THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: September 26, 2017

Sanctions Board Decision No. 98
(Sanctions Case No. 392)

IBRD Loan No. 7677-UA
Ukraine

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. 392 (the "Respondent"), together with certain Affiliates,[2] with a minimum period of ineligibility of three (3) years beginning on the date of this decision. This sanction is imposed on the Respondent for fraudulent practices.

I. INTRODUCTION

1. The Sanctions Board met in panel sessions in January and March 2017, at the World Bank Group's headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of J. James Spinner (Chair), Olufunke Adekoya, and Catherine O'Regan.

2. A hearing was held on January 31, 2017, 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, all attending in person. The Respondent was represented by outside counsel attending in person. Three additional representatives of the Respondent also participated in the hearing, either in person or remotely via video conference. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")[3] to the Respondent on August 31, 2015 (the

---

[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] Section 1.02(a) of the Sanctions Procedures defines "Affiliate" to include "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." The sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraph 73.

[3] 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.

"Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated May 20, 2015;

ii. Explanation submitted by the Respondent to the EO on October 14, 2015 (the "Explanation");

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on January 15, 2016, and amended on June 3, 2016 (the "Response");

iv. Reply submitted by INT to the Secretary to the Sanctions Board on February 19, 2016 (the "Reply"); and

v. Post-hearing submissions filed with the Secretary to the Sanctions Board by the Respondent on February 8, 2017, and July 7, 2017, and INT's comments on these submissions, filed with the Secretary to the Sanctions Board on February 23, 2017, and July 24, 2017, respectively.

4. On August 31, 2015, consistent with Sections 4.01 and 4.02 of the Sanctions Procedures, the EO issued the Notice and temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility[4] with respect to any Bank-Financed Projects,[5] pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the Notice identified the EO's recommended sanction for the Respondent and any entity that is an Affiliate directly or indirectly controlled by the Respondent, to take effect in the absence of any Response: debarment with conditional release, after a minimum period of four (4) years.[6] The Notice identified two conditions for release from sanction: (i) appropriate remedial measures to address the sanctionable practices for which the Respondent has been sanctioned and (ii) an effective integrity compliance program adopted and implemented in a manner satisfactory to the Bank.[7] On November 11, 2015, the EO issued a determination with respect to the Respondent's Explanation, finding no basis to withdraw the Notice or revise the sanction originally recommended therein.[8] On January 15, 2016, the Respondent filed a Response, which contested the EO's finding of liability and recommended sanction.[9]

---

[4] The full scope of ineligibility effected by a temporary suspension is defined in the Sanctions Procedures at Sections 4.02(a) and 9.01(c), read together.

[5] The term "Bank-Financed Projects" encompasses any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. 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.

[6] See Sanctions Procedures at Sections 1.02(a) and 9.04.

[7] See Sanctions Procedures at Section 9.03.

[8] See Sanctions Procedures at Sections 4.02(b)-(c).

[9] See Sanctions Procedures at Section 5.01(a).

II. GENERAL BACKGROUND

5. This case arises in the context of the Ukraine Roads and Safety Improvement Project (the "Project"), which sought to "improve the condition and quality of sections" of a specific national roadway and "to increase traffic safety on roads." On April 21, 2009, IBRD entered into a financing agreement with Ukraine (the "Borrower") for a loan of approximately US$400 million to help finance the Project (the "Financing Agreement"). The Project became effective on September 3, 2009, and closed on November 30, 2014.

6. On November 17, 2009, the implementation unit for the Project (the "PIU") issued bidding documents (the "Bidding Documents") for a contract to complete the capital repair of a six-kilometer section of a national roadway (the "Contract"). On January 20, 2010, the Respondent submitted a bid to perform the Contract. On February 22, 2010, the PIU sent a "Letter of Acceptance" attaching the Contract for the Respondent's signature. On March 19, 2010, the Respondent signed the Contract and provided the PIU with a performance security (the "Performance Security"), consistent with a requirement identified in the Bidding Documents, the PIU's Letter of Acceptance, and the Contract. The Performance Security was assertedly issued by a Ukrainian bank ("Bank A").

7. The Contract confirmed a total remuneration of the equivalent of approximately US$11,243,200 and stipulated that 10% of this amount was available to the Respondent in advance, but only if the Respondent furnished a valid and enforceable advance payment security. Between May and June 2010, the Respondent provided the PIU with an advance payment security (the "Advance Payment Security") ostensibly issued by a different Ukrainian bank ("Bank B"). The record reflects that the Respondent received an advance payment of the equivalent of approximately US$932,000 from the PIU on June 30, 2010.

