

Date of issuance: August 10, 2015

**Sanctions Board Decision No. 79
(Sanctions Case No. 299)**

**IBRD Loan No. 4818-IN
India**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of reprimand on the respondent entity in Sanctions Case No. 299 (the “Respondent”) by means of a formal letter of private reprimand issued to the Respondent 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 a panel session on December 5, 2014, at the World Bank Group’s headquarters in Washington, D.C., to review this case. The panel was composed of L. Yves Fortier (Chair), Alison Micheli, and Ellen Gracie Northfleet. A hearing was held on the same day, following requests from the Respondent and the World Bank Group’s Integrity Vice Presidency (“INT”), and in accordance with Article VI of the Sanctions Procedures. INT participated in the hearing through its representatives attending in person. The Respondent was represented by two of its officers and outside counsel. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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”)² to the Respondent on April 9, 2014 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) presented to the EO by INT, dated February 7, 2014;
- ii. Explanation submitted by the Respondent to the EO on June 24, 2014 (the “Explanation”);

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 Effective March 31, 2013, the EO’s title changed to “IBRD/IDA Suspension and Debarment Officer” (“SDO”). For consistency with the Sanctions Procedures applicable in this case, this decision refers to the former title.

- iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on August 25, 2014 (the “Response”); and
 - iv. Reply submitted by INT to the Secretary to the Sanctions Board on September 25, 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 Affiliate³ directly or indirectly controlled by the Respondent. The EO recommended a minimum period of ineligibility of three (3) 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 9, 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;⁴ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁵ 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”)⁶ 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.

³ 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).

⁴ For the avoidance of doubt, the scope of ineligibility to be awarded a contract shall include, without limitation, (i) applying for prequalification, 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.

⁵ 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 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. Sanctions Procedures at Section 9.01(c)(ii), n.17.

⁶ 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 Karnataka Municipal Reform Project (the “Project”) in India, which aimed to assist the State of Karnataka in improving the delivery of urban services. On May 2, 2006, IBRD and the Republic of India (the “Borrower”) entered into an agreement for a loan of US\$216 million to finance the Project. On the same date, IBRD and the State of Karnataka entered into an agreement concerning implementation of the Project (the “Project Agreement”). The Project Agreement delegated implementation of the Project’s components to several implementation units, including the particular unit relevant in this case (the “PIU”).

6. In June 2009, the PIU issued bidding documents for the provision of sewerage systems under the Project, all in the greater Bangalore area. A joint venture (the “JV”), composed of the Respondent and a partner company (the “JV Partner”), bid for a total of eight contracts under the Project, with three bids dated July 30, 2009, and five bids dated August 5, 2009 (together, the “Bids”). The Respondent prepared the bids as the JV’s “lead partner.” The aggregate minimum value of the Bids was the equivalent of approximately US\$87 million. Each of the eight Bids included a work experience certificate (the “Certificate”) attributed to the same issuer (the “Purported Issuer”). INT alleges that the Respondent engaged in fraudulent practices because this Certificate submitted with the Bids was false.

III. APPLICABLE STANDARDS OF REVIEW

7. 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.

8. 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 the respondent’s conduct did not amount to a sanctionable practice.

9. The Project Agreement provided that the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) shall govern the procurement of works under the Project. However, the bidding documents for contracts under the Bids all defined fraudulent practice in accordance with the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 2006) (the “October 2006 Procurement Guidelines”). In accordance with the Bank’s legal framework applicable to sanctions, as well as considerations of equity, the standards applicable in the event of such 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.⁷ Therefore, the alleged sanctionable practices in this case have the meaning set forth in Paragraph 1.14(a)(ii) of the October 2006 Procurement Guidelines, which defines the term “fraudulent practice” 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.”

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

10. INT asserts that the Certificate is falsified, and that the Respondent engaged in fraudulent practices by knowingly or recklessly submitting the Certificate with each of the Bids. According to INT, the record supports a finding that the Respondent’s employees acted knowingly in submitting the falsified Certificate, because the Respondent’s explanations are internally contradictory and deficient; or at least recklessly, given that the Respondent was aware of the risk that the Certificate was falsified, but did not implement any controls to prevent or detect the misconduct. INT further submits that the Respondent’s misrepresentations were made in an attempt to mislead the Borrower and meet the bidding criteria for the contracts advertised by the PIU. INT contends that the Respondent is liable under the doctrine of respondeat superior for the acts of its employees in preparing and submitting the Certificate.

