THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: June 30, 2015

Sanctions Board Decision No. 77
(Sanctions Case No. 322)

IDA Credit No. 4869-UZ
Uzbekistan

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 322 (the "Respondent"), together with any entity that is an Affiliate[2] directly or indirectly controlled by the Respondent, with a minimum period of ineligibility of four (4) years and six (6) months beginning on the date of this decision. This sanction is imposed on the Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board met in panel sessions in October 2014 and November 2014 to review this case. The panel was composed of L. Yves Fortier (Chair), Catherine O'Regan, and Denis Robitaille. Neither the Respondent nor the World Bank Group's Integrity Vice Presidency ("INT") requested a hearing. Nor did the Sanctions Board Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.[3]

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

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")[4] to the Respondent on April 7, 2014 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated December 20, 2013;

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

[2] The term "Affiliate" means "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." Sanctions Procedures at Section 1.02(a).

[3] See Sanctions Procedures at Section 6.01.

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

ii. Explanation submitted by the Respondent to the EO on April 29, 2014 (the "Explanation");

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on July 9, 2014 (the "Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on August 8, 2014 (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 the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The EO recommended a minimum period of ineligibility of six (6) years, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

4. Effective April 7, 2014, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[5] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[6] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as "Bank-Financed Projects")[7] pending the final outcome of the sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group.

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

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

[7] For the avoidance of doubt, the term "Bank-Financed Projects" includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section 1.01(c)(i), n.3.

II. GENERAL BACKGROUND

5. This case arises in the context of the Syrdarya Water Supply Project (the "Project") in Uzbekistan. IDA and the Republic of Uzbekistan entered into a financing agreement valued at the equivalent of approximately US$88 million on September 16, 2011. The Project, which is currently scheduled to close on December 31, 2017, seeks to improve the availability, quality, and sustainability of public water supply services in selected areas of Uzbekistan. The public agency tasked with coordinating the Project (the "PCU") directed the selection process for a contract for consulting services related to the Project (the "Contract"). Between July and December 2011, the PCU published a request for expressions of interest regarding the Contract (the "REOI"), issued a subsequent request for proposals to a short list of interested companies (the "RFP"), and opened all four proposals from the short list of candidates.

6. In the course of the selection process, the PCU received an expression of interest (the "EOI") and a technical proposal (the "Technical Proposal"), submitted in the name of the Respondent. Both documents included descriptions of the Respondent's past experience and were signed by the same individual (the "Signatory"). The Technical Proposal also enclosed a power of attorney, bearing a signature attributed to the Respondent's General Manager (the "General Manager") and stating that the Signatory was authorized to submit "the Bid" on the Respondent's behalf (the "Proposal POA").

7. On January 6, 2012, the PCU received a letter from the Signatory, which was sent in the Respondent's name and requested a return of the Respondent's tender documents. The PCU, after seeking guidance from the Bank, nevertheless proceeded to consider the submitted tender documents as planned. Upon review, the Technical Proposal failed to attain the minimum score required for further consideration. The Contract was awarded to another bidder.

8. INT alleges that the Respondent engaged in fraudulent practices through its agent by knowingly or recklessly submitting false and misleading experience documents with its EOI and Technical Proposal. INT additionally alleges that the Respondent engaged in an obstructive practice by deliberately fabricating two documents constituting material evidence in order to impede INT's investigation.

III. APPLICABLE STANDARDS OF REVIEW

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

10. 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.

11. The financing agreement for the Project provided that the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 2006 and May 2010) (the "May 2010 Consultant Guidelines") would apply. However, the REOI stipulated that consultants would be selected in accordance with the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 2006) (the "October 2006 Consultant Guidelines"); and the RFP provided that selection of consultants would be governed by the World Bank's Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits & Grants by World Bank Borrowers (January 2011) (the "January 2011 Consultant Guidelines").

