT contends that the Parent Company's acquisition of the Respondent would not change the Respondent's obligations and liabilities with regard to Bank-funded procurement, and that, even if supported by evidence, the asserted corrective measures would be insufficient to justify a reduced sanction as requested by the Respondent. According to INT, a reduced sanction would be disproportionate to the seriousness of the Respondent's misconduct. In conclusion, INT requests that the Sanctions Board impose a sanction "at least as severe" as the sanction recommended by the EO in the Notice, i.e., a debarment with conditional release after a minimum period of four years.

D. The Parent Company's Submission

20. Upon its initial review, the Sanctions Board noted that the record lacked support for the majority of mitigating factors asserted in the Response, i.e., the Respondent's claimed corporate compliance improvements, internal action against the Director, internal investigation, voluntary restraint, and changes in management. The Sanctions Board reminded the Respondent in an interim determination that, consistent with Section 5.03 of the Sanctions

Procedures and the Sanctions Board's publicly available case law, a respondent bears the burden of presenting evidence to support its requests for mitigation.[11] Taking into account the Parent Company's expressed willingness to engage further in these proceedings as may be needed to reinforce the assertions made in the Response, the Sanctions Board, in its discretion, invited the Respondent to submit additional evidence demonstrating and clarifying all asserted mitigating factors, including but not limited to information regarding the transaction that led to the Respondent's change in ownership.

21. In the interest of efficiency, the Sanctions Board notes that the standard text of Notices of Sanctions Proceedings issued to respondents may benefit from an explicit clarification that all evidence supporting a respondent's requests for mitigation or other arguments should be submitted in a timely manner with the Explanation and/or the Response, or may otherwise be excluded from the record.

22. The Respondent did not avail itself of the opportunity to submit additional evidence in response to the Sanctions Board's determination. Instead, the Parent Company filed a written submission (the "Parent Company's Submission") stating that it had withdrawn from its acquisition of the Respondent and that the Respondent's previous owner had accordingly decided to "liquidate [the Respondent] as soon as all ongoing contracts are completed or terminated."

E. INT's Comments

23. With the Chair's authorization, INT filed written comments on the Parent Company's Submission. In its comments, INT reiterates its view that the Parent Company's asserted acquisition of the Respondent and subsequent withdrawal do not change the Respondent's obligations and liabilities in these proceedings. INT asserts that the Respondent has failed to provide any evidence demonstrating and clarifying the claimed mitigating factors, and reiterates its request for a sanction "at least as severe" as the one recommended by the EO.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

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

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[11] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 72 (stating that a respondent bears the burden of presenting evidence to show voluntary corrective action); Sanctions Board Decision No. 60 (2013) at para. 135 (denying mitigation where the respondents failed to provide evidence of a policy or practice of voluntary restraint); Sanctions Board Decision No. 61 (2013) at para. 46 (denying mitigation for the asserted conduct of an internal investigation where the record contained insufficient information regarding the conduct or outcomes of the asserted investigation).

A. Evidence of Fraudulent Practices

25. As noted above in Paragraphs 13 and 14, allegations of sanctionable practices relating to the Ethiopia Contract are governed by the May 2004 Procurement Guidelines, while allegations relating to the Uganda Contract and Tanzania Contract are governed by the October 2006 Procurement Guidelines. Accordingly, INT bears the initial burden to show that it is more likely than not that the Respondent (i) made misrepresentations or omissions of facts (ii) that were knowing or reckless (iii) in order to influence the procurement process or the execution of a contract (May 2004 Procurement Guidelines), or in order to obtain a financial or other benefit or avoid an obligation (October 2006 Procurement Guidelines).

1. Misrepresentations of facts

26. As noted above in Paragraphs 7 to 9, the bidding documents for the Contracts required bidders to provide various types of financial information with their bids. In response to these requirements, each of the Bids contained a letter signed by the Director asserting that the Respondent had provided the relevant financial records. However, the record reveals that the financial records included in the Bids did not belong to the Respondent. Instead the records belonged to the Third Party, which has a similar name and is owned by a close relative of the Director, but is registered in another country and – according to the Director's own statements – is not related to the Respondent. The financial records explicitly refer to the Third Party, specify a different company location than the Respondent's, and pertain to financial activity predating the business registration of the Respondent in 2009. Accordingly, the Sanctions Board concludes that it is more likely than not that the Director's statements asserting the Respondent's compliance with the tender requirements constituted misrepresentations of facts.

