THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: March 7, 2013

Sanctions Board Decision No. 55
(Sanctions Case No. 159)
IDA Credit No. 4018-IN
India

Decision of the World Bank Group Sanctions Board declaring the respondent entity in Sanctions Case No. 159 ("Respondent"), together with any entity that is an Affiliate[1] Respondent directly or indirectly controls, ineligible 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 provider[3] 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, for a period of six (6) months. 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.

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[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.[5]

2. A hearing was held at the request of Respondent and of the World Bank Group's Integrity Vice Presidency ("INT"), in accordance with Article VI of the Sanctions Procedures. INT participated in the hearing through its representatives attending in person. Respondent was represented by its Emeritus Officer and official representative, its General Counsel, and its outside counsel. The Sanctions Board deliberated and reached its decision based on the written record and the evidence and arguments presented at the hearing.

3. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following pleadings as well as other correspondence:

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO") to Respondent on March 31, 2011 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT;

ii. Explanation submitted by Respondent to the EO on June 27, 2011 (the "Explanation");

iii. Response submitted by Respondent to the Secretary to the Sanctions Board on September 2, 2011, as corrected September 6, 2011 (the "Response");

iv. Reply in Support of Notice of Sanctions Proceedings, submitted by INT to the Secretary to the Sanctions Board on October 12, 2011 (the "Reply");

v. Supplemental Response to Notice of Sanctions submitted by Respondent to the Secretary to the Sanctions Board on February 21, 2012 (the "Supplemental Response"); and

vi. Supplemental Reply in Support of Notice of Sanctions Proceedings submitted by INT to the Secretary to the Sanctions Board on April 9, 2012 (the "Supplemental Reply").

4. 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

[5] Ms. Kim and Mr. Schafer participated in the hearing, deliberations, and decision in this case prior to their replacement on the Sanctions Board.

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 one (1) year, 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 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.

5. Effective March 31, 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 final outcome of the sanctions proceedings.

II. GENERAL BACKGROUND

6. This case arises in the context of the Tamil Nadu Health Systems Project (the "Project"). On January 5, 2005, IDA and the Republic of India (the "Borrower") entered into a Development Credit Agreement (the "DCA") to provide US$110.83 million equivalent in IDA credit for the Project. The Project seeks to improve the effectiveness of the health system in the State of Tamil Nadu ("Tamil Nadu") by, among other things, increasing access to critical health services for poor, disadvantaged, and tribal groups. The DCA provides for the establishment of at least two comprehensive emergency obstetrical and neonatal care centers in each district of Tamil Nadu with a view to reducing maternal and neonatal mortality.

7. On the same date, IDA and Tamil Nadu, as the Implementing Government Unit, entered into a Project Agreement (the "Project Agreement"). The Project Agreement required all goods, works, and services (other than consultants' services) to be procured in accordance with, inter alia, the provisions of Section I of the May 2004 Procurement Guidelines regarding fraud and corruption.

8. On July 21, 2008, the Tamil Nadu Medical Service Corporation Ltd. ("TNMSC") issued bidding documents for a contract to supply 130 ultrasound scanners (the "Contract") under the Project. The bidding documents required the submission of performance certificates attesting to the satisfactory performance of ultrasound scanners manufactured and supplied by each bidder.

9. On September 3, 2008, Respondent submitted a bid for the Contract. Respondent's bid was submitted by its employee and authorized representative who served as a Regional Business Head (the "Regional Business Head") in Respondent's Medical Equipment and Systems unit (the "Medical Unit"). Respondent's bid appended 115 performance certificates purportedly issued by medical facilities stating ultrasound scanners supplied by Respondent had been working satisfactorily.

10. The bids were opened September 4, 2008. Upon technical and financial evaluation, Respondent's bid appeared to be the lowest-priced responsive bid. TNMSC subsequently received a complaint that some of the contested certificates might be forged, however, and asked Respondent to explain. On November 29, 2008, the Regional Business Head wrote to TNMSC to explain why some medical facilities may have mistakenly denied issuing certificates. The Regional Business Head asked that Respondent "not be viewed as [having] indulged in 'fraudulent practice.'" On December 20, 2008, TNMSC requested a letter of no-objection from the Bank to cancel the tender and renew the bidding process with revised conditions, as all other technically responsive bidders had been found non-responsive on commercial points. On December 30, 2008, TNMSC informed Respondent the tender had been cancelled. On June 15, 2009, the Contract was awarded to another firm through a new bidding process.

11. INT alleges Respondent engaged in fraudulent practices by submitting forged performance certificates with its bid.

III. APPLICABLE STANDARDS OF REVIEW

12. 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.

13. 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.

14. 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 Project Agreement, and whose definition of fraudulent practice was repeated in the bidding documents for the Contract. 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 does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward.[6] 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

[6] The definition of fraudulent practices in Paragraph 1.14(a)(ii) of the 2006 Procurement Guidelines is "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).

incorporation of this standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.[7]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

15. INT submits it is more likely than not Respondent engaged in fraudulent practices by knowingly or at least recklessly submitting thirteen forged certificates with its bid in order to influence the procurement process for the Contract. INT relies primarily on the following assertions:

i. After reviewing a random sample of nineteen performance certificates attached to Respondent's bid, INT received confirmation from the purported issuers of thirteen of the certificates that the documents were forgeries.

ii. The Regional Business Head admitted to submitting a number of false certificates in order to save time in bid preparation.

iii. Respondent may be held liable for the submission of the forged certificates as its Regional Business Head knowingly, or at least recklessly, committed the acts in the course of the company's business and on behalf of Respondent.

iv. Respondent's submission of performance certificates was a requirement under the bidding documents and was therefore intended to influence the procurement process for the Contract.

16. INT asserts the repetitive nature of the fraudulent practice as an aggravating factor, as Respondent submitted multiple forged certificates. INT submits mitigation may be appropriate because Respondent met with INT, identified the Regional Business Head, and asked for his resignation.