12. In accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the standards applicable in the event of a conflict shall be those agreed between the borrowing or recipient country and the respondent as governing the particular contract at issue, rather than the standards agreed between the borrowing or recipient country and the Bank.[8] Therefore, sanctionable practices alleged with respect to conduct relating to the REOI – namely, fraud in the EOI and obstruction of INT's investigation into such fraud – would have the meanings set forth in the October 2006 Consultant Guidelines. In addition, sanctionable practices alleged with respect to conduct relating to the RFP – namely, fraud in the Technical Proposal and obstruction of INT's investigation into such fraud – shall have the meanings set forth in the January 2011 Consultant Guidelines.

13. In fact, the applicable definitions of the alleged sanctionable practices under the October 2006 and January 2011 Consultant Guidelines are the same. Both the October 2006 and the January 2011 Consultant Guidelines define "fraudulent practice" as "any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;"[9] and define "obstructive practice" as, inter alia, the acts of "deliberately destroying, falsifying, altering or concealing of evidence material to the investigation . . . in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice."[10]

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

[9] October 2006 Consultant Guidelines at Paragraph 1.22(a)(ii); January 2011 Consultant Guidelines at Paragraph 1.23(a)(ii).

[10] October 2006 Consultant Guidelines at Paragraph 1.22(a)(v)(aa); January 2011 Consultant Guidelines at Paragraph 1.23(a)(v)(aa).

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

14. INT alleges that the Respondent engaged in fraudulent practices by knowingly or recklessly submitting the EOI and the Technical Proposal, which contained false and misleading experience documents. INT asserts first that the Respondent acted knowingly, because the Respondent can be found culpable for the acts of the Signatory, who submitted the EOI and the Technical Proposal as the Respondent's agent and on the Respondent's behalf, and without the Respondent having implemented controls sufficient to prevent the alleged fraud. In the alternative, INT asserts that the Respondent was reckless in having failed to supervise the Signatory, and that this lack of oversight directly caused the submission of false and misleading documents. INT argues that the misrepresentations in the EOI and the Technical Proposal were made in order to obtain a financial benefit, as the Respondent sought to qualify for the Contract by submitting false experience claims.

15. INT additionally alleges that the Respondent engaged in an obstructive practice by deliberately fabricating evidence in order to materially impede INT's investigation. Specifically, INT asserts that the Respondent provided it with two documents (respectively, "POA-1" and "POA-2") that – according to INT – the Respondent fabricated to show different signatures than on the Proposal POA and falsely described as powers of attorney submitted with the Respondent's proposals under the 2007 and 2011 tenders issued by the Asian Development Bank (the "ADB").

16. INT states that it finds no aggravating or mitigating factors.

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

17. The Respondent contests INT's accusations and the EO's recommended sanction. With respect to the allegation of fraudulent practices, the Respondent denies having falsified anything directly, and asserts that any falsifications submitted by the Signatory, as made without the Respondent's knowledge or authorization, "are irrelevant to [the Respondent]." The Respondent adds that although the Signatory had worked as the Respondent's agent in previous bids on ADB-financed contracts in 2007 and 2011, the Respondent did not authorize the Signatory to act on its behalf with respect to the selection process for the present Contract.

18. Regarding INT's allegation of obstructive practice, the Respondent asserts that it "never attempted to impede INT's investigation." The Respondent maintains that its POA-1 and POA-2 are authentic originals of the powers of attorney that the Respondent had signed in duplicate and provided to the Signatory in 2007 and 2011.

19. The Respondent asserts that a "mitigating factor . . . shall come into being" subject to the authentication of POA-1 and POA-2 and a finding that INT's allegation of obstructive practice is "groundless." In addition, the Respondent refers to its "attitude of candidness and cooperativeness with INT" during the investigation.

C. INT's Principal Contentions in the Reply

20. INT submits that the Respondent's claim that the Signatory acted without authorization does not provide a basis for either a withdrawal of the Notice or application of a sanction lighter than that recommended by the EO (i.e., a six-year-minimum debarment with conditional release). INT reiterates its arguments made in the SAE with respect to the agency relationship between the Signatory and the Respondent, as reflected in the Proposal POA, and states that the Respondent's documents furnished to contest this agency relationship, i.e., POA-1 and POA-2, are "not genuine."