8. Execution of the Contract was scheduled to commence in July 2010 and to conclude in January 2012. However, the PIU terminated the Contract on June 24, 2011. In July 2011, the PIU attempted to collect on the Performance Security and the Advance Payment Security (together, the "Security Documents"). The aggregate value of the Security Documents was equivalent to US$2,031,890. The respective purported issuers of each of the Security Documents – Bank A and Bank B – declined to honor them, asserting that the documents were not authentic. The PIU ultimately awarded the Contract to a different firm and, in January 2013, filed a complaint against the Respondent in Ukraine, seeking damages of the current equivalent of approximately US$3 million for breach of contract. The Economic Court of the Region of Lviv ("ECRL") in Ukraine reportedly considered the PIU's complaint against the Respondent and, on May 18, 2015, awarded the plaintiffs a judgment of the equivalent of US$422,479. The record reflects that the case was appealed to the Lviv Economic Court of Appeal, which, by a decree of February 24, 2016, upheld the ECRL decision and ruled in favor of the PIU's recovery of an additional amount equivalent to US$2,835,230. The case was then reportedly appealed to the Supreme Economic Court of Ukraine. On June 21, 2017, the Supreme Economic Court of Ukraine issued a decision remanding the case to ECRL as the court of first instance.

9. INT alleges that the Respondent engaged in fraudulent practices by submitting the false Security Documents in order to mislead the Borrower to obtain a financial benefit.

III. APPLICABLE STANDARDS OF REVIEW

10. *Applicable definition of fraudulent practice*: The alleged fraudulent practice in this case has the meaning set forth in the World Bank's Guidelines for Procurement under IBRD Loans and IDA Credits (May 2004, revised October 1, 2006) (the "October 2006 Procurement Guidelines"), whose definition of "fraudulent practice" appears in the Financing Agreement, the Bidding Documents, and the Contract. Paragraph 1.14(a)(ii) of these Guidelines defines a 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."

11. *Standard of proof*: 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.

12. *Burden of proof*: 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.

13. *Forms of evidence*: 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.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

14. INT alleges that the Respondent knowingly or recklessly misrepresented facts by providing the PIU with false Security Documents before and after signing the Contract. INT asserts that the Respondent made the misrepresentations in order to mislead the Borrower to obtain a financial benefit. In support of its allegations, INT submits that the purported respective issuers of the Security Documents described them as inauthentic and declined to honor the documents.

15. INT states that it has not identified any mitigating factors and requests that aggravation be applied on the basis of the Respondent's repeated pattern of conduct and harm to the Project arising from the misconduct.

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

16. The Respondent raises a number of "[p]otential [l]egal and [j]urisdictional [m]atters" for the Sanctions Board's consideration. Specifically, the Respondent requests that the Sanctions

Board give consideration to the fact that the Sanctions Board's decisions must comport with the established principles of the United Nations' Universal Declaration of Human Rights; the fact that INT's accusations predate the Sanctions Procedures; the principle of territoriality with respect to Ukraine; and "the context of the social and economic reality" of Ukraine, including assertedly widespread reports of corruption in the banking sector.

17. The Respondent denies INT's allegations, which the Respondent describes as dependent on incomplete, incorrect, and circumstantial evidence. The Respondent submits that both Security Documents were in fact valid when issued, but that the issuing financial institutions – Bank A and Bank B – declined to honor them due to internal financial difficulties. The Respondent claims that both Security Documents were obtained by the Respondent's agent in Ukraine (the "Agent") and that, even if the documents were not authentic, the Respondent relied on the Agent in good faith and did not make a knowing or reckless misrepresentation to the PIU.

18. The Respondent submits that INT's proposed grounds for aggravation of any sanction are "significantly overstated" and requests mitigation for the Respondent's asserted cooperation, voluntary corrective actions, record of past performance, passage of time since the alleged misconduct, and the Respondent's period of temporary suspension.

C. INT's Principal Contentions in the Reply

19. INT opposes each of the Respondent's "[l]egal and [j]urisdictional" complaints and submits that the Respondent has failed to disprove the allegations. INT asserts that the Respondent's evidence is not sufficient to establish that either of the Security Documents was valid, or that either of the Security Documents was prepared or submitted without the Respondent's knowing participation or reckless action.

20. INT opposes any mitigation on the basis of the Respondent's asserted voluntary corrective actions or the Respondent's past work. INT supports limited mitigation for the passage of time and the period of the Respondent's temporary suspension, but asserts that the EO has already taken these factors, as well as the Respondent's asserted cooperation, into account in her sanction recommendation.