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

17. Respondent contests INT's accusations and seeks dismissal of the proceedings on the following principal grounds:

i. While it is undisputed the Regional Business Head engaged in a fraudulent practice by submitting forged performance certificates, INT fails to provide any evidence to support a finding Respondent should be held liable for these acts taken without Respondent's knowledge, consent, or encouragement.

ii. INT seeks inappropriately to use a strict liability standard, which is inconsistent with the purpose and legislative history of the World Bank's

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

sanctions system, the standard used by INT in other cases, and national legal systems.

iii. The sanctions proceedings must be dismissed due to "fundamental deficiencies" in the World Bank's sanctions regime and INT's investigation, which fail to meet international standards.

18. Respondent further asserts that, should the Notice not be withdrawn, any sanction should be limited to a non-public reprimand given the absence of any aggravating factors and the presence of various mitigating factors including Respondent's minor role in the misconduct, broad corrective actions, cooperation with INT's investigation, substantial revenue losses due to its temporary suspension, and its position in the national business community.

C. INT's Reply

19. In its Reply, INT rejects Respondent's arguments regarding the asserted inadequacy of the Bank's sanctions regime, INT's investigation, and the evidence presented. INT asserts:

i. The Bank's sanctions process, including temporary suspension, is consistent with the framework approved by the Bank's Executive Directors, due process, and the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") among multilateral development banks.

ii. INT collected sufficient evidence to prove the falsity of the performance certificates, mainly by contacting their purported issuers. Because Respondent admitted and apologized for its misconduct when confronted with this evidence, there was no need to further establish Respondent's misconduct.

iii. The record of INT's interview with the Regional Business Head conducted in September 2011 (the "Record of Interview"), as attached to the Reply, shows Respondent's "rogue employee" defense lacks merit. The Regional Business Head's actions in preparing and submitting the bid with forged certificates were taken within the scope of his authority, with the knowledge of Respondent's management, and in the absence of any corporate governance training or controls.

20. INT seeks an increased period of debarment in view of the Record of Interview, which shows that Respondent failed to provide all relevant evidence and that some of the mitigating factors taken into account by the EO "are not as reliable as they first appeared."

D. Respondent's Principal Contentions in the Supplemental Response

21. Having sought and received the Sanctions Board Chair's authorization to make an additional submission following INT's introduction of new evidence in the Reply, Respondent filed a Supplemental Response that (i) reiterates Respondent's request to dismiss the sanctions proceedings; (ii) asserts INT's Record of Interview is unreliable, was improperly conducted,

and should be excluded from the record; (iii) requests INT produce "its investigations manuals, policies, procedures, and guidelines . . . together with all other supporting authorities and materials cited in the Reply"; (iv) presents additional evidence, including a verbatim transcript of Respondent's own interview with the Regional Business Head in November 2011 (the "Transcript of Interview"), which, according to Respondent, shows that INT acted improperly and that the Regional Business Head refuted INT's case; (v) asks the Sanctions Board to immediately terminate or narrow the scope of Respondent's temporary suspension; and (vi) requests that a hearing be held within two weeks.

E. INT's Supplemental Reply

22. With the Sanctions Board Chair's authorization, INT filed a Supplemental Reply in which INT argues that the Sanctions Board should deny Respondent's requests to (i) dismiss the sanctions proceedings, (ii) exclude INT's Record of Interview, and (iii) lift or limit the temporary suspension. With regard to the Regional Business Head's testimony, INT argues that it properly conducted its interview to clarify inconsistencies and rebut arguments in Respondent's Explanation and Response. INT further argues that Respondent's own Transcript of Interview refutes Respondent's "rogue employee" defense and supports INT's allegations. Regarding Respondent's claim that it has been harmed and denied due process because no hearing had been set as of the date of the Supplemental Response, INT submits it was Respondent that caused delay by requesting additional time to further investigate and prepare an additional written submission.

F. Presentations at the Hearing

23. At the hearing, INT reiterated its main arguments that Respondent is responsible under the doctrine of respondeat superior for the Regional Business Head's repeated fraudulent acts in submitting thirteen forged certificates because the Regional Business Head was a senior employee acting within the scope of his employment and in his employer's interests; the Regional Business Head did not act alone to procure the forgeries; and Respondent lacked sufficient internal controls to prevent or detect the type of misconduct alleged. INT argued that a sanction should take into account the heightened standard of due diligence required of firms working in the health sector; Respondent's willful blindness or recklessness in operating without any demonstrated controls; the inadequacy of Respondent's remedial action against the Regional Business Head alone; and Respondent's delay in conducting an internal investigation. INT asserted a sanction limited to Respondent's Medical Unit would be practically impossible to implement; and asked the Sanctions Board to debar Respondent itself, which used its own name and standing to submit the bid.

24. Respondent stated it accepted liability for the Regional Business Head's fraudulent submission of forged certificates, and conceded it had failed to put in place appropriate internal controls to prevent or detect such misconduct. Respondent denied culpability as opposed to responsibility, however, because its management had not directly participated in or directed the misconduct carried out by the Medical Unit. Respondent asserted any debarment would be inappropriate in view of (i) new Bank guidance stating that sanctions need not be applied to an entire entity where only an identifiable business unit was responsible, and

broader application is not reasonably necessary to prevent evasion; and (ii) a range of applicable mitigating factors and the absence of aggravating factors. Respondent requested any sanction be limited to a letter of reprimand or conditional non-debarment.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

25. The Sanctions Board first considers various procedural matters Respondent raised in the sanctions proceedings. The Sanctions Board then considers (i) whether the submission of forged performance certificates by Respondent's Regional Business Head constitutes a fraudulent practice, and (ii) whether Respondent may be held liable for the Regional Business Head's acts. Finally, the Sanctions Board considers what sanctions, if any, should be imposed on Respondent.