2. Made knowingly or recklessly

27. INT alleges that the Director acted knowingly in misrepresenting the Respondent's qualifications in the Bids. 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.[12]

28. In the present case, the Sanctions Board notes that the Director's letters, which were included in the Bids to assert the Respondent's compliance with the financial requirements, referred to time periods predating the Respondent's registration as a company in 2009 and were accompanied by financial documents that explicitly referred to the Third Party. In addition, the Director admitted that she had knowingly included the Third Party's financial information in the Ethiopia Bid. On this record, the Sanctions Board concludes that it is more likely than not that the Director knew that the financial records contained in the Bids belonged to another company, and that her statements confirming the Respondent's compliance with the relevant tender requirements therefore constituted knowing misrepresentations.

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[12] Sanctions Procedures at Section 7.01.

3. In order to influence the procurement process or to obtain a financial or other benefit or avoid an obligation

29. The Sanctions Board has found sufficient evidence of intent to influence the procurement process where the record showed that misrepresentations had been made in response to a tender requirement.[13] In the present case, the Sanctions Board notes that the Director's statements in the Bids regarding the Respondent's financial history responded directly to the financial requirements defined in the relevant bidding documents. In addition, the Director stated during her interview that she had included the Third Party's financial data with the Ethiopia Bid in order to comply with the applicable tender requirements. Accordingly, the Sanctions Board determines that it is more likely than not that the Director's misrepresentation of the Respondent's financial history in the Ethiopia Bid was intended to "influence a procurement process," as required under the definition of fraudulent practice set out in the May 2004 Procurement Guidelines; and the misrepresentations in the Uganda and Tanzania Bids were made to "obtain a financial or other benefit," such as the award of the Contracts, as required under the definition of fraudulent practice set out in the October 2006 Procurement Guidelines.

B. Liability of the Respondent for the Director's Misconduct

30. The Sanctions Board has previously considered that a respondent entity could be held directly and/or vicariously liable for the acts performed by its president, owner, and sole shareholder or its chief executive officer and authorized representative, acting in the course and scope of that individual's duties.[14] The record reveals that the Director was the Respondent's sole owner and only director at the time of the misconduct, and that she submitted the Bids in her capacity as the Respondent's director. On the basis of this record, the Sanctions Board concludes that the Respondent may be held directly and/or vicariously liable for the fraudulent practices carried out by the Director in the course and scope of her duties.

C. Sanctioning Analysis

1. General framework for determination of sanctions

31. 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

[13] See, e.g., Sanctions Board Decision No. 54 (2012) at para. 28; Sanctions Board Decision No. 60 (2013) at paras. 100-101.

[14] See, e.g., 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. 70 (2014) at para. 25 (finding liability for the respondent firm, which bore responsibility for the corrupt practice carried out by its sole shareholder and business manager).

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.

32. 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.[15] 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.[16]

33. The Sanctions Board is required to consider the factors set out 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. They 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.

34. 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

35. Section 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct and management's role as examples of severity.

36. *Repeated pattern of conduct*: INT asserts that the repetitive nature of the Respondent's fraudulent acts is an aggravating factor. Noting that the alleged misconduct related to three bids submitted over a three-month period from June to September 2010 for Bank-Financed Projects in three countries, the Sanctions Board finds that aggravation is warranted under this factor.[17]

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

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

[17] See, e.g., Sanctions Board Decision No. 41 (2010) at paras. 78, 88 (applying aggravation where the respondents' fraudulent practices involved multiple forgeries across several Bank-Financed Projects); Sanctions Board Decision No. 60 (2013) at para. 122 (applying aggravation where the respondents' misconduct related to four or more Bank-Financed Projects and took place over several years); Sanctions Board Decision No. 69 (2014) at para. 37 (applying aggravation where the respondent submitted forged bid securities with two separate bids for two Bank-financed contracts).

