THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: November 15, 2013

Sanctions Board Decision No. 61
(Sanctions Case No. 197)

IDA Credit No. 4418-AZ
Azerbaijan

Decision of the World Bank Group[1] Sanctions Board:

i. **imposing a sanction of debarment with conditional release on the respondent entity (the "Respondent Firm") and an individual respondent (the general director and a co-owner of the Respondent Firm, hereinafter referred to as the "Respondent General Director") in Sanctions Case No. 197, together with any entity that is an Affiliate[2] directly or indirectly controlled by either of these Respondents, with a minimum period of ineligibility of one (1) year and six (6) months beginning from the date of this decision. This sanction is imposed on the Respondent Firm and the Respondent General Director for fraudulent practices.**

ii. **imposing a sanction of debarment on an individual respondent in Sanctions Case No. 197 (a project manager of the Respondent Firm, hereinafter referred to as the "Respondent Project Manager"), together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Project Manager, for a period of one (1) year and six (6) months beginning from the date of this decision. This sanction is imposed on the Respondent Project Manager for fraudulent practices.**

I. INTRODUCTION

1. The Sanctions Board met on December 5, 2012, at the World Bank's headquarters in Washington, D.C., to review this case. The Sanctions Board was composed for this case of L. Yves Fortier (Chair), Marielle Cohen-Branche, Patricia Diaz Dennis, Catherine O'Regan, Denis Robitaille, and Randi Ryterman. Neither the respondents in this case (the "Respondents") nor the World Bank Group's Integrity Vice Presidency ("INT") requested

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

[2] In accordance with Section 1.02(a) of 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."

a hearing. Nor did the Sanctions Board Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.

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

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")[3] to the Respondents on May 25, 2012 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT;

ii. Explanation submitted by the Respondents to the EO on June 27, 2012 (the "Explanation");

iii. Response submitted by the Respondents to the Secretary to the Sanctions Board on August 10, 2012 (the "Response"); and

iv. Reply in Support of Notice of Sanctions Proceedings, submitted by INT to the Secretary to the Sanctions Board on September 12, 2012 (the "Reply").

3. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarment with conditional release for each of the Respondents, together with any entities that are Affiliates directly or indirectly controlled by any of the Respondents. The EO recommended a minimum period of ineligibility of three (3) years for each of the Respondents, after which period a Respondent may be released from ineligibility only if that Respondent has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that the Respondent has (a) taken appropriate remedial measures to address the sanctionable practices for which the Respondent has been sanctioned; (b) in the case of the Respondent Firm, adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank; and (c) in the case of the Respondent General Director and the Respondent Project Manager, completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics and complied with the condition that any entity that is an Affiliate directly or indirectly controlled by either individual Respondent has adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

4. Effective May 25, 2012, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended each of the Respondents, together with any entities that are Affiliates directly or indirectly controlled by any of the Respondents, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any

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

other manner;[4] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[5] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as "Bank-Financed Projects") pending the final outcome of these sanctions proceedings.

II. GENERAL BACKGROUND

5. This case arises in the context of the Azerbaijan Social Protection Development Project (the "Project"). On November 28, 2008, IDA and the Republic of Azerbaijan entered into a financing agreement for the Project (the "Financing Agreement"). The Project's objectives were to improve the delivery of labor market and social protection interventions in Azerbaijan through strengthened institutions, enhanced institutional and human resources capacity, and improved targeting of social safety net programs. Because the Project was to be managed and implemented by the project implementation unit within the Ministry of Labor and Social Protection of the Population of the Republic of Azerbaijan ("MLSPP"), the Financing Agreement provided for financing in support of the MLSPP's incremental operating costs, including office supplies and materials.

6. On March 16, 2011, the MLSPP issued bidding documents for the procurement of computer hardware and office equipment under the Project (the "Bidding Documents"). Where a bidder did not manufacture the required goods, the Bidding Documents required the bidder to submit manufacturers' authorization forms ("MAFs") to demonstrate that the relevant manufacturer had authorized the bid's submission and guaranteed the goods.

