

Date of issuance: October 16, 2012

**Sanctions Board Decision No. 54
(Sanctions Case No. 174)
IDA Credit No. 4052-BD
Bangladesh**

Decision of the World Bank Group Sanctions Board declaring the respondent entity in Sanctions Case No. 174 (“Respondent”), together with any entity that is an Affiliate¹ Respondent directly or indirectly controls, ineligible for a period of one (1) year to (i) be awarded a contract for any Bank-financed or Bank-executed project or program governed by the Bank’s Procurement Guidelines, Consultant Guidelines or Anti-Corruption Guidelines (hereinafter collectively referred to as “Bank-Financed Projects”),² (ii) be a nominated subcontractor, consultant, manufacturer or supplier, or service provider³ 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. The ineligibility shall extend across the operations of the World Bank Group.⁴ This sanction is imposed on Respondent for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the World Bank’s Guidelines for Procurement under IBRD Loans and IDA Credits (May 2004) (the “May 2004 Procurement Guidelines”). The period of ineligibility shall begin on the date this decision issues.

¹ In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted January 1, 2011 (the “Sanctions Procedures”), 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.”

² As in the Sanctions Procedures, the terms “World Bank” and “Bank” are here used interchangeably to refer to both the International Bank for Reconstruction and Development (“IBRD”) and the International Development Association (“IDA”). See Sanctions Procedures at Section 1.01(a), n.1.

³ In accordance with Section 9.01(c)(i), n.14 of the Sanctions Procedures, a nominated sub-contractor, consultant, manufacturer or supplier, or service provider 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.

⁴ In accordance with Section 1.02(a) of the Sanctions Procedures, the term “World Bank Group” means, collectively, IBRD, IDA, the International Finance Corporation (“IFC”) and the Multilateral Investment Guarantee Agency (“MIGA”). The term includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes (“ICSID”).

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on June 5, 2012, at the World Bank's headquarters in Washington, D.C., to review this case. The Sanctions Board was represented by L. Yves Fortier (Chair), Hassane Cissé, Marielle Cohen-Branche, Patricia Diaz Dennis, Hoonae Kim, and Hartwig Schafer. Neither Respondent nor the World Bank's Integrity Vice Presidency ("INT") requested a hearing on this matter. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.

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") to Respondent on June 30, 2011 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT;
- ii. Response submitted by Respondent to the Secretary to the Sanctions Board, dated September 29, 2011 (the "Response"); and
- iii. Reply in Support of Notice of Sanctions Proceedings, submitted by INT to the Secretary to the Sanctions Board, dated November 15, 2011 (the "Reply").

3. Pursuant to Section 4.01(c), Section 9.01, and Section 9.04 of the Sanctions Procedures, the EO recommended in the Notice that Respondent, together with any Affiliate Respondent directly or indirectly controls, be declared ineligible to (i) be awarded a contract for any Bank-Financed Projects, (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 to participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, after a minimum period of ineligibility of two (2) years, Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the Bank Group's Integrity Compliance Officer it has (a) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (b) put in place an effective integrity compliance program acceptable to the Bank and implemented this program in a manner satisfactory to the Bank.

4. Effective June 30, 2011, Respondent, together with any Affiliate Respondent directly or indirectly controls, was temporarily suspended from eligibility to be awarded additional contracts for Bank-Financed Projects or participate in new activities in connection with Bank-Financed Projects pending the outcome of this sanctions proceeding.

II. GENERAL BACKGROUND

5. This case arises in the context of the Bangladesh Health, Nutrition and Population Sector Program (the "Project"). On May 17, 2005, IDA and the People's Republic of Bangladesh (the "Borrower") entered into a Development Credit Agreement to provide

approximately US\$310 million to support the Project. The Project sought, among other objectives, to ensure increased access to reproductive health services. The Development Credit Agreement required goods, works, and services to be procured in accordance with the May 2004 Procurement Guidelines.

6. On March 25, 2009, the Bangladesh Ministry of Health and Family Welfare's Directorate General of Family Planning (the "DGFP") issued an Invitation for Re-Bids for the procurement of 720,000 sets of intrauterine contraceptive devices ("IUDs") under the Project. The tender required bidders to include evidence they (i) had received a satisfactory World Health Organization Good Manufacturing Practices ("WHO GMP") inspection certificate and (ii) had annual turnover of at least US\$1.25 million during one or more of the previous three years.