11. INT asserts that repetition is an aggravating factor, and states that it has not identified any mitigating factors.

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

12. The Respondent concedes that the Certificate was falsified and that it was submitted in response to a bidding requirement. It does not contest responsibility for the submission of the false Certificate, which it attributes to its “failure of oversight.” The Respondent asserts that the Certificate was produced by a “rogue employee” (the “Project Manager”) and was included in the Bids by other staff who were acting with only “nascent internal controls” and were unaware of its falsity. The Respondent denies that it provided contradictory or intentionally misleading statements during the investigation, as INT asserted. The Respondent counters that INT failed to conduct a thorough investigation or engage appropriately with the Respondent during INT’s inquiry.

13. The Respondent argues that the record does not support aggravation for any repeated misconduct. It requests mitigation on numerous grounds, namely: the lack of harm resulting from the misconduct; the Respondent’s minor role in the misconduct; voluntary corrective actions including cessation of misconduct, internal action against the responsible individual, and an effective compliance program; various forms of cooperation including assistance with INT’s investigation, an internal investigation, admission and acceptance of responsibility, and voluntary

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

restraint from bidding; the period of temporary suspension served by the Respondent to date; the passage of time since the misconduct and the Bank's potential awareness of it; the Respondent's reputation and "track record"; adverse consequences of the Respondent's debarment; proportionality under the Sanctions Board's past precedent and the Sanctioning Guidelines; and general policy considerations. The Respondent asserts that potentially appropriate sanctions in this case would be limited to a letter of reprimand, conditional non-debarment, or debarment of less than one year.

C. INT's Principal Contentions in the Reply

14. On the issue of liability, INT asserts that there is no basis for a "rogue employee" defense, because the Project Manager was acting within the scope of his employment to serve the Respondent and because the Respondent did not have any controls in place for a rogue employee to evade.

15. With respect to sanctioning factors, INT asserts that, in spite of the Respondent's concession regarding the falsity of the Certificate, the Respondent has not fully accepted liability for the misconduct and "appears to continue to mislead the Bank in relation to its conduct." INT describes the Respondent's comments on INT's conduct as "baseless accusations, [made] in order to divert attention from the misconduct," which should be treated as an aggravating factor and further evidence of the Respondent's failure to accept responsibility for its actions. INT additionally contends that the Respondent's asserted remedial actions are not supported by documentary evidence and were not raised by the Respondent until after the end of INT's investigation.

D. Presentations at the Hearing

16. At the hearing, INT stated that the Respondent's submission of the false Certificate is undisputed, and asserted that the Certificate's repeated submission in eight bids merits aggravation. INT conceded that some level of mitigation is appropriate for the Respondent's cooperation with INT and subsequent remedial measures, as well as the passage of time since the misconduct. However, INT added that the extent of any mitigation on these grounds should be limited by the Respondent's failure to support its arguments with evidence, its apparent lack of remorse, and its incomplete cooperation.

17. The Respondent affirmatively accepted responsibility for the actions of its staff and added that it contested only the severity of the sanction recommended by the EO, not the finding of liability. The Respondent asserted that the EO's recommended sanction was disproportionate given the isolated nature of the misconduct and the multiple mitigating circumstances set out in the Response. The Respondent additionally criticized INT's failure to inform the Respondent of the possibility of a negotiated resolution before INT initiated the present sanctions proceedings, which the Respondent asserted is a violation of INT's internal policy. In conclusion, the Respondent expressed its intent to refrain from further misconduct and to serve as a "reliable partner" to the Bank in the future. With respect to compliance measures, the Respondent also expressed understanding of INT's concerns, stated that it would appreciate the Bank's

recommendations on compliance, and noted that it was open to the possibility of periodic reporting to and/or engagement with the World Bank Group's Integrity Compliance Officer.⁸

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

18. The Sanctions Board will first consider whether it is more likely than not that the Respondent engaged in fraudulent practices. The Sanctions Board will then determine what sanction, if any, should be imposed on the Respondent.

A. Evidence of Fraudulent Practices

19. In accordance with the definition of "fraudulent practice" under the October 2006 Procurement 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 a misrepresentation, that (ii) knowingly or recklessly misled or attempted to mislead a party (iii) to obtain a financial or other benefit or to avoid an obligation.