7. On April 27, 2011, the Respondent Firm submitted a bid (the "Bid") prepared by the Respondent Project Manager and signed by the Respondent General Director, who was also one of the two co-owners of the Respondent Firm.[6] The Bid appended ten MAFs purportedly issued by manufacturers to authorize the Bid's submission with full guarantees of the manufacturers' goods as offered. The MLSPP's bid evaluation committee examined the Bid and determined that one of the MAFs was a scanned copy. Upon the MLSPP's

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

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

[6] INT did not name the Respondent Firm's other co-owner as a respondent in these proceedings.

inquiry, the ostensible issuer denied the MAF's authenticity. The MLSPP's bid evaluation committee concluded that the Bid was not substantially responsive to the tender and rejected the Respondent Firm from further evaluation. INT alleges that a total of three MAFs, as detailed below, are forgeries.

III. APPLICABLE STANDARDS OF REVIEW

8. Pursuant to Section 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is "more likely than not" that the respondent engaged in a sanctionable practice. Section 8.02(b)(i) defines "more likely than not" to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered; formal rules of evidence do not apply.

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

10. The Financing Agreement provided that the World Bank's Guidelines for Procurement under IBRD Loans and IDA Credits (May 2004, revised October 2006) (the "October 2006 Procurement Guidelines") would govern the Project's procurement. The Bidding Documents, however, defined sanctionable practices in accordance with the World Bank's Guidelines for Procurement under IBRD Loans and IDA Credits (May 2004, revised October 2006 and May 2010) (the "May 2010 Procurement Guidelines"). In accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the applicable standards in the event of such conflict shall be those agreed between the member country and the respondent as governing the particular contract at issue, rather than the standards agreed between the member country and the Bank.[7] Therefore, the alleged sanctionable practice in this case has the meaning set forth in the May 2010 Procurement Guidelines. As set forth in Paragraph 1.14(a)(ii) of these Guidelines, the term "fraudulent practice" is defined as "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation."[8]

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

[8] May 2010 Procurement Guidelines at para. 1.14(a)(ii).

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

11. INT asserts that it is more likely than not that the Respondents engaged in fraudulent practices by knowingly or recklessly submitting three forged MAFs with the Bid in order to influence the procurement process. INT relies primarily on the following contentions:

i. The Bidding Documents required each bidder to submit an MAF where the bidder did not manufacture the goods being offered. To meet this requirement, the Respondent Firm included three forged MAFs in the Bid as prepared by the Respondent Project Manager and signed by the Respondent General Director.

ii. After being contacted by INT, representatives of the MAFs' purported issuers stated, in writing, that the MAFs attributed to them were not authentic – a point that the Respondents did not contest when confronted by INT.

iii. The Respondent General Director personally participated in bid preparation. He not only decided, with his co-owner, the composition of the bid preparation team, but also advised the Respondent Project Manager as to where he might obtain the first MAF on short notice; and reviewed the final Bid for competitiveness before signing it. The Respondent General Director engaged in fraudulent practices knowingly or at least recklessly, as he signed and submitted the Bid either knowing that it contained at least one forged MAF or while ignoring specific "red flags" signaling a risk of forgery.

iv. The Respondent Project Manager was primarily responsible for preparing the Bid and assembling all the necessary MAFs, including the three MAFs at issue. He either knew that the first MAF was forged or ignored specific red flags that it was forged. His submission of the second and third forged MAFs should also be considered at least reckless, if not knowing, in the absence of any documentary evidence of his supposed acquisition of these MAFs directly from their purported issuers.

v. The Respondents failed to perform the necessary due diligence to ensure the Bid's validity. Their explanations as to how they obtained the MAFs, followed by their asserted inability to supply corroborating documentary evidence due to inadvertent deletion of emails, lack credibility.

12. INT asserts that the Respondent Firm's deletion of emails and the misleading statements from representatives of the Respondent Firm about those emails may be considered an aggravating factor. INT avers that no mitigating factors apply.

B. The Respondents' Principal Contentions in the Explanation and Response

13. The Respondents do not contest that the three MAFs were forged or that the Respondents may have acted recklessly, but deny knowing or direct involvement in the fraud and disclaim any responsibility for "errors or discrepancies" in the MAFs. Their primary contentions are:

i. Given the Respondent Firm's strong regional business record and history of social and charitable involvement, "[i]t is obvious" that the Respondent Firm "cannot afford any illegal acts in business."

ii. All three MAFs were supplied to the Respondent Firm by third parties contracted "to compile documentation," consistent with the Respondent Firm's standard practice. In addition to using a third-party vendor to obtain the first MAF, the Respondents learned through further internal investigation that the second and third MAFs were provided by another third-party vendor. The Respondent Firm had checked the bid documents, but did not find anything suspicious. Moreover, pursuant to the "contractual obligations" between the Respondent Firm and each of the third parties, the responsibility for any errors or discrepancies in the documentation is borne by the third parties.

iii. Relevant Bank procurement staff are partial to the Respondent Firm's competitors. To the detriment of both the Respondent Firm and the Bank, a number of the Respondent Firm's bids to date have not been selected in spite of its superior pricing and qualifications.