D. Presentations at the Hearing

21. INT reiterated its arguments presented in the pleadings and submitted that the evidence in the record contradicts the Respondent's primary defense that Banks A and B (the "Banks") falsely claimed that the Security Documents were inauthentic. INT argued that the record supports a finding that the Respondent acted knowingly, or at least recklessly, in making the alleged misrepresentations. First, INT stated that the Respondent likely acted knowingly, because the evidence reflects the Respondent's – rather than the Agent's – direct involvement in the misconduct. Specifically, INT stated that the Respondent's asserted use of the Agent to obtain the Security Documents was not supported by the record and that the evidence submitted by the Respondent to corroborate the relationship between the Respondent and the Agent was internally inconsistent. Second, INT argued that the record also supported a finding of recklessness in that the evidence reflected several red flags with respect to the Agent and no due diligence by the Respondent with respect to either the Agent or the Security Documents.

22. During the hearing, the Sanctions Board invited the Respondent to comment on the "[l]egal and [j]urisdictional" contentions set out in the Response. The Respondent answered that the Response was drafted by former counsel not present at the hearing but that, as a general matter, the Respondent felt that it unfairly bore the burden of proof in these proceedings.

23. On the merits of INT's allegations, the Respondent stated that the evidence allows for the possibility that the Banks falsely denied the validity of the Security Documents, noting in particular that the Banks did not pursue a criminal complaint against the Respondent. Accepting, arguendo, that the Security Documents may have been false, the Respondent argued that it acted prudently in an unfamiliar market and relied on the Agent in good faith. With the benefit of hindsight, the Respondent conceded that it would have acted differently and would not allow such misrepresentations to take place in the future. The Respondent submitted that, if a sanction is imposed, it should be limited to a reprimand, taking into account the absence of any findings of past misconduct, the extent of the Respondent's temporary suspension, harm caused to its business, its voluntary corrective actions, and the extent of its corporate restructuring.

E. Post-Hearing Submissions

24. In February 2017, following the hearing, the Sanctions Board Chair authorized the Respondent to submit additional information regarding its compliance program and corporate restructuring, as asserted at the hearing. INT was requested to provide comments in reply. The Respondent's post-hearing submission claimed an internal corporate compliance program and corporate restructuring, and provided documentation of both. In its comments, INT argued that any mitigation applied to the Respondent's sanction on the basis of the compliance program should be minimal.

25. Separately, on July 7, 2017, the Respondent submitted additional evidence relating to the PIU's civil complaint against the Respondent in Ukraine. The Respondent proposed that the new evidence related to a "key element" of INT's allegations. Consistent with the Sanctions Board Chair's authorizations, this evidence was admitted into the record and INT filed comments on the Respondent's submission on July 24, 2017. INT argued in its submission that the Respondent's evidence was not exculpatory.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

26. The Sanctions Board will first address the preliminary "[l]egal and [j]urisdictional" matters raised by the Respondent in the Response. The Sanctions Board will then consider whether it is more likely than not that the Respondent engaged in the alleged fraudulent practices. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on the Respondent.

A. Preliminary Matters

27. As noted above at Paragraphs 16 and 19, the parties have made opposing submissions with respect to the Respondent's list of "[p]otential [l]egal and [j]urisdictional [m]atters." Each matter is addressed in turn below.

28. *Applicability of the Sanctions Procedures*: The Respondent expresses concern because "the facts underlying the INT's accusations occurred . . . before the current Sanctions Procedures were implemented." INT states that "[t]here is no impropriety" in applying the version of Sanctions Procedures current at the time that a case is initiated and that any potential nullum crimen sine lege ("no crime without law") concern is resolved by the fact that the applicable definition of fraudulent practice also applied at the time of the Respondent's conduct. The Sanctions Board observes that the applicable definition of fraudulent practice was included in both the Bidding Documents and the Contract, and a courtesy copy of the applicable Sanctions Procedures was provided to the Respondent as an annex to the Notice in 2015. Furthermore, the sanctions framework does not contain or imply a stipulation that a sanctions proceeding be governed only by the procedures in force at the time of the alleged misconduct. The Sanctions Procedures themselves, through various iterations, have consistently specified that they apply to sanctions proceedings initiated during their period of effectiveness.[10] In the present case, the Notice was issued on August 31, 2015; the version of the Sanctions Procedures adopted on April 15, 2012, was thus current and applicable at the time that the Notice was issued. The Respondent has not suggested that this version of the Sanctions Procedures differs from the previously applicable Sanctions Procedures in a manner that is prejudicial to the Respondent. Accordingly, the Sanctions Board concludes that the 2012 Sanctions Procedures are applicable to these proceedings.