7. On May 6, 2009, Respondent submitted a bid in response to the DGFP tender. Respondent's bid included (i) a letter purportedly issued by the Drug Controller of the State of Uttar Pradesh (the "WHO GMP Letter" or the "Letter") stating an inspection was held on March 18, 2008, and issuing a WHO GMP certificate valid for five years based on the inspection report (the "WHO GMP Certificate" or "Certificate"); (ii) a copy of the purported WHO GMP Certificate; (iii) purported copies of Respondent's audited financial statements for three fiscal years; and (iv) a certificate from Respondent's auditors stating its sales turnover in 2005-2006 was approximately US\$1.15 million.

8. The DGFP awarded the contract to Respondent, despite its stated turnover below the US\$1.25 million threshold for the tender. On July 21, 2009, the DGFP and Respondent signed a contract for the supply of 720,000 sets of IUDs for US\$135,936 (the "Contract").

9. INT alleges the Letter and the Certificate were forgeries, and that Respondent engaged in fraudulent practices by submitting them with its bid for the DGFP tender.

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

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

12. The alleged sanctionable practice at issue has the meaning set forth in the May 2004 Procurement Guidelines, which governed the Project's procurement under the Development Credit Agreement. As set forth in Paragraph 1.14(a)(ii) of these Guidelines, the term "fraudulent practice" is defined as a "misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract." This definition of fraud does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward.⁵ The Sanctions Board has previously held the "knowing or reckless" standard may be implied under the pre-October 2006 definitions, however, because the legislative history of these definitions reflects the October 2006 incorporation of this standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.⁶

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

13. INT submits it is more likely than not Respondent engaged in fraudulent practices by knowingly submitting the forged WHO GMP Letter and WHO GMP Certificate with its bid in order to influence the procurement process. INT relies primarily on the following assertions:

- i. To meet the requirements set out in the bidding documents, Respondent included a WHO GMP Letter and WHO GMP Certificate purportedly issued by the Drug Controller for Uttar Pradesh State in its bid.
- ii. The Deputy Drugs Controller for the Central Drugs Standard Control Organization (North Zone) (the "Deputy Drugs Controller"), whose jurisdiction includes Uttar Pradesh State, confirmed no inspectors had carried out an inspection of Respondent as claimed in the Letter; and reported the individual who purportedly signed the Letter and issued the Certificate claimed his signature was "definitely forged."
- iii. In response to the DGFP's inquiries, Respondent did not address the authenticity of the documents. The DGFP then terminated the Contract for fraud and debarred Respondent and its Managing Director (the "Managing Director"), who was also Respondent's founder and controlling shareholder, for ten years.
- iv. The Managing Director admitted the Letter and Certificate were forgeries, and claimed they were prepared by a former employee of Respondent who was responsible for obtaining such certification (the "Consultant"). The Consultant, however, denied any role in the forgeries.

⁵ See, e.g., the definition of fraudulent practices in Paragraph 1.14(a)(ii) of the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 2006): "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).

⁶ See Sanctions Board Decision No. 41 (2010) at para. 75.

- v. Respondent is responsible for these misrepresentations, as the forged documents were prepared and submitted by Respondent's employee or consultant who was acting within the course and scope of his or her normal duties without adequate internal controls.
- vi. The 2005-2006 annual turnover stated in Respondent's bid exceeds the 2005-2006 annual turnover stated in the audited financial statements Respondent submitted to the Indian Ministry of Corporate Affairs. While there is insufficient evidence to determine which financial statements were falsified, the existence of two divergent sets of financial figures for the same fiscal year indicates "significant deficiencies in [Respondent's] internal controls."

14. INT asserts no aggravating factors apply. INT posits as mitigating factors the non-involvement of Respondent's management in the misconduct, Respondent's admission of misconduct and acceptance of responsibility, and its cooperation with INT's investigation.

B. Respondent's Principal Contentions in the Response

15. Respondent does not deny the Letter and Certificate were forged, and offers the following points in its defense:

- i. Respondent was the lowest bidder in the tender issued by the DGFP. After signing the Contract, the DGFP did not report any problems with the samples provided by Respondent, and asked the latter to deliver the goods.
- ii. Respondent was one of the first companies in the developing world to manufacture IUDs; has been ISO-certified; supplies products proven to be of international quality; had all other required certificates; and had no need to forge the WHO GMP Certificate, as it could easily have obtained such certification legitimately and at low cost.
- iii. When informed of the allegations it had submitted false documentation in its bid, Respondent investigated and found the Consultant had obtained the Letter and Certificate. The Managing Director signed the bid without verifying its contents because he trusted the Consultant, a former employee of many years and "vast experience"; he believed the Certificate looked genuine and he had no reason to doubt its authenticity.
- iv. The Consultant was the only person aware of the forgeries at the time. He subsequently left Respondent to work for the competitor firm that had very narrowly lost the tender by a unit price difference of US\$0.001 per device. The competitor then used the Consultant's knowledge of the forgery to sabotage Respondent.
- v. Respondent has cooperated with INT and accepts responsibility. Respondent expresses deep regret for including the forged documents in the bid as a result of carelessness, and points to its lack of ill motive. Respondent further states it

endeavors to maintain a high standard of probity and admits it “should not have submitted the impugned documents to any authority for any purpose.”