14. The Respondents assert several points that could potentially be considered as mitigating factors, such as their cooperation with INT's investigation; the Respondent Firm's own internal investigation; and the implementation of voluntary corrective measures including internal actions against certain employees and a new approach to compiling tender documentation that prohibits third-party involvement.

C. INT's Principal Contentions in the Reply

15. INT asserts that the Response is an unconvincing attempt to further mislead the Bank and is insufficient to exculpate the Respondents, arguing that:

i. The Response proposes a new version of events, implicating another claimed third-party vendor, that is "too belated and too convenient" and entirely absent from INT's interviews with the Respondents. In particular, the claim that another third party obtained the second and third MAFs "contradicts the clear evidence" previously provided by the individual Respondents that the Respondent Firm's staff prepared the Bid with MAFs obtained by the Respondent Project Manager.

ii. Even if true, the Respondents' reliance on a third-party agent would not allow them to escape sanction, because the Sanctions Board has previously held that a respondent cannot avoid liability by acting through an agent.

16. INT submits that the Respondents should be given little mitigating credit for their asserted corrective actions because of the inconsistencies in their explanations over time, their apparent lack of remorse, and the inadequacy of the claimed corrective actions.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

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

A. Evidence of Fraudulent Practices

18. In accordance with the applicable definition of fraudulent practices under the May 2010 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) engaged in an act or omission, including a misrepresentation, that (ii) knowingly or recklessly misled or attempted to mislead a party (iii) to obtain a financial or other benefit or avoid an obligation.

1. Misrepresentation

19. In past decisions finding that respondents had submitted forged bid documents, the Sanctions Board has relied primarily on written statements from the parties named in or supposedly issuing the allegedly fraudulent documents, as well as the respondents' own admissions.[9] Additional corroborating evidence in past cases has included signature samples from the purported signatory[10] and various indicia of falsity on the face of the document in question.[11] In general, and consistent with Section 7.01 of the Sanctions

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[9] See, e.g., Sanctions Board Decision No. 2 (2008) at para. 4 (stating that the Sanctions Board "relied primarily" on a written statement of the bank that had supposedly issued the bid securities stating the securities had been forged, as well as on the respondent's oral and written admissions); Sanctions Board Decision No. 6 (2009) at para. 6 (stating that the Sanctions Board "relied primarily" on the written statement of the individual named in the CV stating the CV had been falsified, contained a forged signature and had been submitted without her consent, as well as on the admission of the respondent's director who had falsified and submitted the CV).

[10] See, e.g., Sanctions Board Decision No. 46 (2012) at para. 23 (finding forgery where the record included specimen signatures for the purported signatory's authorized representatives, none of which matched the signatures at issue; as well as the respondent's admission to signing for the purported signatory without the latter's authorization or agreement, and the purported signatory's written confirmation that the signatures were false and unauthorized).

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

Procedures, the Sanctions Board adopts a flexible approach when considering all probative evidence, and does not require that INT support every forgery allegation with predetermined types of testimonial or documentary evidence.[12]

20. In the present case, the record contains written confirmation from a representative of each purported issuer of the three MAFs that the document in question is inauthentic. In addition, representatives of the purported issuers stated in writing that the individuals named as signatories had reviewed the MAFs and confirmed that they had not signed them. The record does not include signature samples from the purported signatories, which one of the purported issuers declined to provide due to asserted security concerns. However, the record reveals other indicia of falsity on the face of the documents, including the misstatement of a purported issuer's name, attribution to an official of the issuing entity who would not be the appropriate or authorized signatory for MAFs, reference to issuer-owned factories that the purported issuer denies exist, nonconformance with the purported issuer's established content or format for documents of this nature, and other obvious misstatements or omissions in the text of the MAFs. Moreover, none of the Respondents deny that the MAFs were forged. To the contrary, the Respondents appear to acknowledge that the documents were falsified, while denying their own responsibility for the misrepresentations.