29. *International and Ukrainian law*: The Respondent submits that INT's allegations fail to give due consideration to certain "important principles of international law," such as the principle of territoriality with respect to Ukraine. In support of this submission, the Respondent asserts that there is compelling evidence of the Security Documents' legal validity under Ukrainian law and that "no criminal action has been taken against" the Respondent in Ukraine on the basis of conduct alleged by INT. INT responds that Ukrainian law is not determinative with respect to the World Bank's sanctions proceedings. The Sanctions Board notes that these sanctions proceedings are governed by World Bank rules and not by the law of a particular jurisdiction.[11] The fact that events that give rise to sanctions proceedings have or have not also given rise to civil or criminal proceedings in a particular national jurisdiction is not relevant to determining under the Sanctions Procedures whether a sanctionable practice has been committed. The Respondent's submissions on this point are therefore rejected.

30. *National context*: In its Response, the Respondent submits that the facts of this case "have to be interpreted in the context of the social and economic reality" of Ukraine, with due consideration of "widespread reports of corruption in the banking industry." To the extent that the submission suggests that the Sanctions Board should take national context into account in deciding whether a sanctionable practice has been committed, the Sanctions Board rejects this argument. It notes that the obligation not to commit sanctionable practices imposed by the World

---

[10] See World Bank Sanctions Procedures as effective October 15, 2006, at Section 19; World Bank Sanctions Procedures as effective October 15, 2006, and amended December 22, 2008, May 11, 2009, and June 25, 2010, at Section 23; World Bank Sanctions Procedures as adopted September 15, 2010, at Section 13.01; World Bank Sanctions Procedures as adopted January 1, 2011, at Section 13.01; World Bank Sanctions Procedures as adopted January 1, 2011, and amended July 8, 2011, at Section 13.01; World Bank Sanctions Procedures as adopted April 15, 2012, at Section 13.01. Available at: "Procedures and Other Key Documents" section of http://www.worldbank.org/sanctions.

[11] See, e.g., Sanctions Board Decision No. 55 (2013) at para. 50.

Bank remains in full force even in jurisdictions where there are "widespread reports of corruption." In these circumstances, the Sanctions Board declines to consider the Respondent's broad characterization of the Borrower as relevant to the weight of evidence in these proceedings.

31. *The World Bank's human rights obligations*: In its Response, the Respondent requests that the Sanctions Board duly consider that INT's accusations "run afoul of the goal of justice, due process, and the rule of law," and refers to the World Bank's obligation to fulfill "all the recommendations and the decisions of the UN," including the United Nations Universal Declaration of Human Rights. When asked to elaborate on this point at the hearing, the Respondent referred to the perceived "inversion of the presumption of innocence," particularly the expectation that the Respondent demonstrate that it acted with a certain level of diligence in retaining the Agent and obtaining the Security Documents. In its Reply, INT contends that the Respondent's complaint is without merit and that neither the Sanctions Procedures in general nor the present case specifically in any way violates justice, due process, or rule of law. The Sanctions Board observes that the present proceedings are administrative in nature and involve a specific standard of proof that is different from – and lower than – that in criminal proceedings. Once INT has met its burden of establishing that fraudulent documents formed part of the bid documents presented by a respondent, the question arises whether there are circumstances that should have alerted a diligent respondent to the risks relating to the relevant document and whether the respondent had taken precautions to protect against such risks. In such circumstances, the Respondent does bear the burden to provide evidence in its defense, consistent with Section 8.02(b) of the Sanctions Procedures. There is nothing unfair in requiring a respondent to present evidence that it acted with due diligence in such circumstances. Accordingly, the Sanctions Board does not find the Respondent to have raised a valid procedural complaint in this regard that would prevent or affect the Sanctions Board's assessment of the allegations in this case.

B. Evidence of Fraudulent Practices

32. 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 (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.[12]

1. Misrepresentation

33. In past decisions finding that the respondents had submitted forged documents to the entity implementing a Bank-financed contract, the Sanctions Board has relied on written statements from the parties named in or supposedly issuing the allegedly falsified documents, as

[12] Footnote 20 of the October 2006 Procurement Guidelines provides that "'party'" refers to a public official; the terms 'benefit' and 'obligation' relate to the selection process or contract execution; and the 'act or omission' is intended to influence the selection process or contract execution."

well as the respondents' own admissions.[13] The record in the present case includes detailed correspondence from both of the Banks to the PIU, denying having issued either of the Security Documents. The record also reveals indicia of falsity with respect to the Security Documents, including the absence of a prior relationship between the Respondent and Bank A, and the Respondent's inability to obtain the Advance Payment Security directly from Bank B prior to engaging the Agent.