A. Procedural Determinations

1. Respondent's motion to dismiss the sanctions proceedings based on "fundamental deficiencies" in the Bank's sanctions regime and INT's investigation

26. Respondent argues the sanctions proceedings must be dismissed because the legal framework of the sanctions regime, particularly regarding temporary suspension, fails to satisfy core principles of justice and due process. Article III of the Sanctions Board Statute as revised September 15, 2010 (the "Sanctions Board Statute") provides that the Board "shall review and take decisions in sanctions cases and perform other detailed functions and responsibilities as set forth in the Sanctions Procedures." Article IV of the Sanctions Board Statute provides, "In the event of a dispute as to whether the Sanctions Board has competence over a particular matter, the Sanctions Board shall decide whether it has the authority to handle such matter under this Statute." Neither the Sanctions Board Statute nor any provision of the Sanctions Procedures suggests the Sanctions Board's jurisdiction should encompass review of the legal adequacy of the general sanctions framework, as opposed to individual sanctions cases. Nor does Respondent identify any fundamental inconsistencies or shortcomings in the Bank's sanctions framework leading to a lack of due process in the immediate proceedings. The Sanctions Board thus denies Respondent's motion on this ground.

27. Respondent also seeks dismissal due to alleged flaws in INT's investigation, particularly INT's alleged failure to seek sufficient information on the circumstances of the forgeries to determine Respondent's potential liability for the Regional Business Head's acts. In accordance with Section 7.01 of the Sanctions Procedures, the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered. Such analysis may include consideration of the manner or timing of a party's efforts to seek or obtain certain evidence, or failure to seek or obtain other evidence. The record here shows that both INT and Respondent rely upon the Regional Business Head's conduct and statements to support their respective arguments on liability. The Sanctions Board notes that INT interviewed the Regional Business Head only after submitting its SAE, and that Respondent interviewed the Regional Business Head only after submitting its Response. Despite the belated timing of these interviews, each party has had the opportunity, through

supplemental pleadings and oral presentations, to respond to the other party's evidence and arguments. The Sanctions Board finds the totality of the final record sufficient to assess Respondent's potential liability. Although the belated timing of INT's interview is not in line with investigatory best practices, the Sanctions Board finds no fundamental procedural flaw in this respect that affected Respondent's ability to mount a meaningful defense.

2. Respondent's request to exclude the Record of Interview attached to INT's Reply

28. Respondent asks that INT's Record of Interview be excluded from the record. The Sanctions Board denies such request. As stated above, the Sanctions Board finds that the belated introduction of the Regional Business Head's interview statements has caused no prejudice to either party. In particular, the timing of INT's submission of the Record of Interview with its Reply does not dictate the Record of Interview be excluded. Section 5.01(b) of the Sanctions Procedures defines the Reply as "a written reply to the arguments and evidence contained in the Response." Neither Section 5.01(b) nor any other provision of the Sanctions Procedures prohibits INT from submitting additional evidence with its Reply, or requires INT to seek prior permission to do so, so long as such evidence responds to the arguments and evidence in the Response. In the present case, the Sanctions Board is of the view that INT's submission and use of its Record of Interview with the Regional Business Head responds to Respondent's assertion in its Response that the Regional Business Head had acted alone and without management's knowledge, consent, or encouragement.

29. Respondent also objects to the Record of Interview because the document is non-verbatim and not signed by the Regional Business Head. The Sanctions Board has previously held that the appropriate weight to be accorded summary records of interviews must take into account that such evidence lacks the intrinsic accuracy of verbatim transcripts, particularly where there is no indication that the interviewee reviewed or signed a summary to attest to its accuracy.[8] The Sanctions Board has considered these factors in weighing the probative value of the Record of Interview here. Having done so, the Sanctions Board sees no basis to exclude it from consideration solely because it is non-verbatim and not signed. INT's Record of Interview expressly notes that INT did not make a verbatim recording of the interview or ask the Regional Business Head for his signature because the Regional Business Head was reluctant to speak with INT and the interview was conducted by telephone. The Sanctions Board recognizes that a witness's review and signature, while preferable, are not always possible to obtain. Moreover, the Sanctions Board finds that the content of INT's Record of Interview is consistent in key respects with the content of Respondent's subsequent Transcript of Interview with the same individual.

30. Finally, Respondent asserts that the Record of Interview was obtained through harassment and misrepresentations. Respondent has adduced evidence that INT made repeated efforts to interview the Regional Business Head, but there is no evidence that INT engaged in any type of misconduct that would warrant exclusion from the record of the statements thus

[8] See, e.g., Sanctions Board Decision No. 40 (2010) at para. 26; Sanctions Board Decision No. 41 (2010) at para. 45; Sanctions Board Decision No. 45 (2011) at para. 34; Sanctions Board Decision No. 50 (2012) at para. 40.

obtained. The record shows, for example, that the Regional Business Head was initially reluctant to speak with INT, but that he ultimately agreed to speak on two consecutive days, at times suggested by himself. Furthermore, the record does not support Respondent's assertions that INT misled the Regional Business Head into believing that no proceedings were pending against Respondent, and that his statements would not be used in any proceedings. According to the Record of Interview, INT informed the Regional Business Head that "the Bank sanctions system would hold the company responsible for the matter." Moreover, Respondent's Transcript of Interview indicates the Regional Business Head acknowledged that INT's investigator had said INT would take action against Respondent. He also stated that INT's investigator did not explicitly say whether the content of the interview would be produced or not.

3. Respondent's request that INT produce investigations manuals and other materials

31. Respondent asks the Sanctions Board to compel INT to produce, for both the Sanctions Board's and Respondent's review, "its investigations manuals, policies, procedures, and guidelines which were in effect at any time from the commencement of its investigation in this matter up to the date of its interview of [the Regional Business Head], together with all other supporting authorities and materials cited in its Reply." Respondent does not identify with specificity any authorities or materials that INT has cited, but failed to produce, for purposes of the latter category.

32. Section 7.03 of the Sanctions Procedures, titled "No Discovery," reads in full: "Except as expressly provided for in these Procedures, the Respondent shall have no right to review or obtain any information or documents in the Bank's possession." Under Section 3.02 of the Sanctions Procedures, "INT shall present all evidence in INT's possession that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability." The Sanctions Board fails to see how the investigations manuals or other requested documents fall within the scope of Section 3.02. The Sanctions Board thus denies Respondent's request.