21. INT asserts that significant aggravation is merited for the Respondent's lack of candor and its resubmission of the inauthentic POA-1 and POA-2 to the Sanctions Board.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

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

A. Evidence of Fraudulent Practice

23. In accordance with the definition of fraudulent practice under the October 2006 and January 2011 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) engaged in any act or omission, including misrepresentation, (ii) that knowingly or recklessly misled, or attempted to mislead a party (iii) to obtain financial or other benefit or to avoid an obligation.

1. Misrepresentation

24. The EOI represented the Respondent's experience by way of ten "[p]roject[] description sheets," which referred to, inter alia, projects in Nepal, the Philippines, Russia, and Ukraine (the "Four Projects"). The Technical Proposal also included project description sheets for thirteen projects as examples of the Respondent's experience, including two of the Four Projects – those located in Nepal and the Philippines. INT asserts that the Respondent did not in fact bid on or implement any of the Four Projects.

25. In past decisions finding that respondents had submitted false bid documents, the Sanctions Board relied primarily on written statements from the parties named in or supposedly

issuing the allegedly falsified documents, as well as the respondents' own admissions.[11] In the present case, the record includes correspondence to INT from individuals at organizations linked to each of the Four Projects, stating that: (i) the leading organization for the asserted project in Nepal has no record of any association with the Respondent in relation to that project, (ii) the asserted project in the Philippines did not take place, (iii) the asserted project in Russia "has not been considered" and no related tender was conducted, and (iv) the Respondent did not implement the Ukraine project as asserted. The Respondent does not deny that the EOI and the Technical Proposal contained misrepresentations as alleged.

26. On the basis of this record, the Sanctions Board finds that it is more likely than not that the EOI and the Technical Proposal contained misrepresentations in the form of project description sheets referencing the Four Projects.

2. Made knowingly or recklessly

27. Because INT's theories of knowledge and recklessness rely on the existence of an agency relationship between the Respondent and the Signatory with respect to the Project, which the Respondent disputes, the Sanctions Board first addresses whether the record supports a finding that the Signatory served as the Respondent's agent in submitting the EOI and the Technical Proposal. The Sanctions Board then considers whether the Respondent acted knowingly or recklessly.

a. Whether the Signatory served as the Respondent's agent

28. INT asserts that the Signatory entered into a five-year agency agreement with the Respondent in 2007 and was working on the Respondent's behalf at the time of the misconduct. INT submits that the Signatory had no motivation to pose falsely as the Respondent's authorized representative in submitting the EOI and the Technical Proposal, and had no "ability to fulfill the requirements of the Proposal." The Respondent contends that it did not authorize the Signatory to act on its behalf with respect to selection processes under the Project, and that its 2007 and 2011 authorizations of the Signatory to represent it for purposes of ADB-financed contracts had automatically expired upon submission of the relevant bids.

29. In considering whether the record shows an agency relationship between the Respondent and the Signatory, the Sanctions Board looks first to the Proposal POA. This document purports to grant to the Signatory "full power and authority" to submit "the Bid" on behalf of the Respondent and appears to authorize him to represent the Respondent in regard to the selection process for the Contract. The Proposal POA is similar to several other documents issued by the Respondent in that it displays the same letterhead and/or company stamp. However, the

[11] See, e.g., Sanctions Board Decision No. 2 (2008) at para. 4 (stating that the Sanctions Board "relied primarily" on a written statement from the purported issuer of the documents at issue that the documents had been forged, as well as the respondent's oral and written admissions, in finding that the respondent had engaged in fraudulent practices by forging documents); see also Sanctions Board Decision No. 68 (2014) at para. 22 (considering written denials of authenticity by the purported issuer, as well as the respondent's implicit acknowledgment that the documents were falsified, in finding that the documents were forged).