37. *Management's role in 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." As noted above, the record reveals that the Bids were signed by the Director, who was the Respondent's sole director and owner at that time, and who later admitted that she had included the Third Party's financial documents with the Respondent's Ethiopia Bid in order to meet the tender requirements. Accordingly, the Sanctions Board finds that the Director's direct involvement in the misconduct warrants aggravation for the Respondent.[18]

b. Voluntary corrective action

38. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a sanctioned party took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies an effective compliance program and internal action against responsible individuals as examples of voluntary corrective action, with the timing, scope, and quality of those actions 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.[19]

39. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines suggests that mitigation may be appropriate where the record shows a respondent's establishment or improvement and implementation of a corporate compliance program. According to the Response, the Respondent has implemented an "effective integrity compliance program," which "will be verified on a regular basis to ensure that any kind of misconduct and/or fraudulent behavior are prevented." However, the Respondent provided no evidence or details of the asserted integrity compliance program. Accordingly, the Sanctions Board finds no mitigation warranted on this ground.[20]

40. *Internal action against responsible individual*: 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." The Sanctions Board has previously rejected a respondent's request for mitigation based on internal action against a culpable employee where the respondent failed to substantiate its stated action with evidence,[21] or to show that such actions were taken in

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[18] See, e.g., Sanctions Board Decision No. 69 (2014) at para. 34 (applying aggravation for the involvement of the respondent's chairman and general manager); Sanctions Board Decision No. 70 (2014) at para. 32 (applying aggravation for the direct involvement of the respondent's sole shareholder and business manager).

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

[20] See, e.g., Sanctions Board Decision No. 47 (2012) at para. 51 (declining to apply mitigation where the respondent failed to present any evidence of its claimed corrective measures); Sanctions Board Decision No. 61 (2013) at para. 42 (declining to apply mitigation where the respondents asserted certain improvements to their bid preparation process, but provided no detailed description or corroborating evidence to support a finding that the asserted measures had been adopted and implemented).

[21] Sanctions Board Decision No. 44 (2011) at paras. 71-72.

response to the sanctionable practices at issue.[22] The Response asserts that the Director "regretted the misconduct for which she took full responsibility and agreed to resign from her position as the [Respondent's] sole director," and that she left the Respondent after a nine-month handover period. While the Response portrays the Director's departure as an element of the Respondent's reorganization in reaction to the misconduct, the record contains no evidence demonstrating the Director's asserted resignation or the reasons therefor. Accordingly, the Sanctions Board finds that the record does not reveal the type of internal action that may warrant mitigation.

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, admission or acceptance of guilt or responsibility, and voluntary restraint as examples of cooperation.

42. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance and/or ongoing cooperation, "[b]ased on INT's representation that the respondent has provided substantial assistance in an investigation," with consideration of the "truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." INT states that the Director's cooperation with INT is a mitigating factor. The transcript of INT's interview with the Director, who was the Respondent's owner and sole director at the time of the interview, confirms that the Director answered INT's questions with apparent candor, explaining, for instance, her incentive for including the Third Party's financial information in the Respondent's Ethiopia Bid. Accordingly, the Sanctions Board finds that the Director's cooperation with INT's investigation warrants mitigation for the Respondent.

43. *Internal investigation*: Section V.C.2 of the Sanctioning Guidelines refers to cooperation 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 be sanctioned and shared results with INT." In determining whether and to what extent an internal investigation warrants mitigating credit, the Sanctions Board considers whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience;[23] whether the respondent shared its investigative findings with INT during INT's investigation or as part of the sanctions proceedings;[24] and whether the respondent has demonstrated that it followed up on any investigative findings and recommendations.[25] According to the Response, the Parent Company's internal investigation of the Respondent

[22] Sanctions Board Decision No. 56 (2013) at para. 67.

[23] See Sanctions Board Decision No. 50 (2012) at para. 67.

[24] See Sanctions Board Decision No. 56 (2013) at para. 75.