4. Respondent's request for permission to submit additional materials under Section 5.01(c) of the Sanctions Procedures

33. As noted above, Respondent sought and received the Sanctions Board Chair's authorization to file a Supplemental Response following INT's introduction of new evidence (namely, INT's Record of Interview with the Regional Business Head) in the Reply filed on October 12, 2011. On January 3, 2012, Respondent submitted its request for permission to submit additional materials under Section 5.01(c) of the Sanctions Procedures, which provides, "In the event that additional material evidence becomes available to INT or to the Respondent after the applicable deadlines for the submission of written materials have passed, but prior to the conclusion of any hearing to be held on the matter, the Sanctions Board Chair may, as a matter of discretion, authorize such additional evidence to be submitted, together with a brief argument predicated upon such evidence."

34. The Record of Interview attached to INT's Reply qualifies as "additional material evidence" under Section 5.01(c) of the Sanctions Procedures, as it contains new and relevant information concerning a key individual. It was made available to Respondent after the deadline for its Response. INT did not object to Respondent's request to file additional materials in response to the Record of Interview, but sought permission to respond to any additional evidence and arguments thus filed by Respondent. In his discretion, and having considered the applicable standards and the parties' arguments, the Sanctions Board Chair granted Respondent permission to submit additional arguments and evidence under Section 5.01(c) (the Supplemental Response). The Chair also authorized INT to submit additional arguments and evidence in reply to Respondent's additional submission (the Supplemental Reply).

5. Respondent's request to lift or limit the temporary suspension

35. In its submissions, Respondent asked the Sanctions Board to lift the temporary suspension imposed by the EO, or limit its application to Respondent's Medical Unit. Section 4.02(a) of the Sanctions Procedures provides, "In cases where the Evaluation Officer recommends a sanction including a minimum period of debarment exceeding six months, the Respondent . . . shall be temporarily suspended from eligibility to be awarded contracts for Bank Projects or to participate in new activities in connection with Bank Projects."

36. Respondent's temporary suspension followed from the EO's recommendation that Respondent be debarred for a minimum period of one year. The Sanctions Procedures provide that such suspension shall remain in effect "until the date of the final outcome of the sanctions proceedings," as set out in Section 4.02(a), unless the EO decides to terminate the suspension earlier, upon review of a respondent's Explanation, pursuant to Section 4.02(c). The Sanctions Procedures do not otherwise provide for termination or modification of a temporary suspension, and the Sanctions Board has therefore denied Respondent's request.

6. Respondent's request to hold a hearing within two weeks from the submission of the Supplemental Response

37. Respondent requested in its Supplemental Response of February 21, 2012, that a hearing be held "within two weeks." As Respondent was informed on February 23, 2012, in accordance with Articles VII, VIII, and XII of the Sanctions Board Statute, the Sanctions Board holds sessions on dates to be determined by the Sanctions Board Chair or the Panel Chair, as the case may be. Consistent with this statutory framework and the Sanctions Board's usual practice, the hearing requested by Respondent and INT was held at the first available session following the close of pleadings. As noted earlier, the pleadings phase itself was extended at Respondent's request to permit the submission of additional materials under Section 5.01(c). Respondent's request was therefore denied.

7. Respondent's requests to bring unlimited and unspecified attendees to the Sanctions Board hearing

38. Following the Secretariat's request to both parties to propose attendees for the hearing for the Sanctions Board Chair's approval, Respondent failed to do so and did not request an

extension of time to make such submission. Respondent's counsel later asserted that the Sanctions Board lacked authority to require such information. Counsel maintained that Respondent had the right to bring an unlimited number of unidentified attendees to the hearing.

39. Article XI of the Sanctions Board Statute provides that, in matters not otherwise addressed in the Sanctions Board Statute, Code of Conduct, Sanctions Procedures, or other formal guidelines issued by the Bank in respect of sanctions proceedings, the Sanctions Board shall follow the instructions of the Sanctions Board Chair for its operation. With regard to the conduct of hearings specifically, the Sanctions Board's Hearing Guidelines, as communicated to the parties, state, "The Sanctions Board Chair may impose reasonable limits on attendance." As the parties were informed prior to the hearing, representation at Sanctions Board hearings is customarily limited to a maximum of four individuals per side. In the present case, the Sanctions Board Chair determined, as a matter of discretion, to accept up to five representatives per side. Parties must provide in a timely fashion the name and position of each proposed attendee so that the Sanctions Board Chair may exercise his authority to approve reasonable attendance, and appropriate logistical arrangements can be made. The efficient administration of proceedings necessitates compliance with such basic requirements.

8. Respondent's post-hearing motion to dismiss

40. Following the hearing, Respondent submitted a new motion to dismiss the proceedings based upon a statement by a representative of INT during the hearing. In response to a question regarding Respondent's other Bank-financed contracts, INT's representative expressed concern of other potential misconduct involving Respondent, but said INT lacked sufficient proof. The Sanctions Board Chair then stated INT's remark would be disregarded. No further reference to, or consideration of, such other potential misconduct followed.

41. Respondent argues that INT's reference to other potential misconduct was inconsistent with minimum standards of fairness and due process and, had this been a jury trial, would have required an immediate declaration of mistrial. Respondent asserts INT's statement makes it difficult or even impossible for the Sanctions Board to fairly and impartially evaluate Respondent's potential liability, particularly when Respondent has asserted in its defense that the fraudulent practice alleged in this matter was an isolated incident, not indicative of any systemic misconduct. INT denies its statement was improper or prejudicial.

42. The parties were informed on August 21, 2012, that the Sanctions Board had denied the motion to dismiss and that reasons would follow in the present decision. The Sanctions Board is not a jury. The present proceedings are administrative in nature, without formal rules of evidence. The statement by INT's representative did not, in any way, prejudice Respondent. Immediately after the statement, the Sanctions Board Chair stated that the Sanctions Board would disregard the statement. In fact, during its deliberations, the Sanctions Board did not consider the statement. It considered and determined Respondent's liability solely on the basis of the evidence accepted into the record.

B. Evidence of Fraudulent Practices

43. As stated earlier, in accordance with the allegations in the SAE and the applicable definition of fraudulent practices under the May 2004 Procurement Guidelines, INT bears the initial burden of showing that Respondent (i) made a misrepresentation of facts (ii) that was knowing or reckless (iii) in order to influence the procurement process or the execution of the Contract.

