THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: January 13, 2014

Sanctions Board Decision No. 62

Decision of the World Bank Group Sanctions Board denying a request for reconsideration of Sanctions Board Decision No. 47 (2012) (the "Original Decision"), as filed by the respondent entity in Sanctions Case No. 121 (the "Respondent").

I. INTRODUCTION

1. The Sanctions Board has reviewed a request for reconsideration filed by the Respondent with regard to Sanctions Board Decision No. 47 (2012), by which the Sanctions Board debarred the Respondent, with the possibility of conditional release after a minimum period of three years, for fraudulent practices in Sanctions Case No. 121. The Sanctions Board was composed for this case of L. Yves Fortier (Chair), Hassane Cissé, Ellen Gracie Northfleet, Catherine O'Regan, Denis Robitaille, Randi Ryterman, and J. James Spinner.

2. Having deliberated, the Sanctions Board has reached its decision on the request for reconsideration based on the written record, which included:

i. the request for reconsideration submitted by the Respondent to the Secretary to the Sanctions Board on August 16, 2013 (the "Request for Reconsideration" or "Request");

ii. comments on the Request for Reconsideration submitted by the World Bank Group's Integrity Vice Presidency ("INT") to the Secretary to the Sanctions Board on August 29, 2013 ("INT's Comments");

iii. the written record previously considered by the Sanctions Board in the original proceedings in Sanctions Case No. 121; and

iv. the Original Decision.

II. APPLICABLE STANDARDS OF REVIEW

3. The statutory and procedural framework that governed the original proceedings in Sanctions Case No. 121, and likewise governs the present Request for Reconsideration, includes the Sanctions Board Statute as revised September 15, 2010 (the "Statute"), and the Sanctions Procedures as adopted January 1, 2011 (the "Sanctions Procedures").

4. Both the Statute and the Sanctions Procedures speak to the finality of Sanctions Board decisions. Article XIV of the Statute provides that the Sanctions Board's decisions "shall be final and without appeal." Section 8.03(a) of the Sanctions Procedures states that each Sanctions Board decision "shall be final and shall take effect immediately." Neither the Statute nor the Sanctions Procedures address whether the Sanctions Board itself may elect to

reopen or reconsider its own decisions. They contain no provisions expressly permitting or prohibiting such reconsideration.

5. In the absence of directly controlling provisions for reconsideration, Article XI of the Statute provides: "In all matters not addressed in this Statute, the Code of Conduct or the Sanctions Procedures or any formal guidelines issued by the Bank in respect of sanctions proceedings, the Sanctions Board shall follow the instructions of the Sanctions Board Chair for the operation of the Sanctions Board." Article IV further 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." Finally, Article VII, Section 2, reads in relevant part as follows: "A plenary session may be convened by the Sanctions Board Chair . . . when it is necessary to deal with . . . a question of [the Sanctions Board's] competence under Article IV, or any other matter warranting consideration by the full Sanctions Board."

6. Consistent with the above statutory provisions, and at the instruction of the Sanctions Board Chair, the Sanctions Board first considered the applicable standards for requests for reconsideration in Sanctions Board Decision No. 43 (2011), as later summarized in Sanctions Board Decisions No. 57 (2013) and No. 58 (2013). The Sanctions Board emphasized the principle of finality as a fundamental aspect of Sanctions Board proceedings, while at the same time recognizing that fundamental principles of fairness dictate that finality must, on occasion, yield in narrowly defined and exceptional circumstances.[1] Looking to general principles of law, as demonstrated by leading international and national practice, the Sanctions Board concluded that a final decision may be reconsidered only in exceptional circumstances such as the discovery of newly available and potentially decisive facts, fraud or other misconduct in the original proceedings, or a clerical mistake in the issuance of the original decision.[2] Mere attempts to re-argue or re-litigate a case, or respondents' failure to timely or effectively present previously available facts or related evidence to the Sanctions Board, do not warrant reconsideration.[3]

III. THE PARTIES' PRINCIPAL CONTENTIONS

7. The Respondent asks the Sanctions Board to reduce the minimum period of debarment imposed in the Original Decision and to terminate its ineligibility. The Request for Reconsideration principally asserts that:

i. The Respondent "never had bad intentions," as shown by its full cooperation with the Bank and INT in difficult circumstances including high personnel attrition and "poor institutional memory."