1. Misrepresentation

20. INT asserts that the Respondent submitted the false Certificate with its eight Bids. In a number of past decisions finding that the respondents had submitted forged bid documents, the Sanctions Board 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

21. In the present case, the record confirms that each of the Bids contained a copy of the Certificate and includes the Purported Issuer's written denials that (i) the Certificate was issued as presented, (ii) the Respondent ever executed the work described in the Certificate, and (iii) the Purported Issuer had any record of the numbered agreement claimed on the Certificate. In addition, the Respondent acknowledges in its Response that it "submitted a falsified experience certificate . . . along with bids for eight World Bank-financed contracts." At the hearing, the Respondent's counsel described the certificate as "false" and stated that the Respondent's liability

⁸ Noting the Respondent's apparent interest in the possibility of settlement, and the parties' admissions that neither side had previously initiated settlement discussions, the Sanctions Board Chair invited the parties to explore the possibility of a negotiated resolution following the hearing. As the Sanctions Board was later informed, however, the parties were not able to reach agreement on a negotiated resolution.

⁹ 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. 61 (2013) at para. 21 (considering the written evidence of denials of authenticity by the purported issuers and signatories of the documents at issue, as well as the additional indicia of falsity on the face of the documents and the respondents' tacit acknowledgment that the documents are inauthentic, in finding that the documents were forged); Sanctions Board Decision No. 68 (2014) at para. 22 (finding that the bids contained misrepresentations in the form of forged bid documents where the record included two letters from the purported issuer of the bid documents stating that the documents were falsified, and the respondent implicitly acknowledged that the bid documents were falsified).

was not in dispute. In these circumstances, the Sanctions Board finds that it is more likely than not that the Bids each contained a misrepresentation in the form of the inauthentic Certificate.

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

22. INT submits that the Respondent acted knowingly or recklessly in submitting the Bids with the falsified Certificate.

23. The Sanctions Board first addresses INT's allegation that the Respondent acted knowingly in submitting the false Certificate, "[i]n light of the contradictions and deficiencies" in the Respondent's responses to INT. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.¹⁰ The Sanctions Board has previously considered internal contradictions in a respondent's statements to INT as part of the evidence that the alleged misconduct was knowing.¹¹ Here, INT contends that the Respondent's representatives initially stated that the Certificate was genuine, then blamed the Project Manager for the Certificate's submission, and later blamed the Respondent's unnamed business rivals for a "well thought out conspiracy." The Respondent counters that INT has misportrayed statements by the Respondent's representatives in order to create the appearance of inconsistencies.

24. The record does not support a finding that the Respondent's responses have been so inconsistent as to reveal a knowing misrepresentation. First, as the relevant interview transcript reveals, the Respondent's representatives repeatedly stopped short of affirming the Certificate's authenticity to INT at their first meeting and instead described the Certificate as "probably" authentic and "supposed to be accurate" because it relates to the Purported Issuer, with which the Respondent asserted a history of past work. Second, the Respondent's reference to its "business rivals" is presented in terms of speculation as to the Project Manager's motive in making the false submissions, not as an alternative theory of who carried out the misrepresentation. In sum, the Respondent's statements consistently attribute submission of the Certificate to the Project Manager and do not display internal contradictions so severe as to indicate that the Respondent acted knowingly in submitting a falsified document at the time of the Bids.

25. The Sanctions Board next considers whether the Respondent acted recklessly. INT submits that the Respondent must have been aware of the risk that the Certificate was falsified in view of four major discrepancies between the Certificate and a valid contract between the Respondent and the Purported Issuer. The Respondent itself identified these four discrepancies to INT: namely, the Certificate incorrectly identified the name, number, and value of the valid contract, and incorrectly stated the value of water- and sewerage-related work actually carried out.

¹⁰ Sanctions Procedures at Section 7.01.

¹¹ See Sanctions Board Decision 75 (2014) at paras. 22, 24.

26. In determining whether there was 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.¹² 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 proverbial “reasonable person” would exercise under the circumstances.¹³ In other words, the question is whether the respondent knew or should have known of the substantial risk presented.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

27. In determining whether a respondent was aware or, based on apparent red flags, should have been aware of a substantial risk that a document is a forgery, the Sanctions Board has considered whether any indicia of falsity were apparent on the face of the document¹⁷ and whether a responsible individual made any effort to supervise the bid preparation process.¹⁸ In the event that the Sanctions Board finds that it is more likely than not that a respondent was or should have been aware of a substantial risk of forgery, the Sanctions Board may consider whether the record shows that the respondent took precautions that were commensurate with the risk involved.