21. Considering the written evidence of denials of authenticity by the purported issuers and signatories of the three MAFs, the additional indicia of falsity on the face of the documents, and the Respondents' tacit acknowledgment that the documents are inauthentic, the Sanctions Board finds it more likely than not that the MAFs were forged and therefore constituted misrepresentations in the Bid.

2. That knowingly or recklessly misled or attempted to mislead a party

22. INT has the burden to prove that it is more likely than not that the Respondents used the forged MAFs to knowingly or recklessly mislead or attempt to mislead a party. As discussed below, the Sanctions Board finds that the record supports a conclusion that it is more likely than not that the Respondents acted at least recklessly, if not knowingly, in using the forged MAFs to attempt to mislead the MLSPP.

23. In assessing recklessness, the Sanctions Board may consider whether circumstantial evidence indicates that a respondent was aware of, but disregarded, a substantial risk – such as harm to the integrity of the procurement process due to false or misleading bid documents.[13] 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.[14] In other words, the question is whether the

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[12] Sanctions Board Decision No. 59 (2013) at para. 25.

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

[14] Id.

respondent knew or should have known of the substantial risk presented.[15] In the context of Bank-Financed Projects, the standard of care may 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.[16] Industry standards or customary or firm-specific business policies, procedures, or practices may also be relevant in certain cases.[17]

24. The record here supports a finding that the Respondents acted at least recklessly in preparing and/or submitting the Bid with forged MAFs. As noted earlier, the Respondents admit that they "may have acted recklessly," although they deny knowing or direct involvement in any fraudulent practices.

25. With respect to the first MAF, which the Respondents assertedly obtained from a third-party vendor under time pressure, records of interview with the individual Respondents indicate that they were aware that they lacked prior experience in obtaining MAFs through the vendor in question; and that the Respondent General Director knew that the vendor was not an official distributor of the relevant goods. According to INT's record of interview, the Respondent Project Manager presumed as a matter of "standard procedure with all vendors" that it would normally take three to five days to obtain such an MAF directly from the manufacturer, and stated that he "did not want to risk" missing the bidding deadline. The Respondent General Director also reportedly asserted that acquiring the first MAF directly from the manufacturer "would not have been a problem . . . if it was not a weekend." The record indicates that the Respondent General Director advised the Respondent Project Manager to try to obtain the MAF more quickly from several possible sources that would be open on Sundays, including the vendor in question; and that the Respondent Project Manager contacted the vendor and, the following day, accepted the MAF from the vendor. The record reflects that the Respondents made no efforts to check the authenticity of the expedited MAF or to verify the credentials or reliability of the vendor as a source for such documentation. For example, the Respondents do not appear to have compared the first MAF to earlier MAFs that the Respondent General Director reported having obtained directly from the relevant manufacturer for previous bids, which should have revealed obvious discrepancies. The Respondent General Director subsequently acknowledged that the Respondents "should [have] double check[ed]" the first MAF with its purported issuer. In these circumstances, the record supports a finding that the individual Respondents acted recklessly in their claimed reliance on the third-party vendor to provide the first MAF more quickly than the manufacturer was expected to do.

26. With respect to the second and third MAFs, the record reflects that the Respondents originally claimed to have obtained these MAFs directly from the manufacturers, then later claimed to have obtained the MAFs through another third-party vendor. The inconsistency in the Respondents' explanations of these transactions, combined with the absence of contemporaneous records documenting the transactions, calls into question the veracity of

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[15] Id.

[16] Id.

[17] Id.

the Respondents' claim of third-party involvement and the adequacy of the Respondent Firm's process for obtaining, verifying, and documenting these MAFs. Even if the Respondents' later claims of third-party involvement were to be taken at face value, the Respondents appear to admit that they did not take any steps to check the authenticity of these MAFs after receiving them from the claimed third-party vendor, as "on the one hand we trust our partner companies because they fulfill contractual obligations, and on the other hand, MAF documents themselves are less significant" than the financial aspects of a bid. Yet the copies of the second and third MAFs reveal, on the face of each document, readily apparent indicia of potential inauthenticity such as a blurred signature or a significant error in the text. For example, the second MAF omitted to state the name of the Respondent Firm as the recipient of the MAF. The third MAF stated that the purported signatory was authorized to sign the document on behalf of the Respondent Firm, rather than the manufacturer. In these circumstances, the Respondents' admitted failure to make any effort to verify the authenticity of the MAFs supports a finding of at least recklessness.