1. Misrepresentation of facts

44. In previous cases concerning fraudulent bid documents, the Sanctions Board has relied on written statements from the parties named in the documents or ostensibly issuing them, as well as the respondents' own admissions.[9] In this case, the ostensible issuers of thirteen performance certificates attached to Respondent's bid informed INT that the documents had not been issued by their respective hospitals and/or clinics. In addition, Respondent admitted that its bid submission included a large number of false certificates. Considering the ostensible issuers' confirmations of forgery as well as Respondent's own admission, the Sanctions Board finds it more likely than not that Respondent engaged in misrepresentations of fact by submitting thirteen forged performance certificates with its bid for the Contract.

2. Made knowingly or recklessly

45. To support its allegation that Respondent acted knowingly or at least recklessly in submitting the forged performance certificates, INT refers to the fact the Respondent submitted multiple forged certificates, as well as the Regional Business Head's written admission of having prepared the false certificates for the bid.

46. The Sanctions Board does not agree with INT's argument that submitting multiple forged certificates together necessarily leads to the conclusion that the party making such submissions acted knowingly or recklessly. Nor does the Sanctions Board rely upon the content of the written resignation letter, the accuracy of which is unclear. However, other evidence in the record does support a finding of knowledge. The Regional Business Head repeatedly stated that the forgeries would have been known to his supervisor and others in the company at the time, because the forgeries were apparent on the face of the certificates themselves. While Respondent denies the bid was submitted for supervisory approval, in the view of the Sanctions Board, the Regional Business Head's statements lead to the conclusion that the certificates' lack of authenticity would have been readily apparent at least to the Regional Business Head himself. On this basis, the Sanctions Board finds it more likely than not that the Regional Business Head knowingly submitted falsified documents with the bid.

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[9] See, e.g., Sanctions Board Decision No. 46 (2012) at para. 23 (stating the Sanctions Board considered a written statement from the respondent's purported joint venture partner that its signature on the joint venture agreement and power of attorney submitted by the respondent was forged, as well as an admission from the respondent that its logistics officer had signed the agreement without authorization); Sanctions Board Decision No. 52 (2012) at paras. 20-22 (stating the Sanctions Board considered written evidence from the purported issuer of respondent's bid security that the document was forged, as well as the respondent's acknowledgement of "false documentation").

3. In order to influence the procurement process

47. INT asserts that Respondent's submission of forged documents was made in order to influence the procurement process, because the submission of performance certificates was a necessary tender requirement for the Contract. In the Response, Respondent concedes, "There is no dispute that [the Regional Business Head] submitted forged performance certificates with the subject bid and that he did this to influence the procurement process." On this record, and consistent with past decisions finding fraudulent intent where respondents submitted falsified versions of documents required under a tender,[10] the Sanctions Board finds it more likely than not that the misrepresentations were made in order to influence the procurement process for the Contract.

C. Respondent's Liability for the Acts of Its Employee

48. The Sanctions Board will now consider Respondent's liability for the Regional Business Head's bid submission on Respondent's behalf.

49. The Sanctions Board has often concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, including in multiple cases of forgery or other fraudulent practices.[11] In each case, the Sanctions Board has considered the specific facts and circumstances in the record, such as whether the employee acted within the course and scope of his or her employment;[12] whether the employee, when committing the sanctionable practice, was motivated at least in part by a purpose to serve the company;[13] and whether the employer, at the time of the alleged misconduct, had supervision or control measures in place that should have been sufficient to prevent or detect that type of misconduct.[14] For example, where an employer asserted it simply relied upon the honesty of its employees, and failed to implement any controls such as "a basic 'four-eye-principle' (*i.e.*, a review by someone other than the individual who forged each Authorization . . .)," and the

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[10] See, e.g., Sanctions Board Decision No. 49 (2012) at para. 26; Sanctions Board Decision No. 54 (2012) at para. 28.

[11] See, e.g., Sanctions Board Decision No. 31 (2010) at para. 24; Sanctions Board Decision No. 36 (2010) at para. 39; Sanctions Board Decision No. 37 (2010) at para. 41; Sanctions Board Decision No. 39 (2010) at para. 56; Sanctions Board Decision No. 44 (2011) at para. 52; Sanctions Board Decision No. 46 (2012) at para. 27; Sanctions Board Decision No. 47 (2012) at para. 32; Sanctions Board Decision No. 48 (2012) at para. 28; Sanctions Board Decision No. 51 (2012) at para. 75.

[12] See, e.g., Sanctions Board Decision No. 48 (2012) at para. 29; Sanctions Board Decision No. 50 (2012) at para. 50; Sanctions Board Decision No. 51 (2012) at paras. 42, 76; Sanctions Board Decision No. 52 (2012) at para. 32.

[13] See, e.g., Sanctions Board Decision No. 46 (2012) at para. 29.

[14] See, e.g., Sanctions Board Decision No. 36 (2010) at para. 39; Sanctions Board Decision No. 37 (2010) at para. 42; Sanctions Board Decision No. 46 (2012) at para. 29; Sanctions Board Decision No. 47 (2012) at para. 33; Sanctions Board Decision No. 48 (2012) at para. 30.

Sanctions Board has found no evidence supporting a "rogue employee" defense, it found the employer responsible for the actions of employees acting on the employer's behalf.[15]

50. In view of the Sanctions Board's consistent application of such fact-specific analyses to assess an employer's potential liability, Respondent's complaint that it has been unfairly subjected to a strict liability standard is unpersuasive. Respondent's invocation of national law standards is also unavailing. As the Sanctions Board has held previously, the Sanctions Board Statute and the Sanctions Procedures provide no basis for importing a national law framework as controlling in the Bank's sanctions proceedings.[16]

51. The record reveals that the Regional Business Head was in charge of managing the Medical Unit's commercial, marketing, and bid activities at the regional level, and was Respondent's authorized representative for the bid in the present case. Nothing in the record suggests he acted out of any motive other than to serve the company; to the contrary, his interview statements support a finding that he submitted the bid with the forged certificates with the intention of carrying out his duties to Respondent. The submission of performance certificates thus fell within the course and scope of his employment and was carried out on behalf of Respondent.