28. The record supports a finding that the Respondent’s employees were or should have been aware of a substantial risk that the Certificate was falsified. First, the basic discrepancies that the Respondent’s staff voluntarily identified to INT between the Certificate and the Respondent’s actual contract with the Purported Issuer should have been apparent to the Respondent’s employees at the time of the Bids’ preparation. In addition, the Respondent asserts, and the record does not contradict, that staff members involved in preparing the Bids – the assistant manager who compiled tender documents and the senior manager who signed the Bids (the “Assistant Manager” and the “Senior Manager,” respectively) – did not examine the Certificate for authenticity and instead relied on the assumption that the Project Manager had obtained it directly

¹² See, e.g., Sanctions Board Decision No. 51 (2012) at para. 33.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ See, e.g., Sanctions Board Decision No. 47 (2012) at para. 27 (noting physical indicia of falsification apparent on the face of some of the documents in question, such as identical language, similar signatures and lack of stamps); Sanctions Board Decision No. 52 (2012) at para. 27 (noting that the forged bid security submitted by the respondent lacked a bid security number, as would have been standard).

¹⁸ See Sanctions Board Decision No. 73 (2014) at para. 30 (finding that the respondent director was or should have been aware of a substantial risk of falsity, either because of potential red flags in the document or because he made no effort to supervise or direct the bid preparation process).

from the Purported Issuer. This reliance was particularly risky given that, as the Respondent's representatives stated, the overall absence of controls in tender preparation and the lack of oversight for project managers until early 2012 had resulted in lost bids, lost projects, and lost revenue.

29. The record also reflects that the Respondent's employees failed to take additional precautions as such awareness would have warranted. In past cases, the Sanctions Board has found that the respondents failed to act to mitigate a known or apparent risk of forged bid documents when those respondents made no efforts to check the authenticity of the bid documents in question.¹⁹ The Respondent's employees acknowledges that they did not detect that the Certificate was false due to a failure of the Respondent's "nascent" and "deficient" internal controls. In their interviews with INT, the Respondent's representatives repeatedly admitted that they did not make any effort to authenticate the Certificate.

30. Having determined that the Respondent's employees were or should have been aware of a substantial risk that the Certificate might not be authentic and that no adequate precautions were adopted despite this risk, the Sanctions Board concludes that the record supports a finding that the Respondent's employees acted recklessly in submitting the falsified Certificate.

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

31. INT alleges that the Respondent submitted the false Certificate "to meet the bidding criteria" for relevant contracts advertised by the PIU. The Sanctions Board has previously found that a respondent's submission of forged or misleading documents in response to a bid requirement was more likely than not intended to show the respondent's eligibility to be awarded the contract and thereby help the respondent win the bid and benefit from such award.²⁰ In the present case, the bidding documents for contracts under the Project instructed bidders to submit notarized certificate copies in support of their asserted work experience during certain time periods and of specified nature and value. The notarized copy of the Certificate included in each of the Bids represented that the Respondent had complied with all of those requirements. Accordingly, the Sanctions Board concludes that submission of the falsified Certificate was intended to obtain a financial or other benefit by helping to qualify the JV to receive contracts under the Project.

B. The Respondent's Liability for the Acts of its Employees

32. In past cases, the Sanctions Board has 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

¹⁹ See e.g., Sanctions Board Decision No. 73 (2014) at paras. 31-32 (finding that the respondent director failed to take appropriate measures to mitigate the risk of a false bid security where the record indicated that he did not track all guarantees, retain copies of submitted bids, or inquire about reasons for a bid's rejection, and the record did not reflect other precautions to verify the accuracy or authenticity of the bid security).

²⁰ See, e.g., Sanctions Board Decision No. 48 (2012) at para. 25; Sanctions Board Decision No. 61 (2013) at para. 28.

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 considered any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.²²

33. The record reveals that the Project Manager, the Assistant Manager, and the Senior Manager all appear to have acted within the course and scope of their particular positions, and without evading internal controls. Although the Respondent's pleadings referred at times to the Project Manager as a "rogue employee," the Respondent's submissions did not appear to contest liability on this basis and, at the Sanctions Board hearing, the Respondent confirmed that it accepted responsibility for the conduct of its staff. The Respondent has also described its internal control measures at the time of the misconduct as "nascent" and "deficient" and repeatedly admitted to INT that the Respondent did not make any effort to authenticate the Certificate.

34. Applying the doctrine of respondeat superior to the circumstances revealed by the record, the Sanctions Board concludes that the Respondent is liable for the fraudulent practice.

C. Sanctioning Analysis

1. General framework for determination of sanctions

35. 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.

36. 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

37. 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

²¹ See, e.g., Sanctions Board Decision No. 61 (2013) at para. 30; Sanctions Board Decision No. 68 (2014) at paras. 30-31.

²² See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 53-54; Sanctions Board Decision No. 63 (2014) at para. 72.