34. The Respondent submits that the PIU "determined the Performance Security to be legitimate when it accepted the Security" prior to commencement of the Project; that the Security Documents are in fact legally valid under Ukrainian law, as demonstrated by third-party legal analysis and the Respondent's meetings with Bank A staff; and that the Banks have falsely denied the validity of the respective Security Documents.

35. The Sanctions Board does not find any of these arguments persuasive. First, the record does not reflect that the PIU did, or was obligated to, authenticate the Performance Security. The responsibility to submit valid documents to the PIU lay with the Respondent and its employees. Both the Bidding Documents and the Contract provided that the Respondent "shall ensure that the Performance Security is valid and enforceable until the [Respondent] has executed and completed the Works and remedied any defects." Second, neither the third-party legal analysis under national law nor the evidence of the Respondent's meeting with Bank A staff concludes that either of the Security Documents is valid. Third, the record contains no evidence to support a finding that the Banks falsely denied the validity of the Security Documents.

36. Considering all of the parties' arguments and the totality of the evidence, the Sanctions Board finds that it is more likely than not that the submission of the Performance Security and the Advance Payment Security to the PIU constituted misrepresentations.

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

Whether the Respondent's employees or the Agent acted knowingly

37. INT alleges that the misrepresentations were knowing, either because the Respondent was directly involved in obtaining and submitting the Security Documents or because the Agent's knowing actions in obtaining or creating the Security Documents may be imputed to the Respondent for purposes of liability. The Respondent asserts that it was unaware of any misrepresentations, as it was the Agent who obtained both of the Security Documents, which were, according to the Respondent, valid documents.

38. 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.[14] The Sanctions

---

[13] See, e.g., Sanctions Board Decision No. 79 (2015) at para. 21 (considering written denials of authenticity by the purported issuer, as well as admissions by the respondent, in finding that that the document in question was false).

[14] Sanctions Procedures at Section 7.01.

Board has previously found sufficient evidence of knowledge in cases of alleged fraud where the respondents and/or their employees either directly admitted to creating or knowingly using documents that contained misrepresentations,[15] or, alternatively, could be presumed by inference to have acted knowingly based on their statements and/or indicia of falsity apparent to them.[16]

39. The record in the present case includes conflicting evidence regarding the specific members of the Respondent's staff who participated in obtaining the Security Documents. In contemporaneous correspondence between the Respondent's employees and the PIU after the Contract was awarded, the Respondent identifies one employee as "the person in charge of . . . obtaining the guarantees," but then describes a different employee and a subcontractor as "people dealing with the [B]anks" in order to obtain the guarantees. In a later notarized declaration in August 2015, the Respondent's President states that in fact it was he who "managed the negotiations" with both Bank A and Bank B. Conflicting with this evidence is the Respondent's written agreement with the Agent, which describes services related to obtaining an unspecified guarantee from Bank B. The Agent's subsequent invoices to the Respondent refer to services to obtain a "performance [g]uarantee" from Bank A.

40. Nothing in the Respondent's pleadings or the rest of the record appears to reconcile the apparent discrepancies above. The Respondent's representatives' statements at the Sanctions Board hearing in January 2017 did little to clarify the circumstances of the Security Documents' preparation or acquisition. In these circumstances, the Sanctions Board does not find the evidence to reflect a sufficient basis for a finding that it is more likely than not that the misrepresentations were made knowingly.

Whether the Respondent's staff acted recklessly

41. INT argues that the Respondent's actions were at least reckless, given the Respondent's "blind reliance" on its Agent, in spite of "numerous red flags." The Respondent states that "mistakes were made," but submits that the Respondent's staff did not act recklessly because they relied on the Agent in good faith and on recommendation of a trusted third party.

42. In assessing recklessness, the Sanctions Board considers 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 World Bank's procurement process due to false or misleading bid documents – but nevertheless failed to act to mitigate that risk.[17] Where circumstantial evidence is insufficient to infer subjective awareness of risk, the Sanctions Board has measured a

---

[15] See, e.g., Sanctions Board Decision No. 46 (2012) at para. 24 (finding that the misrepresentation was made knowingly, where the respondent's employee who forged the signature on the bid document admitted that he knew he was not authorized to sign on behalf of the purported signatory); Sanctions Board Decision No. 49 (2012) at paras. 22, 24-25 (finding that the misrepresentation was carried out knowingly where the respondent and its affiliate admitted to creating and using forged documents).