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[1] See, e.g., Sanctions Board Decision No. 57 (2013) at paras. 7-8 (citing Sanctions Board Decision No. 43 (2011) at paras. 14-15).

[2] See, e.g., Sanctions Board Decision No. 57 (2013) at para. 8 (citing Sanctions Board Decision No. 43 (2011) at paras. 15-27).

[3] See, e.g., Sanctions Board Decision No. 57 (2013) at para. 8 (citing Sanctions Board Decision No. 43 (2011) at paras. 26-27).

ii. The Respondent has implemented revised standard operating procedures and tightened internal procedures to ensure that there are "no loopholes in the [tender] process"; it has "discontinued the practice" that led to the submission of forged bid documents; and it has had an "excellent track record" in its area of manufacturing.

iii. The Respondent relied on junior staff in submitting the documents at issue, which in any event were not required by the tender.

iv. "[T]he purpose of debarment has [been] served" because, taking into account the period of temporary suspension, approximately 80% of the minimum period of ineligibility has elapsed.

8. In INT's Comments, INT asserts that the Respondent "has failed to state an acceptable basis for reducing its sanction, and has not otherwise met the conditions required for its release." Additionally, INT submits that the Request "states no new or exceptional circumstances"; that the Respondent has yet to engage with the World Bank Group's Integrity Compliance Office (the "ICO"); and that unconditionally releasing the Respondent at this time "would set a troubling precedent, and erode the sanctions system's preventive function of promoting ethical corporate conduct."

IV. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

9. The Sanctions Board does not find exceptional circumstances warranting reconsideration of the Original Decision. The Request for Reconsideration does not show any newly available and potentially decisive fact, fraud or other misconduct in the original proceedings, or clerical mistake in the issuance of the Original Decision.

10. Firstly, the Sanctions Board has already considered the Respondent's asserted lack of intent in the Original Decision, but found the misrepresentations to have been made at least recklessly, with an intent to influence the procurement process, and to be imputable to the company.[4]

11. Secondly, as also expressly stated in the Original Decision, and in accordance with Sections 9.02(e), 9.02(h), and 9.02(i) of the Sanctions Procedures, the Sanctions Board determined the appropriate sanction in the original proceedings with due consideration for:

i. the Respondent's asserted lack of managerial involvement, voluntary corrective actions, cooperation with INT's investigation, and history of performance;

ii. the period of temporary suspension served by the Respondent since February 4, 2011; and

iii. the passage of substantial time – almost eleven years – since the first instance of underlying misconduct.[5]

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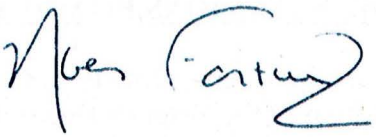
[4] Sanctions Board Decision No. 47 (2012) at paras. 27-28, 31-33.

[5] Id. at paras. 48-57.

The Sanctions Board found mitigation to have been warranted only for the Respondent's cooperation, the period of temporary suspension already served, and the passage of time since the underlying misconduct.[6] Moreover, this mitigation was balanced against the aggravation applied as a result of the repeated nature of the Respondent's misconduct, as well as the magnitude of harm caused by misconduct resulting in the award of multiple contracts in a sensitive sector and involving the supply of drugs.[7]

12. Finally, the Request does not appear to present other types of exceptional circumstances warranting reconsideration. Although the Respondent asserts that approximately "80% [of its debarment] time has elapsed" and the purpose of its debarment has been served, the Sanctions Board notes that the Respondent conflates its temporary suspension and minimum debarment periods and that the Respondent does not appear to have engaged with the ICO to seek to demonstrate compliance with the conditions for release set out in the Original Decision.

13. Considering the applicable standards of review and the record presented, the Sanctions Board hereby denies the Request for Reconsideration.



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On behalf of the
World Bank Group Sanctions Board

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[6] Id. at paras. 53-54, 56.

[7] Id. at paras. 40-44.