27. The Sanctions Board notes that the Respondents' broad denial of responsibility for any errors by their asserted third-party vendors is unpersuasive. While the Respondents argue that they properly relied on third parties to provide valid MAFs consistent with their past practice, the Respondents do not provide credible evidence to show that each of the claimed third-party transactions took place or to demonstrate the reasonableness of the Respondents' asserted reliance on those third parties. In any event, a respondent cannot evade liability merely by delegating responsibilities to a third party, particularly where reliance on the third party is unaccompanied by appropriate safeguards.[18]

3. To obtain a financial or other benefit or avoid an obligation

28. The Sanctions Board finds that it is more likely than not that the misrepresentations were made to obtain a benefit. The Sanctions Board has previously found that, where the record showed that a respondent's submission of forged or misleading documents was made in response to a bid requirement, the respondent's use of the documents was more likely than not intended to show the respondent's qualifications and thereby help the respondent win the tender and benefit from such award.[19] As noted earlier, the record here reveals that the Bidding Documents required the submission of MAFs authorizing a bid's submission and extending warranties with respect to any required goods not manufactured by the bidder. As this requirement applied to the Respondent Firm's Bid, the Sanctions Board finds that the Respondents submitted the falsified MAFs with the Bid to demonstrate the Respondent Firm's capacity to supply the necessary goods and thereby enable the Respondent Firm to win the tender and benefit from the Contract award.

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[18] See Sanctions Board Decision No. 52 (2012) at paras. 27-29 (finding recklessness where the respondent relied on a third-party vendor to obtain a document required by the bid and submitted the document without any effort to verify its authenticity, despite multiple indicia of potential falsification in the document and the respondent's lack of basic information to confirm the agent's identity or credentials).

[19] See, e.g., Sanctions Board Decision No. 48 (2012) at para. 25.

B. The Respondent Firm's Liability for the Acts of the Individual Respondents

29. In past cases, the Sanctions Board has considered that a respondent entity could be held directly and/or vicariously liable for the acts performed by its president, owner, and sole shareholder or its chief executive officer and authorized representative, acting in the course and scope of that individual's duties.[20] The Sanctions Board has also concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.[21] Where a respondent entity has denied responsibility for the acts of its employees based on a rogue employee defense, the Sanctions Board has assessed any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.[22]

30. The Respondent Firm does not contest its liability for the actions of the individual Respondents. The record indicates that, following the Respondent Project Manager's work to acquire MAFs and prepare the Bid with specific direction from the Respondent General Director, the latter submitted the Bid on the Respondent Firm's behalf with his signature as the Respondent Firm's general director and authorized representative. The record of INT's communications with the individual Respondents and the Respondent Firm's other staff reflects that both individual Respondents were acting in the course and scope of their duties and for the benefit of the Respondent Firm in preparing and submitting the Bid. Moreover, the record does not provide any basis for, and the Respondents do not assert, a rogue employee defense. The Sanctions Board thus concludes that the Respondent Firm is liable for the fraudulent conduct of the individual Respondents.

31. For the reasons set out above, the Sanctions Board concludes that it is more likely than not that each of the Respondents engaged in the fraudulent practices alleged.

C. Determination of Appropriate Sanctions

1. General framework for determination of sanctions

32. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section 8.01(b) of the Sanctions Procedures requires the Sanctions Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section 9.01. The range of sanctions set out in Section 9.01 includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment,

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[20] See Sanctions Board Decision No. 41 (2010) at para. 85; Sanctions Board Decision No. 52 (2012) at para. 32.

[21] See, e.g., Sanctions Board Decision No. 46 (2012) at para. 29; Sanctions Board Decision No. 55 (2013) at para. 51.

[22] See, e.g., 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 Decision No. 55 (2013) at para. 53.

(iv) debarment with conditional release, and (v) restitution or remedy. As stated in Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.

33. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.[23] 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.[24]

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

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

2. Factors applicable in the present case

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

a. Interference in the Bank's investigation

37. Section 9.02(c) of the Sanctions Procedures requires consideration of "interference by the sanctioned party in the Bank's investigation." Section IV.C.1 of the Sanctioning Guidelines describes this factor as including "deliberately destroying, falsifying, altering, or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation."