Respondent disputes the authenticity of the General Manager's signature on the Proposal POA and suggests that it is dissimilar from the General Manager's signature appearing in authentic documents provided directly by the Respondent to the Bank: namely, POA-1, POA-2, a hard copy of the Respondent's response to INT's show-cause letter, the Explanation, and the Response. The Sanctions Board notes that the record does not include, and INT does not appear to have requested, any copies of the Respondent's internal correspondence contemporaneous with the Signatory's submission of the EOI and the Technical Proposal, which may have facilitated authentication of the Proposal POA. The Sanctions Board therefore considers that this document has limited evidentiary weight on its own.[12]

30. Other evidence, however, bolsters a conclusion that the Signatory acted as the Respondent's authorized agent during the period of the alleged misconduct, as INT asserts. For example, statements from the Respondent, the Signatory, and the ADB, taken together, confirm that the Signatory had previously served as the Respondent's authorized agent. While the Respondent asserts that its prior authorizations of the Signatory were limited to the ADB tenders issued in 2007 and 2011, the Signatory reportedly described to INT a broader agreement to serve as the Respondent's agent for a term of approximately five years beginning in 2007. Most importantly, the record does not suggest, and the Respondent does not offer, any reason why the Signatory would act on his own, without the Respondent's knowledge or authorization, to prepare and submit the EOI and the Technical Proposal in the name of the Respondent. As INT notes, the Signatory had no means to implement the Contract on his own.

31. Taking into account the totality of the circumstances and evidence presented, the Sanctions Board finds that it is more likely than not that the Signatory acted as the Respondent's agent in submitting the EOI and the Technical Proposal. The Sanctions Board will now consider whether the Respondent knowingly or recklessly caused the alleged misrepresentations.

b. Whether the Respondent acted knowingly or recklessly

32. INT has the burden to prove that it is more likely than not that the Respondent submitted the false experience documents knowingly or recklessly. As discussed below, the Sanctions Board finds that the record supports a conclusion that it is more likely than not that the Respondent acted at least recklessly in having the EOI and the Technical Proposal submitted in its name with the false experience documents.

33. In assessing recklessness, the Sanctions Board may consider whether circumstantial evidence indicates that a respondent was or should have been aware of a substantial risk – such as harm to the integrity of the Bank's procurement process due to false or misleading bid documents – but nevertheless failed to act to mitigate that risk.[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 that the

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[12] See Sanctions Board Decision No. 64 (2014) at para. 35 (ascribing limited evidentiary weight to documents for which authentication would have been useful and apparently feasible, but which INT did not authenticate).

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

proverbial "reasonable person" would exercise in the circumstances.[14] In the context of Bank-Financed Projects, the standard of care should be informed by the Bank's procurement policies, as articulated in the applicable Procurement or Consultant Guidelines and the standard bidding documents for the contract at issue.[15] Industry standards or customary or firm-specific business policies, procedures, or practices may also be relevant in certain cases.[16]

34. The record supports a finding that, for two principal reasons, the Respondent was or should have been aware of a substantial risk that the Signatory could have submitted false documents on the Respondent's behalf. First, the record reveals that the Respondent did not take steps to confirm the Signatory's qualifications or otherwise vet him as a suitable authorized representative for purposes of tender submission. The Respondent stated that it had hired the Signatory for the ADB tenders on the recommendation of "some intermediary friends" and on the basis of his Russian-language skills and residence in Uzbekistan. The Respondent's description of the Signatory as merely a "cook" suggests that the Respondent viewed the Signatory as lacking the technical skills required to represent the Respondent during a selection process. Second, the Respondent's described practices with respect to agents reflect a broader lack of oversight. In its correspondence with INT, the Respondent referred to "loopholes or weak points in [its] overseas projects' management," including weaknesses in its "agent-entrusting" and an absence of "legal terms and conditions to prevent the agent from becoming a freewheeler."

35. In these circumstances, the Respondent should have taken adequate precautions to mitigate the substantial risk of misrepresentation from the Signatory's continued representation of the Respondent. Yet it did not do so. Indeed, as mentioned in the previous paragraph, the Respondent admitted in its correspondence with INT that there were "loopholes or weak points" in its system of project management including the absence of conditions to prevent an agent from becoming a "freewheeler."