52. Respondent argues that the Regional Business Head acted on his own and without management's awareness, approval, or instructions. As the Sanctions Board has previously held, however, INT is not required to show that a particular employee was specifically authorized or instructed to commit fraudulent or other sanctionable practices. The relevant question is rather whether the employee's misconduct was – as in the present case – "a mode, albeit an improper mode" of carrying out an assigned duty.[17]

53. With regard to the scope and adequacy of Respondent's controls or supervision at the time of the misconduct, Respondent submitted a copy of its corporate Code of Conduct, and asserted in its Response that it ensured compliance with this Code through a strong and comprehensive internal controls framework. In its Supplemental Response, Respondent also asserted that the Regional Business Head confirmed he was aware of the Code of Conduct, had received training in this respect, and knew that the Code prohibited the falsification of performance certificates.

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[15] Sanctions Board Decision No. 39 (2010) at paras. 56, 58. See also Sanctions Board Decision No. 46 (2012) at paras. 28-30; Sanctions Board Decision No. 47 (2012) at paras. 33-34; Sanctions Board Decision No. 48 (2012) at paras. 30-32; Sanctions Board Decision No. 51 (2012) at para. 76.

[16] See Sanctions Board Decision No. 45 (2011) at para. 46 (rejecting the respondent's assertion that national legal principles should define its liability for the acts of its agent or affiliate); Sanctions Board Decision No. 50 (2012) at para. 51 (stating neither a national law nor the respondent's Articles of Association preempt the respondent's liability).

[17] See Sanctions Board Decision No. 46 (2012) at para. 29 (explaining why an employer may be held responsible for its employee's wrongful acts, even if such acts were not specifically authorized, so long as the misconduct was "a mode, albeit an improper mode, of carrying out his responsibilities to fill in the missing … documentation for the bid and submit a complete bidding package by the deadline"); Sanctions Board Decision No. 48 (2012) at para. 29.

54. The record reveals the Regional Business Head's statements that he once received an email sent to all employees regarding the Code of Conduct, and that he knew no organization would tolerate the use of forged certificates. However, there is no evidence in the record that Respondent put in place any actual training, supervision, or control measures prior to the misconduct at issue that would be sufficient to prevent or detect the type of fraud such as was found in this case. To the contrary, the record supports a finding that Respondent did not train or instruct its staff on how to prepare bids. At the Sanctions Board's hearing, Respondent acknowledged that its bid review control mechanisms in this instance were inadequate and that the facts speak for themselves. In these circumstances, the Sanctions Board accepts Respondent's admission at the hearing that it could properly be held liable for the use of the forged certificates.

55. For the reasons set out above, the Sanctions Board concludes Respondent is liable for the fraudulent practices carried out by the Regional Business Head on Respondent's behalf. The Sanctions Board must now determine an appropriate sanction or sanctions.

D. Determination of Appropriate Sanctions

1. General framework for determination of sanctions

56. 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 range of 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.

57. As reflected in Sanctions Board precedents, 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]

58. 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 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.

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[18] See Sanctions Board Decision No. 40 (2010) at para. 28; Sanctions Board Decision No. 41 (2010) at para. 86 (considering the totality of circumstances in determining an appropriate sanction).

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

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

2. Factors applicable in the present case

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

a. Severity of the misconduct

61. Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction.

62. *Repeated pattern of conduct*: Section IV.A.1 of the Sanctioning Guidelines refers to a repeated pattern of conduct as potential grounds for aggravation. INT asserts that Respondent's submission of "several different forged [certificates]" merits aggravating treatment. Respondent argues that any misconduct was limited to a single instance and a single individual. 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, the Sanctions Board does not find that Respondent's simultaneous submission of multiple forged certificates with its bid for the Contract – all attesting to the satisfactory performance of ultrasound scanners previously manufactured and supplied by Respondent – constitutes an aggravating factor.[20]

63. *Management's role in misconduct*: Section IV.A.4 of the Sanctioning Guidelines provides that there may be aggravation "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board does not find aggravation warranted on this ground in the present case. While the Regional Business Head expressed his belief that the forgeries were apparent on the face of the bid documents submitted to his supervisor and the head office, the record does not disclose that it is more likely than not any "high-level personnel" of Respondent actually participated in, condoned, or were willfully ignorant of the misconduct.

64. *Involvement of public official or World Bank staff*: Section IV.A.5 of the Sanctioning Guidelines provides that there may be aggravation "[i]f the respondent conspired with or involved a public official or World Bank staff in the misconduct." Respondent asks the Sanctions Board to consider the lack of involvement of any public official or World Bank staff. While such involvement may be an aggravating factor, the Sanctions Board does not consider its absence a mitigating factor.[21]

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[20] See Sanctions Board Decision No. 39 (2010) at paras. 32, 60 (not identifying any aggravating factors in a case where INT asserted as an aggravating factor the repetitive nature of the respondents' fraudulent acts, which involved three different forged manufacturer authorizations, each manipulated in a different way).

[21] Cf. Sanctions Board Decision No. 52 (2012) at para. 46 (considering the absence of potential aggravating factors – such as past sanctionable misconduct, delays, or incomplete contract performance – as a neutral fact, not as grounds for mitigation).

b. Magnitude of harm caused by the misconduct

65. 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.

66. Respondent denies it caused any harm to the project or to public safety or welfare, as Respondent was not awarded the contract; the delay in selecting a final contractor was due to the lack of other qualified bidders; and the value of the bid was modest (US$1.5 million).