²³ See Sanctions Board Decision No. 40 (2010) at para. 28; see also Sanctions Board Decision No. 75 (2014) at para. 27.

²⁴ Sanctions Board Decision No. 44 (2011) at para. 56; see also Sanctions Board Decision No. 75 (2014) at para. 27.

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 a minimum of three years.

38. 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 the respondent.

2. Factors applicable in the present case

a. Severity of the misconduct

39. *Repeated pattern of conduct:* Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction. Section IV.A.1 of the Sanctioning Guidelines identifies a repeated pattern of conduct as one example of severity. INT submits that aggravation is warranted for the Respondent’s submission of the false Certificate in the eight Bids “at different times in 2009.” The Respondent contends that the alleged misconduct resulted from “a single failure of oversight” and that it submitted all eight Bids electronically as “a single set of documents,” “with only the name of the [contract] changed on each bid.” The Sanctions Board has previously applied aggravation for repeated misconduct where the misconduct took place over an extended period of time,²⁵ related to several contracts or projects,²⁶ and/or included different types of misrepresentations.²⁷ However, the Sanctions Board has declined to apply aggravation for repeated misconduct where it found that the respondents’ misconduct constituted a single scheme.²⁸ In the present case, the same Certificate was included in several bid packages for contracts under the same project, which bid packages appear to have been prepared by the Respondent in a single course of action before the bids were submitted in two batches in the same week. The Sanctions Board does not find these circumstances to present a repeated pattern of misconduct which would warrant aggravation.

²⁵ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 53 (applying aggravation where the respondent submitted various false documents “over an extended period” of time).

²⁶ See, e.g., Sanctions Board Decision No. 74 (2014) at para. 36 (applying aggravation where the respondent’s fraudulent acts related to three bids submitted over a three-month period for different Bank-financed projects in three countries).

²⁷ See, e.g., Sanctions Board Decision No. 56 (2013) at para. 55 (applying aggravation where the respondents engaged in “several distinct types of fraud, on different subject matters, extending over the course of nearly two years”); Sanctions Board Decision No. 68 (2014) at para. 37 (applying aggravation where the respondent submitted forged bid securities, tailored to two separate bids for two Bank-financed contracts under the same project).

²⁸ Sanctions Board Decision No. 63 (2014) at para. 97 (declining to apply aggravation where the respondents’ corrupt payments were made “pursuant to a single scheme”).

b. Magnitude of harm

40. *Lack of harm*: Section 9.02(b) of the Sanctions Procedures requires consideration of the magnitude of the harm caused by the misconduct in determining a sanction. Section IV.B.2 of the Sanctioning Guidelines identifies the degree of harm to the project only as a potential basis for aggravation. However, the Respondent requests mitigation under this factor, asserting that it withdrew the Bids. The Respondent provides no documentation to show that it withdrew any of the eight Bids in question. The record instead reveals that the PIU rejected each of the Bids either in response to the Respondent's failure to authenticate the Certificate or for competitive reasons. In any event, the Sanctions Board has previously considered the absence of harm, even where supported by evidence, as merely a neutral fact that does not justify mitigation.²⁹ The Sanctions Board thus declines to apply any mitigation for the lack of harm asserted by the Respondent.

c. Minor role in the misconduct

41. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a sanctioned party played a minor role in the misconduct. Section V.A of the Sanctioning Guidelines proposes that this factor be applied "if no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct." In the present case, the Respondent asserts that none of the Respondent's employees with decision-making authority was involved in the alleged misconduct, except the Senior Manager, who was merely negligent. As discussed above, the Senior Manager's participation in the reckless misrepresentation included signing each of the Bids despite the evident lack of any verification or controls.³⁰ Moreover, the record provides no basis to conclude that the Project Manager, whose participation in the misconduct is undisputed, lacked decision-making authority. The Sanctions Board therefore declines to apply mitigation under this factor.³¹

d. Voluntary corrective action

42. 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 several examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of those 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 substantiate any claimed voluntary corrective action.³²

43. *Cessation of misconduct*: Section V.B.1 of the Sanctioning Guidelines suggests that mitigation may be appropriate where the record shows a respondent's cessation of the alleged

²⁹ See, e.g., Sanctions Board Decision No. 73 (2014) at para. 45.

³⁰ See *supra*, Paragraphs 28-30.

³¹ See Sanctions Board Decision No. 54 (2012) at paras. 15, 38 (declining to apply mitigation for minor role where a respondent's managing director assertedly signed the respondent's bid without verifying its contents, which were prepared by a consultant who was the only person aware of the forgery).