36. Having determined that the Respondent was or should have been aware of a substantial risk that the Signatory could have submitted false documents on the Respondent's behalf but did not take adequate precautions notwithstanding this risk, the Sanctions Board concludes that the Respondent acted at least recklessly in causing – through the Signatory – submission of the EOI and the Technical Proposal with misrepresentations.

3. <u>To obtain a financial or other benefit or to avoid an obligation</u>

37. INT alleges that the misrepresentations in the EOI and the Technical Proposal were made in order to obtain a financial benefit, as the Respondent sought to qualify for the Contract by submitting false experience claims. The Sanctions Board has previously found that a respondent's submission of forged or misleading documents in response to a bid requirement is more likely than not intended to show the respondent's qualifications and thereby help the

[14] Id.

[15] Id.

[16] Id.

respondent win the tender and benefit from such award.[17] In the present case, both the REOI and the RFP required information about the candidate firms' past experience. Accordingly, the Sanctions Board finds that misrepresentations in the EOI and the Technical Proposal were more likely than not intended to showcase the Respondent's capacity to perform the necessary tasks and thereby enable the Respondent to be shortlisted and eventually be awarded the Contract.

B. Evidence of an Obstructive Practice

38. In accordance with the definition of obstructive practice under the October 2006 and the January 2011 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) deliberately falsified evidence (ii) that is material to the investigation in order to materially impede a Bank investigation into allegations of a fraudulent practice.

1. Deliberately falsifying evidence

39. During the course of INT's investigation, the Respondent denied having authorized the Signatory to submit the EOI and the Technical Proposal for the Contract. In support of this denial, the Respondent challenged the authenticity of the Proposal POA by calling attention to a discrepancy between (i) the General Manager's alleged signature on the Proposal POA and (ii) the General Manager's claimed signatures on POA-1 and POA-2, which the Respondent asserts are authentic and were prepared for inclusion in the Respondent's bids under ADB-financed projects in 2007 and 2011. INT submits evidence that, notwithstanding the Respondent's assertions, POA-1 and POA-2 were never submitted to the ADB with the Respondent's bids under those projects. On this basis, INT alleges that the Respondent deliberately fabricated the two documents.

40. The Sanctions Board notes a material distinction between the Respondent's actual claim and INT's characterization of the Respondent's claim. In correspondence with INT, the Respondent stated that POA-1 and POA-2 were "issued to [the Signatory]" with "intended use" for the ADB tenders. However, the Respondent does not claim that POA-1 and POA-2 were in fact submitted as part of the tenders. Indeed, a close review of the documents reveals that POA-1 as provided by the Respondent specified a validity period that fell short of the ADB's deadline for bid submission. Accordingly, INT's assertion that the Respondent misrepresented its use of POA-1 and POA-2 is unavailing.

[17] See, e.g., Sanctions Board Decision No. 48 (2012) at para. 25; Sanctions Board Decision No. 75 (2014) at para. 25.

41. Moreover, INT has not presented evidence to demonstrate that it is more likely than not that POA-1 and POA-2 were fabricated in order to impede its investigation in this case. As noted earlier, the Respondent asserts that the documents identified as POA-1 and POA-2 in the record are originals of the 2007 and 2011 authorizations that the Respondent had signed in duplicate, with one set of originals going to the Signatory and a second set of originals retained by the Respondent. The documents presented to the Sanctions Board appear to have original stamps and signatures. INT has not suggested any indicia of inauthenticity on the face of the documents, and the Sanctions Board has not seen any such indicia.

42. On the basis of this record, the Sanctions Board concludes that INT has not borne its burden of proof to show that it is more likely than not that the Respondent deliberately falsified any evidence.

2. That is material to the investigation, in order to materially impede a Bank investigation into allegations of a fraudulent practice

43. In view of the finding in Paragraph 42, the Sanctions Board need not consider whether the evidence at issue was material to the Bank's investigation or whether any falsification was intended to materially impede the investigation. For the reasons set out above, the Sanctions Board finds that it is not more likely than not that the Respondent engaged in an obstructive practice as alleged.