38. *Deliberate destruction of evidence*: INT argues that the Respondent Firm's alleged deletion of emails warrants aggravation. The Respondents assert that a corporate server migration process caused the unintentional loss of emails. The record does not reveal any credible explanation for the particular timing of the Respondent Firm's purported loss of emails shortly after the MLSPP's inquiry and before INT's interviews, the Respondent Firm's ability to retrieve one potentially exculpatory email while asserting that all other relevant emails from the same time period had been deleted, or the fact that the period for which email records are unavailable coincides with the bid preparation period. On the other

[23] Sanctions Board Decision No. 40 (2010) at para. 28.

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

hand, the record does not include sufficient evidence to support a finding that it is more likely than not that any of the Respondents instructed or participated in any deliberate destruction or concealment of evidence. On the inconclusive record presented, the Sanctions Board does not find aggravation warranted for the deletion of emails as a form of interference.

39. *False statements to investigators*: INT also asserts that representatives of the Respondent Firm – including the individual Respondents – made misleading statements about internal emails relating to the tender. Since the Sanctions Board has not found it more likely than not that the emails were deliberately destroyed, it concludes that the Respondents' alternative explanations regarding the missing emails do not warrant aggravation as false statements to INT. However, the Sanctions Board takes into account the Respondents' shifting factual assertions as a separate sanctioning factor as explained in Paragraph 51 below.

b. Voluntary corrective action

40. Section 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party . . . took voluntary corrective action." Section V.B of the Sanctioning Guidelines identifies various examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and quality of the actions to be considered as potential indicia of the respondent's genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to show voluntary corrective action.[25]

41. *Internal action against responsible individual(s)*: Section V.B.2 of the Sanctioning Guidelines states that mitigation may be appropriate where "[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative." The Respondents assert that the Respondent Project Manager was removed from participation in tender preparation, and that his only subordinate at the time was dismissed from the company for failing to verify the authenticity of the first MAF. The Sanctions Board does not find sufficient evidence to support mitigation for these asserted internal actions. First, the Respondents did not submit any evidence documenting the Respondent Project Manager's removal or the disciplinary nature of his alleged removal. Any assertion must have an evidentiary basis in the record, or it remains a mere assertion and not a substantiated fact. Second, the asserted disciplinary nature of the dismissal of the Respondent Project Manager's subordinate is not corroborated by any evidence in the record, nor is it consistent with the Respondents' statements denying that any verification process existed or was required.

42. *Internal compliance program*: Section V.B.3 of the Sanctioning Guidelines states that voluntary corrective actions may include the establishment or improvement and implementation of an effective compliance program. While the Respondents assert certain improvements to their bid preparation process, they provide no detailed description or corroborating evidence to support a finding that the asserted measures were adopted and

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

implemented. Without prejudice to any future assessment that the World Bank Group's Integrity Compliance Officer may conduct to more fully evaluate the adequacy of the Respondent Firm's integrity compliance measures, the Sanctions Board declines to apply mitigating credit for the asserted compliance measures on the record presented.

c. Cooperation

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

44. *Assistance with INT's investigation*: Section V.C.1 of the Sanctioning Guidelines states that mitigation may be appropriate for a respondent's assistance and/or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance in an investigation" as well as the "truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of [the] assistance." The record reveals that the Respondents promptly provided detailed responses to INT's queries. Nevertheless, the record does not support a finding that the Respondents substantially assisted the investigation so as to merit mitigating credit. The Respondents' statements reveal substantial internal inconsistencies, particularly in their varying accounts of basic aspects of the bid preparation process.

45. *Internal investigation*: Section V.C.2 of the Sanctioning Guidelines refers to cooperation where a respondent has "conducted its own, effective internal investigation of the misconduct and relevant facts relating to the misconduct for which it is to be sanctioned and shared results with INT." In determining whether and to what extent an internal investigation warrants mitigating credit, the Sanctions Board considers whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience;[26] whether the respondent shared its investigative findings with INT during INT's investigation or as part of the sanctions proceedings;[27] and whether the respondent has demonstrated that it followed up on any investigative findings and recommendations.[28]

46. The Respondents assert that they conducted an internal investigation both prior to and after receiving the Notice. The Sanctions Board does not find mitigation warranted in this respect, as the record contains insufficient information regarding the conduct or outcomes of the asserted investigation. For example, the Respondents do not explain who carried out the internal investigation, or how a thorough investigation could be conducted given the significant amount of purportedly missing email correspondence. The investigative results that the Respondents have provided in these proceedings also appear

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

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

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

to be incomplete, with little evidence to substantiate the asserted finding that a third party was responsible for providing each of the forged MAFs. Nor do the Respondents present evidence to support their assertion that they took corrective measures in response to the internal investigative findings.