C. INT’s Reply

16. In its Reply, INT asserts the EO’s recommended sanction is appropriate. INT argues Respondent requests mitigation on grounds that are not relevant, such as the low price and high quality of Respondent’s goods; or that the EO has already credited, such as Respondent’s cooperation. INT also asserts there is insufficient evidence to support Respondent’s theory of sabotage by the Consultant and Respondent’s competitor.

V. THE SANCTIONS BOARD’S ANALYSIS AND CONCLUSIONS

17. The Sanctions Board first considers whether the record contains sufficient evidence to show it is more likely than not Respondent engaged in fraudulent practices by submitting the Letter and Certificate. The Sanctions Board then considers what sanctions, if any, should be imposed on Respondent.

A. Evidence of Fraudulent Practice

18. In accordance with the definition of fraudulent practices under the May 2004 Procurement Guidelines, INT bears the initial burden to show Respondent (i) made a misrepresentation or omission of facts (ii) that was knowing or reckless (iii) in order to influence the procurement process or the execution of a contract.

1. Misrepresentation or omission of facts

19. In past cases finding falsified bid documents, the Sanctions Board has relied primarily on written statements from the parties named in or supposedly issuing the documents, as well as the respondents’ own admissions.⁷ Here, the Deputy Drugs Controller confirmed no inspectors had carried out an inspection of Respondent as the Letter claimed and as a valid Certificate would require. He also reported the individual who purportedly signed the Letter and issued the Certificate claimed his signature on those documents was “definitely forged.” Respondent itself admits the documents were forged. This record suffices to show Respondent’s submission of the Letter and Certificate constituted a misrepresentation of facts.

2. Made knowingly or recklessly

20. As stated in the SAE and noted above, INT has the burden to prove it is more likely than not the misrepresentation was made either knowingly or recklessly.

⁷ See, e.g., Sanctions Board Decision No. 2 (2008) at para. 4 (stating the Sanctions Board “relied primarily” on a written statement from the documents’ purported issuer that the document had been forged, as well as the respondent’s oral and written admissions); Sanctions Board Decision No. 6 (2009) at para. 6 (stating the Sanctions Board “relied primarily” on the signed written statement of the individual whose CV had been submitted, stating the CV had been falsified, contained a forged signature and had been submitted without her consent, as well as the admission of the respondent’s former executive director).

21. The record does not support a finding Respondent made a knowing misrepresentation. While any individual creating or deliberately procuring and using a forgery would do so knowingly, INT does not allege, and the record does not show, that any specific individual acting on behalf of Respondent – such as the Managing Director, the Consultant, or another identified employee – personally created the forgeries or knowingly procured or submitted forged documents. Rather, INT specifically asserts it “has no evidence to indicate that [the Managing Director] was aware of, or involved in, the misconduct when it occurred”; and “submits that one cannot conclude whether or not [the Consultant or Managing Director] were involved in the preparation and submission of the false documents.”

22. With regard to an assessment of recklessness, the Sanctions Board has previously held it may consider whether circumstantial evidence indicates 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.⁸ Alternatively, where circumstantial evidence may be insufficient to infer subjective awareness of risk, the Sanctions Board may measure a respondent’s conduct against the common “due care” standard of the degree of care the proverbial “reasonable person” would exercise under the circumstances.⁹ In other words, the question is whether the respondent knew or should have known of the substantial risk presented.¹⁰ In the context of Bank-Financed Projects, 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.¹¹ Industry standards or customary or firm-specific business policies, procedures or practices may also be relevant in certain cases.¹²

23. The record supports a finding it is more likely than not Respondent acted recklessly in repeatedly submitting the forged Letter and Certificate in support of the bid, without any verification efforts or controls designed to ensure the documents’ authenticity.