C. Sanctioning Analysis

1. General framework for determination of sanctions

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

45. 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.[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]

46. The Sanctions Board is required to consider the types of factors set forth in Section 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning

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

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

Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. They further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after a minimum of three years.

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

2. Factors applicable in the present case

a. Severity of the misconduct

48. Section 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A.2 of the Sanctioning Guidelines identifies sophisticated means of misconduct as one example of severity, based on, inter alia, the degree of planning, diversity of techniques applied, and level of concealment.

49. *Sophisticated means*: The Sanctions Board has previously applied aggravation on this basis where a respondent's misrepresentations included different types of forged official documents clearly drafted in an effort to avoid detection.[20] In the present case, the record reveals that the Respondent's false claims of past experience in the EOI and the Technical Proposal are highly detailed and contain specific references to actual development projects and their implementing or financing entities. The Sanctions Board finds aggravation warranted on the basis of the apparent forethought and planning required to prepare deceptive documents of this nature.

b. Voluntary corrective action

50. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a sanctioned party took voluntary corrective actions. Section V.B.3 of the Sanctioning Guidelines identifies the establishment or improvement and subsequent implementation of a corporate compliance program as an example of voluntary corrective action, with the timing, scope, and quality of the action 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 substantiate any claimed voluntary corrective action.[21]

51. *Effective compliance program*: The Respondent alludes to several potential remedial measures in its correspondence with INT, including the "adopt[ion of] the World Bank

[20] Sanctions Board Decision No. 69 (2014) at para. 33.

[21] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 67 (2014) at para. 38.

Guidelines and the Ethics of Conduct as [its] blueprint for . . . future operation" and intent to change its practice with respect to agents. In past cases, the Sanctions Board has declined to afford mitigation where the record contained no evidence that the respondent had in fact implemented compliance measures,[22] or where the evidence did not demonstrate the type of voluntary corrective actions that would prevent or address the type of misconduct at issue.[23] In the present case, none of the Respondent's statements to INT in regard to potential remedial actions were accompanied by evidence. The Sanctions Board therefore declines to apply any mitigation on this basis.

c. Cooperation

52. 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 and a respondent's internal investigation as examples of cooperation.

53. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance and/or ongoing cooperation, "[b]ased on INT's representation that the respondent has provided substantial assistance in an investigation," with consideration of the "truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." In its Explanation, the Respondent refers to its "attitude of candidness and cooperativeness" during INT's investigation. The Sanctions Board has previously accorded varying levels of mitigation in cases where a respondent's managers met with INT on several occasions and provided relevant information and documentation;[24] corresponded with INT and made relevant personnel available for interviews;[25] or engaged in more limited forms of cooperation, e.g., by replying to INT's show-cause letter.[26] The Sanctions Board has denied mitigating credit under this factor where it did not consider the respondent's statements to INT to have substantially assisted the investigation.[27]

54. The record reveals that the Respondent responded to INT's requests for information several times between November 2012 and July 2013, spoke with INT via videoconference, offered to provide INT with a signature sample from the Respondent's General Manager, and

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[22] See, e.g., Sanctions Board Decision No. 45 (2010) at para. 74 (finding no basis to apply mitigation for the respondent's asserted willingness to pursue corporate compliance measures, absent evidence of actual implementation).

[23] See, e.g., Sanctions Board Decision No. 65 (2014) at para. 77.

[24] Sanctions Board Decision No. 53 (2012) at para. 58.

[25] Sanctions Board Decision No. 56 (2013) at para. 73.

[26] Sanctions Board Decision No. 37 (2010) at para. 45; Sanctions Board Decision No. 51 (2012) at para. 90.