[25] See Sanctions Board Decision No. 50 (2012) at para. 67.

revealed that "no other person besides [the Director] had been involved in the misconduct." However, the Respondent has not provided any evidence or details of the asserted internal investigation. Accordingly, the Sanctions Board finds that no mitigation is warranted on this ground.

44. *Admission or acceptance of guilt or responsibility*: Section V.C.3 of the Sanctioning Guidelines states that mitigation may be appropriate for a respondent's admission or acceptance of guilt or responsibility, with "[a]dmissions or full and affirmative acceptance of guilt or responsibility for misconduct earlier in the investigation" to be given more weight than admissions or acceptance coming later in the investigation or a subsequent proceeding. During her interview with INT, the Director admitted that she had submitted the Third Party's financial information in the Respondent's Ethiopia Bid in order to meet the tender requirements, and recognized that she should not have done so. In the Response, the Respondent appears to acknowledge the firm's responsibility for the Director's misconduct, seeking a lower or no sanction based on a number of asserted mitigating factors rather than on a denial of liability. In light of the above, the Sanctions Board finds that mitigation is warranted for the admission of the Respondent's Director during her interview and for the Respondent's acceptance of responsibility in the Response.

45. *Voluntary restraint*: Section V.C.4 of the Sanctioning Guidelines provides for mitigation where a sanctioned party has voluntarily refrained from bidding on Bank-financed tenders pending the outcome of an investigation. The Sanctions Board has previously declined to apply mitigation on this ground where respondents asserted that they had refrained from bidding on Bank-financed projects, but failed to provide evidence of a policy or practice of voluntary restraint.[26] According to the Response, the Respondent voluntarily refrained from bidding on Bank-financed tenders pending the final resolution of this case. However, the Respondent provided no evidence demonstrating that it had a policy or practice of voluntary restraint prior to its temporary suspension by the EO. Accordingly, the Sanctions Board finds that no mitigation is warranted on this ground.

d. Period of temporary suspension already served

46. 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 July 8, 2013.

e. Other considerations

47. 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."

[26] See, e.g., Sanctions Board Decision No. 60 (2013) at para. 135.

48. *Change in management/corporate identity*: According to the Response, mitigation is warranted based on the Respondent's "complete structural reorganization." The Sanctions Board has previously considered changes in the management and/or corporate identity of a respondent firm since the time of the misconduct, and applied mitigation where, for instance, a respondent provided detailed evidence of its equitization and restructuring.[27] By contrast, the Respondent in the present case has provided no evidence or details of its asserted structural reorganization. In addition, the statement in the Parent Company's Submission that it has withdrawn from its acquisition of the Respondent calls into question whether the asserted changes remain in effect. The Sanctions Board notes that such withdrawal reverses any change in management/corporate identity. In these circumstances, the Sanctions Board finds that no mitigation is warranted on this ground.

49. *Proportionality with non-contesting respondent*: In accordance with Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommended sanctions.[28] For purposes of proportionality, however, the Sanctions Board has previously considered the EO's recommended sanctions in cases involving both contesting and non-contesting respondents, taking into account the respective levels of culpability of the various parties.[29] In determining an appropriate sanction in this case, the Sanctions Board considers that the Director did not appeal and was consequently debarred for a minimum period of four years beginning on October 10, 2013, pursuant to the EO's recommendation in this sanctions case.

D. Determination of Liability and Appropriate Sanction

50. Considering the full record and all 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 two (2) years beginning on the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, improved its bid preparation policies and procedures. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines and Paragraph 1.14(a)(ii) of the October 2006 Procurement Guidelines.

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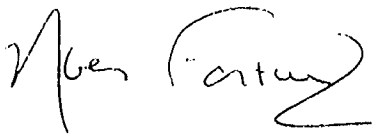
[27] Sanctions Board Decision No. 66 (2014) at para. 49.

[28] Sanctions Procedures at Section 8.01(b).

[29] See Sanctions Board Decision No. 41 (2010) at para. 87; Sanctions Board Decision No. 50 (2012) at para. 70.

51. 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 declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[30]



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

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

[30] 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).