24. The record shows Respondent submitted the forged documents to DGFP on three separate occasions. Respondent initially submitted the Letter and the Certificate in support of its bid for the first tender issued by the DGFP in September 2008. When that tender was canceled and re-bid, Respondent resubmitted the Letter and Certificate in support of its bid for the second tender in May 2009, which led to the Contract signed in July 2009. After Respondent had submitted its bid in the second tender, the DGFP inquired into the accuracy of Respondent’s representations regarding matters such as its financial turnover and product specifications. The record shows Respondent, in reply to these inquiries, then submitted various documents including a new copy of the Letter and Certificate.

⁸ See, e.g., Sanctions Board Decision No. 51 (2012) at para. 33.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

25. The record does not indicate Respondent at any time sought to verify the authenticity of the Letter and Certificate – even in the face of the DGFP’s specific questions as to the accuracy of Respondent’s documentation. Rather, the Managing Director stated he put “utmost faith and trust” in the Consultant who had prepared the bid package for his approval, and therefore signed and approved submission of the bid documents without verifying their contents. The Sanctions Board has previously rejected respondents’ attempts to deflect responsibility for fraud where, by their own admission, they relied on the honesty of their personnel in the absence of basic safeguards or controls to prevent and detect fraud.¹³ Here, despite the Managing Director’s expressed concern about the risks of “leaving things on others” to prepare, and his belief he needed to personally review bids to ensure quality, the record shows no internal review or control mechanisms designed to prevent or detect fraudulent practices of the type alleged. Respondent itself admits to including the forgeries in its bid as a result of “[the Managing Director’s] carelessness.”

26. The Sanctions Board is not persuaded by Respondent’s asserted defense it was the Consultant who obtained the forgeries and then – after moving to a competitor firm – reported the fraud to sabotage Respondent’s business. The record lacks sufficient evidence to ascribe such misconduct or motive to the Consultant, or even to establish whether the Consultant was working with Respondent on the DGFP tender and in the relevant time periods. In any event, regardless of the Consultant’s own role, it was Respondent that chose to rely upon the Consultant without any checks on his work.

27. The record raises other points that could potentially constitute further circumstantial evidence of recklessness, but are ultimately inconclusive as presented. First, a transcript of INT’s interview with the Managing Director shows he knew WHO GMP certificates are issued only after inspection by the relevant drug control authorities; and he admitted he did not know whether any such inspection had taken place before submitting the Certificate at issue. In response to INT’s questioning, the Managing Director stated he might not have been aware of an inspection due to his frequent travel; and that he would not necessarily make a point of keeping abreast of such an inspection because he did not consider WHO GMP certification to be “such a major certification” given its limited relevance for Respondent’s business. The record also shows WHO GMP certificates are issued for only two years, while the Letter stated the Certificate was valid for five years. The Managing Director asserted he learned of the two-year standard only later, however, after the events at issue. The record does not reflect further questioning or evidence on these points sufficient to clarify whether the Managing Director, in his position as head of a small medical-device company, could reasonably be expected to have been aware of these potential discrepancies as to an inspection or the validity period for certification. The lack of evidence is unfortunate. In the circumstances, the Sanctions Board cannot take into consideration this circumstantial evidence to inform its mens rea analysis.

¹³ See, e.g., Sanctions Board Decision No. 39 (2010) at paras. 56, 58; Sanctions Board Decision No. 47 (2012) at para. 33.

3. To influence the procurement process or the execution of a contract

28. The Sanctions Board finds Respondent submitted the Letter and Certificate in order to influence the procurement process for the Contract. As noted above, the DGFP tender required bidders to show they had received a satisfactory WHO GMP certificate. The record thus supports a finding it is more likely than not Respondent submitted the Letter and Certificate so as to be considered responsive to the tender and potentially win the Contract.¹⁴

29. For the reasons set out above, the Sanctions Board concludes the evidence shows it is more likely than not Respondent engaged in fraudulent practices in relation to the Contract. The Sanctions Board must therefore determine an appropriate sanction or sanctions.

B. Determination of Appropriate Sanctions

1. General framework for determination of sanctions

30. Where the Sanctions Board determines it is more likely than not 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 possible sanctions set out in Section 9.01 are: (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.

31. 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.¹⁶

32. The Sanctions Board is required to consider the types of 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 they are not intended to be prescriptive in nature, they provide a point of reference to help illustrate 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.

¹⁴ See, e.g., Sanctions Board Decision No. 47 (2012) at para. 28 (finding intent to influence the procurement process through use of fraudulent performance certificates and orders where the record showed the tenders expressly required documentation of each bidder's past performance and experience).

¹⁵ See Sanctions Board Decision No. 40 (2010) at para. 28.