67. The Sanctions Board rejects any suggestion that harm cannot result from a respondent's fraud simply because of the monetary value of the contract involved, or because the fraud did not lead to the award of the contract. The Sanctions Board has previously found harm warranting aggravation even where the respondent did not succeed in winning the contract.[22] In particular, the Sanctions Board has considered whether a respondent's misconduct necessitated re-bidding and thus substantially delayed the procurement process.[23]

68. Respondent's use of forged documents led to additional correspondence between Respondent and TNMSC in the period from the bid opening in early September 2008 until Respondent's explanations to TNMSC in late November 2008, ultimately concluding in cancellation of the tender in late December 2008. After re-bidding, the contract was awarded to another firm on June 15, 2009. While Respondent argues re-bidding was necessary only because the next lower bid was non-responsive, it was Respondent's fraudulent conduct that disqualified its own bid and derailed the procurement process. The Sanctions Board considers such consequences to warrant aggravation.

c. Interference in the Bank's investigation

69. Section 9.02(c) of the Sanctions Procedures requires the Sanctions Board to consider any interference by the sanctioned party in the Bank's investigation. Section IV.C of the Sanctioning Guidelines provides examples of such interference, including tampering with evidence or witnesses. While INT does not suggest Respondent engaged in such conduct, the

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[22] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 63 (finding that where evidence of collusion was so obvious as to emerge at the public bid opening itself, the resulting damage to the credibility of the procurement process was an aggravating factor under Section 19(5)(c) of the applicable Sanctions Procedures); Sanctions Board Decision No. 50 (2012) at para. 64 (finding aggravation warranted because the respondent's corrupt practices caused harm to the project, even though the respondent's consortium did not ultimately receive the award).

[23] See Sanctions Board Decision No. 40 (2010) at para. 28 (considering as an aggravating factor the fact that the collusive conduct of the respondent and other bidders necessitated re-bidding and therefore delayed the procurement process); Sanctions Board Decision No. 48 (2012) at para. 42 (declining to apply aggravation for a three-month procurement delay caused by the respondent's fraudulent practices where INT clarified such delay was not substantial); Sanctions Board Decision No. 50 (2012) at para. 64 (considering harm as an aggravating factor where the respondent's corrupt practices led the borrower to favor the respondent's bid over other potentially qualified bidders, and expend time and resources over six months of contract negotiations, before the bid ultimately failed due to the misconduct).

Sanctions Board denies Respondent's request for mitigating credit on this ground since the absence of interference is a neutral fact.[24]

d. Past history of misconduct

70. Section 9.02(d) of the Sanctions Procedures provides that the Sanctions Board shall consider "the sanctioned party's past history of misconduct as adjudicated by the [World] Bank Group or by another multilateral development bank." Section IV.D of the Sanctioning Guidelines clarifies that such prior history must involve misconduct other than the misconduct at issue in the present proceedings.

71. Respondent asserts that it has no precedent of adjudicated misconduct before the World Bank or any other bilateral or multilateral development bank or organization, that it has no history of indictments or convictions for fraud or corruption, including by its employees and officers, and that it is widely acknowledged to be one of the most highly regarded companies in India with respect to integrity and compliance.

72. The Sanctions Board does not find mitigation warranted on these grounds. As it has previously stated, "While a record of past sanctionable misconduct may merit treatment as an aggravating factor, the Sanctions Board considers its absence a neutral fact."[25]

e. Minor role in the misconduct

73. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "played a minor role in the misconduct." Section V.A of the Sanctioning Guidelines suggests mitigation may be warranted where "no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct."

74. Respondent asserts as a mitigating factor that the falsifications of bidding documents were the isolated actions of one employee, taken on his own behalf, contrary to the policies of the company, and without any knowledge, assistance, or direction of his management.

75. The Sanctions Board does not find mitigation warranted on this ground. At the time of the misconduct, the Regional Business Head held a supervisory position with regional responsibility in the Medical Unit and was vested with full authority to prepare and submit the bid on behalf of Respondent. He thus qualified as an "individual with decision-making authority" who played a central role in the misconduct.

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[24] Cf. Sanctions Board Decision No. 52 (2012) at para. 46 (considering the absence of potential aggravating factors as a neutral fact, not as grounds for mitigation).

[25] Sanctions Board Decision No. 45 (2011) at para. 64; Sanctions Board Decision No. 52 (2012) at para. 46.

f. Voluntary corrective action

76. 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 suggests various types of voluntary corrective actions that may warrant mitigation, but only where the action apparently "reflects genuine remorse and intention to reform," rather than "a calculated step to reduce the severity of the sentence." A respondent bears the burden of presenting evidence to show voluntary corrective actions.[26]

77. *Internal action against responsible individual*: Section V.B.2 of the Sanctioning Guidelines suggests 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 record reflects that Respondent swiftly sought and obtained the Regional Business Head's resignation after receiving information from INT that he had submitted forged certificates. The Sanctions Board has previously accorded mitigation where a respondent firm terminated the employee who committed the forgeries at issue.[27] Here, however, the Sanctions Board does not find that Respondent took "all appropriate measures" to address the misconduct. While the Regional Business Head was Respondent's authorized bid representative with responsibility for bid preparation and submission, it is not clear to the Sanctions Board that he was the only individual involved in or responsible for the fraudulent practices. The record suggests Respondent did not question the Regional Business Head thoroughly or investigate the circumstances of the forgery until two years after his termination in the course of the present sanctions proceedings. Disciplinary action against an individual employee does not obviate the need to thoroughly investigate a matter, especially when it involves potentially fraudulent acts and where an appropriate investigation would enable management to assess and address its own responsibility or that of other employees.

78. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines suggests mitigation may be appropriate for the establishment or improvement and implementation of a corporate compliance program. The record indicates that Respondent's Medical Unit pursued various compliance measures beginning late in 2009 – that is, after INT had contacted Respondent, but before the initiation of sanctions proceedings. Such measures include incorporating Respondent's Code of Conduct into training for new employees; requiring employees to periodically certify their awareness of and compliance with the Code of Conduct; and creating a new managerial position and a process to review and approve all bids before submission. The record does not show whether these new measures extend across Respondent's operations beyond the Medical Unit. Unit-level improvements alone do not obviate the need for more comprehensive company-wide compliance measures. Nevertheless,

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

[27] See Sanctions Board Decision No. 2 (2008) at para. 7 (considering the respondent firm's termination of the employee who committed the forgeries as a mitigating factor).

the Sanctions Board finds some mitigation appropriate in view of the improvements shown in the record.[28]

g. Cooperation

79. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case."

80. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines suggests 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 [such] assistance." In the SAE, INT submitted mitigation may be appropriate because Respondent's representatives met with INT and identified the employee who submitted the forgeries. INT subsequently asserted, however, that Respondent should receive less mitigating credit given, among other concerns, Respondent's "potential failure to provide the Sanctions Board with all relevant evidence," as shown by the Regional Business Head's later statements. The Sanctions Board grants some mitigation for Respondent's cooperation in meeting with INT and providing information and documents in the course of INT's investigation. However, such mitigating credit is limited by Respondent's failure to then provide more complete information concerning the circumstances of the fraudulent practices.

81. *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, and by persons with sufficient independence, expertise, and experience.[29] Although Respondent reacted swiftly to INT's allegations in late 2009 by confronting the Regional Business Head, asking for his resignation, and sharing information and documents with INT, the record does not support a finding that Respondent conducted a thorough and impartial investigation of the forgeries and relevant facts so as to warrant mitigation. As noted above, the record discloses that Respondent failed to question thoroughly the Regional Business Head until two years after his termination, or to investigate the potential scope of involvement or responsibility of other employees or managers. The Sanctions Board therefore finds that no additional mitigation is warranted on this ground.

82. *Admission/acceptance of guilt/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

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[28] See Sanctions Board Decision No. 53 (2012) at paras. 60-61 (granting mitigation for enhanced compliance system implemented across the respondent's corporate group).

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

proceedings. At the hearing, Respondent accepted liability and responsibility for the Regional Business Head's submission of forged certificates, while denying culpability for any direct wrongdoing. This limited acceptance of responsibility came late in the sanctions proceedings, however, after Respondent's denials throughout the pleadings phase of any liability or responsibility for the acts of its "rogue employee." Although INT asserted in its Reply that Respondent had already admitted and apologized for its misconduct in writing when confronted with INT's evidence in late 2009, the documentation reflects only that Respondent stated it had obtained the Regional Business Head's admission of guilt, and apologized for the inconvenience caused to the World Bank which was due to its employee's behavior. On the basis of the record, the Sanctions Board concludes that no mitigation is warranted for admission or acceptance.[30]

h. Period of temporary suspension already served

83. 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. The Sanctions Board notes that Respondent has been temporarily suspended since the EO's issuance of the Notice on March 31, 2011, and that after Respondent's receipt of the Notice in April 2011, the standard pleadings phase of approximately four months was extended for more than a year following a stay of the proceedings, extensions of time, and submission of additional materials upon both parties' requests.

i. Other considerations

84. 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."

85. *Lost revenues*: Having considered Respondent's period of temporary suspension as noted above, the Sanctions Board does not consider Respondent's claims of substantial lost revenues due to temporary suspension to warrant mitigation as a separate factor.[31]

86. *Responsible business unit*: Respondent argues that any sanction should be limited to the Medical Unit only, rather than apply to the corporate Respondent. Respondent relies upon recent World Bank publications, including an information note (the "Information Note"), which address the possibility of limiting sanctions to a respondent's identifiable division or business unit.[32] INT does not dispute that the Sanctions Board may limit the scope of a

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[30] See Sanctions Board Decision No. 36 (2010) at para. 41 (holding that "eleventh-hour" admissions at a hearing do not warrant consideration as a mitigating factor because they are made at the final juncture of the sanctions process and therefore do not result in savings of Bank resources or facilitate the investigation).

[31] See Sanctions Board Decision No. 53 (2012) at para. 69 (where a respondent argued the business consequences of a debarment, including lost revenues, would be disproportionately harsh, the Sanctions Board declined to find that losses in revenue or impact on the firm's operations would justify mitigating treatment).

[32] See, e.g., The World Bank Group's Sanctions Regime: Information Note (November 2011), available at: http://go.worldbank.org/HX66HN8060.

sanction to a business unit, but contends that sanctioning the corporate Respondent for its employee's conduct would be more appropriate in the present case and consistent with the principles of vicarious liability and respondeat superior applied by the Sanctions Board in the past.

87. As discussed in the Information Note, four rebuttable presumptions should guide the application of sanctions with respect to corporate groups or entities. First, where the respondent is a corporate entity, sanctions presumptively apply to the respondent entity as a whole unless the respondent demonstrates that only an identifiable division or business unit is responsible, and application to the entire entity is not reasonably necessary to prevent evasion.[33] In the present case, the Sanctions Board does not find that Respondent met its burden of proof to rebut this presumption. The fraudulent bid for the Contract was submitted in Respondent's name and for Respondent's benefit, by Respondent's authorized representative acting in the course and scope of his employment, in the context of a firm-wide inappropriate level of controls and oversight. Respondent is therefore responsible for the misconduct, as discussed and found earlier. Implementing and monitoring a sanction with respect to the Medical Unit alone would also present difficulties – particularly in the case of debarment – as the Medical Unit does not act as a separate legal entity in Bank-Financed Projects. Accordingly, the Sanctions Board finds no reason to limit the sanction to Respondent's Medical Unit only.

88. The Sanctions Board has also considered the other rebuttable presumptions set out in the Information Note.[34] Under the second presumption, and absent any argument to the contrary from Respondent, any sanction imposed shall apply to all entities controlled by Respondent. With respect to the third presumption, the Sanctions Board finds no basis in the record to suggest an entity controlling or under common control with Respondent was involved in the misconduct, or that the application of a sanction to such entity would be reasonably necessary to prevent evasion. Consistent with the fourth presumption, the Sanctions Board notes that any sanction imposed may be applied to Respondent's successors and assigns, subject to the principles for the application of sanctions to corporate groups as set out in the Information Note and any relevant provisions of the applicable Sanctions Procedures.

3. Determination of appropriate sanction for Respondent

89. 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 (i) to be awarded a contract for any Bank-Financed Projects, (ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to 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, for a period of six (6) months. The ineligibility shall extend across the

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[33] Id. at p. 21.

[34] Id.

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

L. Yves Fortier
Hassane Cissé
Marielle Cohen-Branche
Patricia Diaz Dennis
Hoonae Kim
Hartwig Schafer