[16] See, e.g., Sanctions Board Decision No. 55 (2013) at para. 46 (finding that misrepresentations were made knowingly where the forged documents' falsity would have been readily apparent to the respondent firm's representative).

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

respondent's conduct against the common "due care" standard of the degree of care that the proverbial "reasonable person" would exercise under the circumstances.[18] In other words, the question is whether the respondent knew or should have known of the substantial risk presented.[19] In determining whether a respondent was aware or, based on apparent red flags, should have been aware of a specific substantial risk that a document is inauthentic, the Sanctions Board has considered whether the circumstances suggested particular caution with respect to the document procured via an agent,[20] whether any specific indicia of falsity were apparent with respect to the document,[21] and whether a responsible individual made any effort to control or supervise the bid preparation process.[22] 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, the Sanctions Board may consider whether the record shows that the respondent took precautions that were commensurate with the risk involved.[23]

43. In the present case, the Sanctions Board finds that the Respondent's understanding of the Agent's qualifications, the indicia of falsity with respect to the Security Documents, and the admitted absence of controls in the Respondent's tender preparation indicated a specific substantial risk that the Security Documents may not be authentic.

44. *Agent's qualifications*: The Respondent asserts that it retained the Agent due to the Respondent's "limited physical presence and few resources in . . . Ukraine," as well as non-familiarity with the Ukrainian language, laws, and customs. In its pleadings, the Respondent submitted that the Agent "came highly recommended from reputable sources affiliated with the Spanish Embassy in Kiev." At the hearing, the Respondent's representative explained that, when the Respondent sought guidance from the Spanish Embassy in Kiev, Embassy staff referred the Respondent to another individual not directly affiliated with the Embassy, but who in turn suggested that the Respondent use the Agent. Neither the professional background of the referring individual nor the fact of this string of referrals is documented in the record. The Respondent's contract with the Agent reflected that the Agent was represented by a Ukrainian national and provided services in Ukraine. However, this contract also revealed that the company was registered as a business entity in New Zealand and was operating via a bank account in

---

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

[19] Id.

[20] See, e.g., Sanctions Board Decision No. 77 (2015) at paras. 34-36 (finding that the respondent's failure to "take steps to confirm [an agent's] qualifications or otherwise vet him as a suitable authorized representative" for tender submission was a principal reason that the respondent should have been aware of a substantial risk of misrepresentation).

[21] See, e.g., Sanctions Board Decision No. 52 (2012) at para. 27 (finding that the respondent's CEO acted at least recklessly when he submitted, without further authentication, a bid security that, inter alia, was not issued by a bank with which the respondent had a relationship, and was not tied to any formal collateral); Sanctions Board Decision No. 61 (2013) at para. 25 (finding that the respondents acted recklessly by using an agent to procure a document that they could not obtain from the issuer directly, in time).

[22] See, e.g., 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 because, inter alia, he made no effort to supervise or direct the bid preparation process).

[23] See, e.g., Sanctions Board Decision No. 79 (2015) at paras. 28-29.

Latvia. When presented with questions regarding the Agent's background at the hearing, the Respondent's representative acknowledged that it "sounded a bit strange."

45. *Indicia of falsity with respect to the Security Documents*: As the record reflects, and the Respondent does not contest, neither of the Security Documents was procured with documented collateral. Instead, each of the Security Documents was assertedly obtained either from a bank with which the Respondent had no prior relationship or from a bank that considered and refused the Respondent's first request for a guarantee.[24]

46. *Controls in tender preparation*: The record does not reveal, and the Respondent does not suggest, that the tender preparation process had proper control mechanisms and clear procedural guidelines. First, documentation in the record provides inconsistent evidence as to who was responsible for liaising with the Banks for the purpose of obtaining the Security Documents.[25] No clarification of these inconsistencies was provided by the Respondent. Second, at the hearing, the Respondent stated that its employees at no point sought to supervise or question the Agent purportedly involved in tender preparation, either before or after bid submission. Third and finally, the Respondent engaged the Agent and agreed on a fee of US$127,000 prior to the PIU's issuance of the Bidding Documents, and without a specific or accurately documented understanding of what this payment would cover.

47. The record does not reveal that the Respondent's staff employed any process of due diligence or other review with respect to the Security Documents. In these circumstances, the Sanctions Board finds that it is more likely than not that the Respondent's staff acted recklessly in submitting the Security Documents to the PIU.