³² See, e.g., Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 71 (2014) at para. 92.

misconduct. The Respondent asserts that it “did everything in its power to ensure prompt cessation of the misconduct” in that it voluntarily withdrew the Bids when it learned from INT that the Certificate may have been fabricated. However, as discussed in Paragraph 40 above, the record does not support the Respondent’s claim that it withdrew the Bids. In these circumstances, the Sanctions Board declines to apply any mitigation for cessation of misconduct.

44. *Internal action against responsible individuals:* Section V.B.2 of the Sanctioning Guidelines suggests that mitigation may be appropriate where the record shows that a respondent’s management took “all appropriate measures to address the misconduct,” including “disciplinary and/or remedial steps with respect to the relevant employee.” The Respondent asserts that it reprimanded the Senior Manager and the Assistant Manager, and relieved the Senior Manager of some authority. The Sanctions Board has previously granted mitigation on this basis where the respondent’s internal action targeted participants in the misconduct and was reflected in documentary evidence.³³ As evidence of the internal actions claimed in this case, the Respondent presents written statements from its technical director (the “Technical Director”) and the Senior Manager, which describe the asserted reprimands and the Senior Manager’s re-assignment. The Respondent asserts that it “did not have the opportunity to discipline” the Project Manager, who “abruptly and secretively” left the Respondent firm around January 2010. In these circumstances, the Sanctions Board concludes that some mitigation is warranted for the Respondent’s reported internal actions.

45. *Effective compliance program:* Section V.B.3 of the Sanctioning Guidelines suggests that mitigation may be appropriate where the record shows a respondent’s “[e]stablishment or improvement, and implementation of a corporate compliance program.” The Sanctions Board has previously granted mitigation on this ground upon a finding that a respondent’s asserted compliance measures addressed, at least in part, some of the elements suggested in the World Bank Group’s Integrity Compliance Guidelines (the “Integrity Compliance Guidelines”).³⁴ The Respondent asserts that, prompted by an infusion of additional equity, it has strengthened its compliance program by retaining an external consulting firm to review its operations and recommend improved controls, establishing and implementing standard operating procedures for its bids, appointing a director responsible for the Respondent’s bids, and instituting additional layers of review with respect to tender documents. INT agrees that the review and improvement of the Respondent’s internal controls deserves some mitigating credit, but argues that the amount of credit should be limited because the review was prompted by an equity infusion rather than by information about the misconduct. The Sanctions Board has previously taken into account the timing of an asserted compliance program as an indication of good faith, but has not required that

³³ Sanctions Board Decision No. 63 (2014) at para. 106.

³⁴ Sanctions Board Decision No. 56 (2013) at para. 69.

the compliance measures be triggered solely by the particular misconduct alleged in the immediate sanctions proceedings.³⁵

46. The Sanctions Board notes that the Respondent's asserted compliance measures appear to address the type of misconduct at issue in this case and several of the principles set out in the Integrity Compliance Guidelines, such as internal controls and selection of business partners.³⁶ The Sanctions Board also takes into account that the Respondent's evidence reflecting new authentication procedures for tender documents appears to predate the issuance of the Notice in this case. Accordingly, based on the written record presented here, the Sanctions Board finds that the asserted compliance improvements, as supported by written policies, implementation measures, and testimonial evidence, warrant mitigation.

e. Cooperation

47. 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, an internal investigation, admission or acceptance of guilt or responsibility, and voluntary restraint from bidding on Bank-financed projects as examples of cooperation.

48. *Assistance and/or ongoing cooperation:* Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance to INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance" as well as "the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." The Sanctions Board has previously accorded mitigation where, for example, a respondent's managers met with INT on several occasions and provided relevant information³⁷ or corresponded with INT and made relevant personnel available for interviews.³⁸ In the present case, the Respondent asserts that it actively cooperated with INT during the investigation and responded "promptly and fully" to all inquiries. INT agrees that the Respondent's conduct merits some mitigating credit, but submits that this should be limited by the Respondent's failure to fully satisfy INT's requests. The record reveals some gaps in the Respondent's responses to INT's queries. More importantly, however, the record shows that the Respondent's senior personnel participated in two detailed interviews with INT; engaged in email and written correspondence with INT investigators; provided INT with internal documents; and offered to meet with INT for a third time, which INT declined. In the course of these interactions, the Respondent provided INT with key inculpatory

³⁵ The Sanctions Board has previously noted, as a fact supporting a finding of mitigation, that a respondent's compliance program was initiated before the Bank's issuance of the Notice of Sanctions Proceedings in that case. Sanctions Board Decision No. 63 (2014) at para. 107; Sanctions Board Decision No. 71 (2014) at para. 94.