47. *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 proceedings. Although the record includes several statements by the Respondents acknowledging that the MAFs were forged, such acknowledgments do not extend to admissions or acceptance of the Respondents' own culpability or responsibility, and their more recent statements deny participation in any fraudulent activity. Given the Respondents' limited and inconsistent characterizations of their role, the Sanctions Board concludes that no mitigation is warranted for admission or acceptance of guilt or responsibility.

d. Period of temporary suspension already served

48. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by a sanctioned party. The Sanctions Board thus takes into consideration that the Respondents have been temporarily suspended since the EO's issuance of the Notice on May 25, 2012.

e. Other potential considerations

49. 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."

50. *Adverse consequences of debarment*: The Respondents argue that the Respondent Firm's debarment would have anticompetitive effects on the Azerbaijani market, and assert that the Respondent Firm's exclusion from tendering could significantly limit the Bank's choice of partners. However, Section 9.02(i) of the Sanctions Procedures expressly limits the Sanctions Board's sanctioning analysis to considerations reasonably relevant to the Respondents' own culpability or responsibility for the sanctionable practice. As the Respondents fail to establish the relevance of their arguments under this framework, and in any event have not provided evidence to support their assertion of anticompetitive effects, the Sanctions Board does not accept this argument.[29]

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[29] The Sanctions Board has previously declined to treat the asserted adverse consequences of debarment as a mitigating factor where respondents have argued that debarment would negatively impact their revenues or business opportunities. Sanctions Board Decision No. 53 (2012) at para. 69; Sanctions Board Decision No. 60 (2013) at para. 140. See also Sanctions Board Decision No. 58 (2013) at para. 12 (stating that financial impacts may be considered the natural consequences of suspension and debarment under the Bank's sanctions system).

51. *Shifting factual assertions*: The record indicates multiple changes of position by the Respondents in their successive statements, which assert varying internal investigative findings and inconsistent explanations to address INT's allegations. The Sanctions Board particularly notes the direct contradiction, for which neither the Respondents nor the record provide any satisfactory explanation, between the Respondents' initial and later claims regarding the Bid's preparation. When INT's investigation appeared to focus only on the first MAF, the Respondents stated that all MAFs except the first one had been obtained directly from product manufacturers. When INT later questioned the authenticity of other MAFs, the Respondents stated that the other apparently falsified MAFs had also been supplied by a third party, who was solely to blame for any falsification. The Sanctions Board finds aggravation warranted in these circumstances.

3. Determination of appropriate sanctions for the Respondents

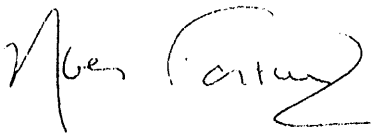
52. Considering the full record and all the factors discussed above, the Sanctions Board:

i. determines that the Respondent Firm and the Respondent General Director, together with any entity that is an Affiliate directly or indirectly controlled by either of these Respondents, shall be, and hereby declares that each is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of one (1) year and six (6) months for each of these Respondents, the Respondent Firm may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, taken appropriate remedial measures and improved its bid preparation policies and procedures, including through the voluntary corrective actions that it represented to the Sanctions Board as having been taken to date; and the Respondent General Director may be released from ineligibility only if all entities he directly or indirectly controls have, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented effective integrity compliance programs in a manner satisfactory to the World Bank Group. These sanctions are imposed on the Respondent Firm and the Respondent General Director for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the May 2010 Procurement Guidelines.

ii. determines that the Respondent Project Manager, together with any entity that is an Affiliate that he directly or indirectly controls, shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or

otherwise participate further in the preparation or implementation of any Bank-Financed Projects, for a period of one (1) year and six (6) months. This sanction is imposed on the Respondent Project Manager for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the May 2010 Procurement Guidelines.

53. Consistent with Sections 9.01(c) and 9.01(d) of the Sanctions Procedures, ineligibility of any entities and individuals debarred pursuant to the present decision shall extend across the operations of the World Bank Group. The Bank will also provide notice of these declarations of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may determine whether to enforce the declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[30] The periods 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
Marielle Cohen-Branche
Patricia Diaz Dennis
Catherine O'Regan
Denis Robitaille
Randi Ryterman

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