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

48. INT asserts that the Respondent provided the Performance Security to the PIU as a precondition to Contract implementation and the Advance Payment Security in order to receive the advance payment under the Contract. The record reveals, and the Respondent does not dispute, that the Bidding Documents and the Contract required a Performance Security and an Advance Payment Security in order to proceed with Contract implementation and receive any advance payment, respectively. The Respondent submits that the record does not support INT's allegation under this element, because the Respondent "paid handsomely for the securities and lost a significant amount of money on the Project." Importantly, however, the applicable definition of fraudulent practice does not require that the Respondent profit from its misconduct,[26] and the Sanctions Board has declined to consider the "proceeds" of a respondent's

[24] See supra Paragraph 33.

[25] See supra Paragraphs 39-40.

[26] See supra Paragraph 32.

misconduct as necessary to a finding of intent to benefit.[27]

49. The record reflects that submission of the Advance Payment Security qualified the Respondent to receive an advance payment for expected work. The record also demonstrates that misrepresentation in the Performance Security served to give the appearance of compliance with a contractual obligation, while in fact avoiding it. In these circumstances, and consistent with precedent,[28] the Sanctions Board finds that it is more likely than not that the misrepresentations were made to benefit the Respondent financially and to help the Respondent avoid an obligation.

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

50. 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 an employee "acted within the course and scope of his employment and with a purpose, at least in part, to serve the [r]espondent."[29] Where a respondent entity denies responsibility for the acts of its employees based on a rogue employee defense, the Sanctions Board has assessed any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.[30]

51. In the present case, INT argues that the actions of the Respondent's staff in submitting false documents can and should be imputed to the Respondent. The Respondent does not contest that it should be liable based on its employees' actions, and neither the record nor the Respondent present any basis for a "rogue employee" defense. The record reflects that employees of the Respondent who were involved in bid preparation and submission all acted within the course and scope of their employment. The record also reflects that these employees were more likely than not motivated by the intent of serving the Respondent in conduct relating to Contract conditions and implementation. Thus, the record supports a finding that the Respondent is liable for the fraudulent conduct of its employees in recklessly submitting the false Security Documents to the PIU.

---

[27] Sanctions Board Decision No. 86 (2016) at para. 39 (finding that the respondent acted with the intention or goal of obtaining a financial benefit, even though the record did not reveal whether the respondent received the proceeds of overbilling); see also Sanctions Board Decision No. 61 (2013) at paras. 7, 28 (finding that the respondents intended to obtain a financial benefit by making misrepresentations in the bid, even though the bid was not ultimately selected).

[28] See, e.g., Sanctions Board Decision No. 86 (2016) at paras. 39-40 (finding that the respondent's misrepresentations with respect to the monthly reports and advance certificates required for payment under the contract were made in order to obtain a financial benefit and to reflect compliance with a contractual obligation, while in fact avoiding it).

[29] See, e.g., Sanctions Board Decision No, 97 (2017) at paras. 59-61.

[30] See, e.g., Sanctions Board Decision No. 92 (2017) at para. 102.

D. Sanctioning Analysis

1. General framework for determination of sanctions

52. 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.

53. 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.[31] 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.[32]

54. 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 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 period of three years.

55. 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 considered in the present case

a. Severity of the misconduct

56. Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct and sophisticated means of misconduct as examples of severity.

57. *Repeated pattern of conduct*: In assessing potential aggravation for a repeated pattern of conduct, the Sanctions Board has previously considered the number and variety of false

---

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

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

documents submitted,[33] and whether the evidence reflected a single scheme or course of action with respect to the misconduct.[34] INT submits that the Respondent's submission of multiple false documents in response to different requirements under the Contract merits aggravation. The Respondent opposes application of aggravation on this basis, but does not address the question of repetition and asserts only that the Security Documents may be authentic. The present case involves submission, on different dates, of two different Security Documents prompted by two unrelated requirements in the Bidding Documents and the Contract[35] and purportedly issued by two different institutions. The Sanctions Board finds aggravation appropriate in these circumstances.

58. *Sophisticated means*: Section IV.A.2 of the Sanctioning Guidelines states that aggravation may be warranted for sophisticated means based on, inter alia, "the complexity of the misconduct (*e.g.*, degree of planning, diversity of techniques applied, level of concealment); the number and type of people or organizations involved; and whether the scheme was developed or lasted over a long period of time." In assessing potential aggravation under this factor, the Sanctions Board has previously considered the level of "forethought and planning" evident in the misconduct.[36] The Sanctions Board finds aggravation appropriate, noting that the present case involves two types of detailed official business documents, which included letterhead images, signatures, and seals, and were responsive to specific value requirements under the Contract.

b. Magnitude of harm

59. Section 9.02(b) of the Sanctions Procedures requires the Sanctions Board to consider the magnitude of the harm caused by the misconduct. Section IV.B.2 of the Sanctioning Guidelines identifies the degree of harm to the project through poor contract implementation or delay as an example of such harm. In assessing potential aggravation under this factor, the Sanctions Board has previously considered whether the delay or failures in contract implementation arose from

---

[33] See, e.g., 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).