³⁶ Sanctions Board Decision No. 56 (2013) at para. 69. See generally World Bank Group Integrity Compliance Guidelines, available at: http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf.

³⁷ Sanctions Board Decision No. 53 (2012) at para. 58.

³⁸ Sanctions Board Decision No. 56 (2013) at para. 73.

information material to these proceedings. Taken as a whole, the Respondent's cooperation appears to have substantially assisted INT's investigation so as to warrant mitigation.

49. *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 . . . and shared results with INT." The Respondent requests mitigating credit for its asserted internal inquiry following INT's 2012 interview with the Respondent's representatives. In its analysis of potential mitigation for an internal investigation, the Sanctions Board considers whether the inquiry was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience;³⁹ whether the respondent shared its investigative findings with INT;⁴⁰ and whether the investigation produced any concrete results.⁴¹ In the present case, the Respondent appears to have provided INT with a summary of the internal inquiry assertedly completed by the Respondent's Technical Director within two weeks of INT's first interview. The two-page report is not accompanied by documented findings or additional evidence. Nor does the record otherwise demonstrate the thoroughness or impartiality of the inquiry or the Technical Director's qualifications. In these circumstances, the Sanctions Board declines to apply any mitigation for an internal investigation.

50. *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. The Respondent seeks mitigation on this ground, asserting both in its pleadings and at the hearing that it accepts responsibility for the submission of the false Certificate and has therefore limited its main arguments to the question of an appropriate sanction. INT contends that any mitigating credit under this factor should be limited because the Respondent has failed to fully accept its liability, as evidenced – according to INT – by the Respondent's lack of full transparency during the sanctions process, attempts to "blame others for the misconduct," and accusations against INT. The Sanctions Board finds the Respondent's representations more persuasive in this respect. The record shows the Respondent's clear acceptance of responsibility throughout the sanctions proceedings. During the investigation, the Respondent's representatives speculated that the Project Manager may have been assisted or encouraged by a business competitor, but overall acknowledged responsibility for the submission of any false documentation given the Respondent's lack of controls. Finally, INT has not shown any basis for treating the Respondent's complaints regarding INT's investigative conduct as a rejection of liability that should limit mitigation or even merit aggravation, as INT asserts. Accordingly, the Sanctions Board finds that mitigation is warranted under this factor.

51. *Voluntary restraint:* Section V.C.4 of the Sanctioning Guidelines provides for mitigation where a sanctioned party has voluntarily refrained from bidding on Bank-financed tenders

³⁹ See, e.g., Sanctions Board Decision No. 68 (2014) at para. 43.

⁴⁰ See Sanctions Board Decision No. 56 (2013) at para. 75.

⁴¹ See, e.g., Sanctions Board Decision No. 61 (2013) at para. 46.

pending the outcome of an investigation. The Respondent asserts that it did not bid on any Bank-funded contracts during INT's initial investigation and follow-up inquiry. The Sanctions Board has previously declined to apply mitigation on this ground where the respondents' asserted voluntary restraint was not corroborated by relevant evidence.⁴² As the record here reveals no evidence to demonstrate that the Respondent had a policy or practice of voluntary restraint during the periods asserted, the Sanctions Board declines to apply any mitigation on this basis.

f. Period of temporary suspension

52. 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 9, 2014. The Respondent requests that this period be deducted from the Respondent's period of debarment, if any. However, nothing in the sanctions framework or Sanctions Board precedent entitles a respondent to a one-for-one credit against a period of debarment based on the period of temporary suspension. The Sanctions Board also takes into account the factors that may have lengthened the duration of a respondent's temporary suspension, giving less credit in cases where a respondent caused delays.⁴³ Here, the Sanctions Board notes that the Respondent requested and was granted a thirty-day extension of time to file its Explanation with the EO, and a subsequent thirty-day extension of the due date for its Response, based on the asserted volume and distant location of evidence and the passage of time since the alleged misconduct.

g. Other considerations

53. 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."

54. *Passage of time*: The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.⁴⁴ This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents.⁴⁵ At the time of the EO's issuance of the

⁴² See, e.g., Sanctions Board Decision No. 44 (2011) at para. 66; Sanctions Board Decision No. 60 (2013) at para. 135.

⁴³ See, e.g., Sanctions Board Decision No. 65 (2014) at para. 82.