[27] See, e.g., Sanctions Board Decision No. 61 (2013) at para. 44 (noting that although the respondents had promptly provided detailed responses to INT's queries, the respondents' statements revealed substantial internal inconsistencies, particularly in their varying accounts of basic aspects of the bid preparation process).

provided an excerpt of the Respondent's "Behavioral Code for Staff." Throughout the investigation, however, the Respondent denied its agency relationship with the Signatory for purposes of the Project and – as also addressed in Paragraph 59 below – failed to show the type of candor and cooperation as would warrant mitigation.

55. *Internal investigation*: Section V.C.2 of the Sanctioning Guidelines provides for mitigation where a respondent conducted an "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." The Respondent asserts that members of upper management met several times "to check on the status of the incident, to find out what's going on and what the root cause is." When asked by INT to list any internal actions taken as a result of the inquiry, the Respondent stated only that it appointed a representative of the General Manager to communicate with INT.

56. In determining whether and to what extent an internal investigation may warrant mitigating credit, the Sanctions Board considers whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience;[28] whether the respondent shared its investigative findings with INT during INT's investigation or as part of the sanctions proceedings;[29] and whether the respondent has demonstrated that it followed up on any investigative findings and recommendations.[30] The Respondent has not indicated the specific circumstances of any investigation, has not shared the results of its internal review with INT, and has provided no evidence to prove that its investigative findings resulted in follow-up actions targeted at the misconduct. Accordingly, the Sanctions Board declines to apply mitigation on this basis.

d. Period of temporary suspension already served

57. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent's temporary suspension since the EO's issuance of the Notice on April 7, 2014.

e. Other considerations

58. Under Section 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider "any other factor" that it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice."

59. *Non-cooperation in proceedings before the Sanctions Board*: The Sanctions Board has previously applied aggravation based on respondents' non-cooperation in the course of

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

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

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

sanctions proceedings.[31] INT submits that the Respondent's "lack of candor to the Sanctions Board" merits significant aggravation. As discussed earlier at Paragraph 30, the Sanctions Board finds implausible the Respondent's suggestion that the Signatory would have acted on his own, without the Respondent's knowledge or authorization, to submit the fraudulent documents at issue in this case. In these circumstances, the Sanctions Board finds that the Respondent's conduct in these proceedings demonstrates a lack of candor warranting aggravation.

60. *Insufficient evidence of obstruction*: The Respondent asserts that "a mitigating factor . . . shall come into being" subject to the authentication of the Respondent's POA-1 and POA-2 and a finding that INT's allegation of obstructive practice is "groundless." The Sanctions Board notes that the insufficiency of one allegation of misconduct will not necessarily have any bearing upon a respondent's culpability for another allegation of misconduct. In addition, although this decision does not find that it is more likely than not that POA-1 and POA-2 were fabricated, the Sanctions Board has not found that the documents are necessarily authentic either. In this context, the Sanctions Board declines to apply any additional mitigation.

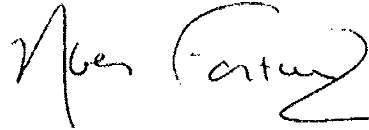
D. Determination of Liability and Appropriate Sanction

61. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Project, provided, however, that after a minimum period of ineligibility of four (4) years and six (6) months beginning on the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented an integrity compliance program with adequate policies and procedures for use of agents, bid preparation, and ethics training for staff. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for a fraudulent practice as defined in Paragraph 1.22(a)(ii) of the October 2006 Consultant Guidelines and Paragraph 1.23(a)(ii) of the January 2011 Consultant Guidelines.

62. The Bank will also provide notice of this declaration of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may

[31] Sanctions Board Decision No. 63 (2014) at para. 121 (applying aggravation to two respondents for their persistent and implausible denials of any responsibility for or knowledge of the corrupt scheme, despite substantial evidence to the contrary); Sanctions Board Decision No. 71 (2014) at para. 107 (applying significant aggravation for the respondent's presentation, in its response and at the hearing, of an uncorroborated version of events lacking in credibility in order to justify the submission of inauthentic documents with its bid).

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.[32]



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board Panel

L. Yves Fortier
Catherine O'Regan
Denis Robitaille

[32] 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 external website (http://go.worldbank.org/B699B73Q00).