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

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

2. Factors applicable in the present case

34. Section 9.02 of the Sanctions Procedures identifies a number of potentially relevant factors, which the Sanctions Board addresses in turn below.

a. Magnitude of the harm caused by the misconduct

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. Section IV.B of the Sanctioning Guidelines identifies harm to the project or to “public safety/welfare” as relevant.

36. As Respondent asserts, the record does not show evidence of delay or complaints regarding the quality of the products Respondent supplied under the Contract. But the record shows Respondent’s fraudulent practices deceived the tendering authorities and led the Borrower’s implementing agency to contract with a firm that repeatedly misrepresented its qualifications to supply medical devices. The Sanctions Board finds such consequences – in a sensitive area such as the health sector, and involving medical products, which require heightened diligence from manufacturers and suppliers – to be an aggravating factor.¹⁷

b. Minor role in the misconduct

37. Section 9.02(e) of the Sanctions Procedures provides for mitigation “where the sanctioned party played a minor role in the misconduct.” Section V.A of the Sanctioning Guidelines suggests such factor may apply where “no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct.”

38. INT asserts the non-involvement of Respondent’s management is a mitigating factor. The Sanctions Board does not find mitigation appropriate on this ground given the role of the Managing Director, who was also Respondent’s controlling shareholder at the time of the misconduct, in repeatedly submitting the forged documents without verification or controls.

c. Cooperation

39. 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 suggests cooperation may take the form of assistance with INT’s investigation, an internal investigation, admission or acceptance of guilt or responsibility, or voluntary restraint.

¹⁷ See Sanctions Board Decision No. 47 (2012) at para. 44.

40. The record reflects Respondent, through the Managing Director, met repeatedly with INT; provided substantial relevant information; and admitted and accepted responsibility for the misconduct. Respondent's cooperation thus warrants mitigation, as INT acknowledges.¹⁸

d. Period of temporary suspension already served

41. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by the sanctioned party. Respondent has been temporarily suspended since the Notice issued on June 30, 2011.

e. Other considerations

42. 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."

43. *National Debarment*: The Sanctions Board has previously considered as a mitigating factor the sanctions imposed on a respondent by the national agency implementing Bank-Financed Projects in that country.¹⁹ Here, the Sanctions Board takes into account that the DGFP debarred Respondent from participating in its tenders for ten years.

44. *Quality and Price of Respondent's Goods*: The Sanctions Board does not consider Respondent's purported low prices and high quality of products to warrant further mitigation, as Respondent suggests. The Sanctions Board has not previously recognized a respondent's claimed record of general performance, quality, prices and dependability as a relevant factor.²⁰ Moreover, while a respondent's incomplete performance in a project as a result of misconduct may be considered an aggravating factor, the Sanctions Board has not generally considered satisfaction of contract obligations a mitigating factor in itself.²¹

¹⁸ See, e.g., Sanctions Board Decision No. 46 (2012) at para. 41 (in response to INT's show-cause letter, respondent retained counsel to review the matter, questioned relevant employees, provided a substantive written response to INT, and expressed regret and acceptance of ultimate responsibility for its employee's fraudulent conduct); Sanctions Board Decision No. 47 (2012) at para. 53 (respondent took steps to carry out its own inquiry into allegations, met with INT, made a former employee available to INT for interview, and provided business records).

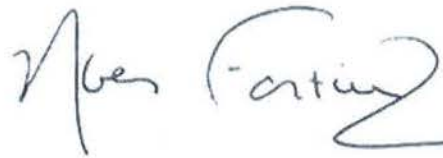
¹⁹ See Sanctions Board Decision No. 2 (2008) at para. 7.

²⁰ See Sanctions Board Decision No. 47 (2012) at para. 57.

²¹ See, e.g., Sanctions Board Decision No. 29 (2010) at paras. 23, 34 (not taking into account as a mitigating factor the fact the respondent had left no assignment "incomplete or undone" under the contract); Sanctions Board Decision No. 44 (2011) at para. 63 (applying aggravation for substantial delays, risks of structural damage to contract works and waste of the borrower's time and resources occasioned by the respondent's misrepresentations, even though the respondent completed the work, thereby capping, but not negating, the total damages); Sanctions Board Decision No. 53 (2012) at para. 67 (declining to grant mitigation for the respondent's purported satisfactory completion of the contract).

3. Determination of appropriate sanction for Respondent

45. Considering the full record and all the factors discussed above, the Sanctions Board hereby determines Respondent, together with any entity that is an Affiliate Respondent directly or indirectly controls, shall be, and hereby declares that it is, ineligible for a period of one (1) year to (i) be awarded a contract for any Bank-Financed Projects, (ii) be a nominated subcontractor, 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. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on Respondent for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines. 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

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