⁴⁴ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where sanctions proceedings were initiated more than five (and up to nine) years after the misconduct, and more than five (and up to eight) years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 68 (2014) at para. 47 (applying mitigation where the Notice of Sanctions Proceedings was issued more than four and a half years after the sanctionable practices had occurred and more than four years after the Bank had become aware of the potential misconduct).

⁴⁵ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71.

Notice in April 2014, approximately four years and eight months had elapsed since the Respondent submitted the Certificate with the Bids in late July and early August 2009; and approximately four years and two months had elapsed since the Bank first became aware of the potential misconduct in February 2010. The Respondent requests that mitigation be applied on this basis. INT agrees that some level of mitigation is appropriate, but asserts that the investigation may have proceeded more quickly had the Respondent been more forthcoming with INT. The Sanctions Board notes that the record does not reflect any attempts by the Respondent to delay INT's investigation and instead reveals that the Respondent's representatives provided detailed and relevant information about the Bids to INT on several occasions. In most of these instances, the Respondent appears to have provided the information within a few weeks of INT's requests. Accordingly, the Sanctions Board concludes that mitigation is justified for the passage of time.

55. *Record of general performance:* The Respondent requests mitigation in light of its reputation, as well as its record of completed projects and social responsibility. The Sanctions Board denies this request, consistent with past precedent declining to grant mitigation on the basis of a respondent's claimed record of general performance and contributions to development work.⁴⁶

56. *Adverse consequences of debarment:* The Respondent contends that the collateral consequences of debarment for its business and staff should be considered as mitigating factors. Consistent with past precedent, the Sanctions Board declines to apply mitigation on the basis of potential business impact of a debarment on the Respondent⁴⁷ or collateral consequences for the Respondent's employees.⁴⁸

57. *Proportionality with past sanctions cases; application of the Sanctioning Guidelines:* The Respondent asserts that a comparative review of Sanctions Board decisions issued in cases involving similar allegations of misconduct, as well as the application of the Sanctioning Guidelines, show that the alleged misconduct warrants a sanction significantly lower than that recommended by the EO,⁴⁹ such as a letter of reprimand or conditional non-debarment. In each instance, the Sanctions Board's choice of sanction is based on a case-by-case analysis tailored to the specific facts and circumstances presented,⁵⁰ and informed by applicable past precedents and the relevant provisions of the Sanctions Procedures and Sanctioning Guidelines. The Sanctions Board applies the same approach here.

58. *General policy considerations:* The Respondent contends that the Sanctions Board should be guided by the Bank's higher-level "policy purposes" underpinning the sanctions system, "[n]amely, . . . the World Bank's intertwined goals of reducing poverty and supporting development" and therefore "should refrain from action which would, in effect, discourage the

⁴⁶ See, e.g., Sanctions Board Decision No. 72 (2014) at para. 68.

⁴⁷ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 69.

⁴⁸ Sanctions Board Decision No. 66 (2014) at para. 48.

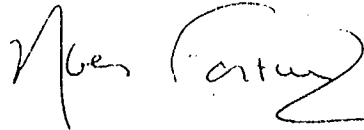
⁴⁹ See *supra*, Paragraph 3.

⁵⁰ Sanctions Board Decision No. 44 (2011) at para. 56.

development of productive facilities and resources in India.” The Respondent also asks, within this policy framework, that the Sanctions Board “take into consideration” how INT conducted its investigation of the Respondent, as a small or medium enterprise from the developing world, compared to how INT has conducted investigations of large companies. The way in which an investigation is conducted by INT may in certain circumstances inform the Sanctions Board’s consideration of the credibility, weight, and sufficiency of the evidence in a sanctions case.⁵¹ However, the Sanctions Board notes that neither Section 9.02 of the Sanctions Procedures nor any other element of the sanctions framework provides for use of generalized policy considerations, a respondent’s nationality or size, or unsupported claims of investigative bias, unrelated to a specific respondent’s culpability or responsibility, as factors in the determination of an appropriate sanction. Accordingly, the Sanctions Board declines to apply any mitigation on these grounds.

D. Determination of Liability and Appropriate Sanction

59. Considering the full record and all the factors discussed above, the Sanctions Board issues a formal letter of private reprimand to the Respondent as of the date of the present decision, without prejudice to the Respondent’s eligibility to participate in Bank-Financed Projects. This sanction is imposed on the Respondent for a fraudulent practice as defined in Paragraph 1.14(a)(ii) of the October 2006 Procurement Guidelines.



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board Panel

L. Yves Fortier
Alison Micheli
Ellen Gracie Northfleet

⁵¹ See Sanctions Board Decision No. 60 (2013) at para. 60.