[34] See 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"); Sanctions Board Decision No. 79 (2015) at para. 39 (declining to apply aggravation where the respondent included the same false document 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).

[35] Supra Paragraphs 6-8.

[36] See Sanctions Board Decision No. 69 (2014) at para. 33 (applying aggravation where the respondent's misrepresentations included different types of forged official documents clearly drafted in an effort to avoid detection); Sanctions Board Decision No. 77 (2015) at para. 49 (applying aggravation where the respondent's deceptive documents were highly detailed).

the misconduct at issue.[37]

60. INT requests that aggravation be applied on the basis of (i) financial harm to the Project, because the PIU could not collect on the Security Documents and (ii) the delays in Project implementation that followed the Respondent's poor performance under the Contract, which was consequently terminated. The Respondent argues that the actual amount of financial harm to the Borrower is "far lower" than US$2 million (the approximate aggregate value of the Security Documents), given the lower amount of US$422,479 awarded by ECRL under civil proceedings against the Respondent in Ukraine.[38] The Respondent also submits that any issues with implementation of the Contract are not attributable to the alleged misconduct.

61. The Sanctions Board observes that the PIU acted in reliance on the Security Documents, but was unable to collect US$2,031,890 from the Respondent. The record reflects that, at the time of this decision, the PIU's suit against the Respondent seeking damages for breach of contract remains unresolved and, according to documents filed by the Respondent, was most recently remanded to the court of first instance.[39] The Sanctions Board declines the Respondent's proposal to apply the civil judgment of a court in Ukraine as a benchmark of financial harm in this case and notes that, in any event, the record does not demonstrate with finality that this amount will be paid to the PIU. With respect to delays in implementation of the Project, the record is not sufficient to establish that the Respondent's misrepresentations caused or contributed to the delays in Project implementation. In these circumstances, the Sanctions Board finds aggravation appropriate on the basis of the direct financial harm to the Borrower.

c. Past history of adjudicated misconduct (absence of)

62. The Respondent requests that the Sanctions Board take into account the absence of any findings of past misconduct with respect to the company. However, the Sanctions Board has previously held that "a lack of prior misconduct does not warrant mitigating credit"[40] and reaffirms this holding in the present case. While a record of past misconduct may merit treatment as an aggravating factor, the Sanctions Board considers its absence a neutral fact.[41]

d. Voluntary corrective action

63. *Effective compliance program*: Section 9.02(e) of the Sanctions Procedures provides for mitigation where a sanctioned party took voluntary corrective action. A respondent bears the

---

[37] See Sanctions Board Decision No. 55 (2013) at para. 68 (applying aggravation where use of forged documents led to additional correspondence between the respondent and the PIU and "derailed the procurement process," ultimately resulting in re-bidding); Sanctions Board Decision No. 78 (2015) at para. 78 (declining to apply aggravation where the record did not indicate that problems and delays subsequent to the misconduct were caused by that misconduct).

[38] Supra Paragraph 8.

[39] Supra Paragraph 8.

[40] Sanctions Board Decision No. 90 (2016) at para. 49.

[41] See, e.g., id.

burden of presenting evidence to substantiate any claimed voluntary corrective action.[42] Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record reveals a respondent's "[e]stablishment or improvement, and implementation of a corporate compliance program." The Sanctions Board has previously granted mitigation on this ground where a respondent's asserted compliance measures appeared to address the types of misconduct at issue and/or at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines (the "Integrity Compliance Guidelines").[43] Conversely, the Sanctions Board has declined to apply mitigation where the record did not reflect implementation of the asserted compliance measures,[44] or where the asserted voluntary corrective actions would not appear to prevent or address the type of misconduct at issue.[45]

64. The Respondent requests mitigation on the basis of its compliance system and controls, which were assertedly enhanced beginning in January 2015. INT submits that the Respondent's asserted corrective actions were not contemporaneous with the Respondent's discovery of the alleged misconduct, are not described in detail in the record, are not supported by any evidence of their implementation or efficacy, and would not "specifically remedy" the misconduct at issue. The record reveals that the Respondent contacted an outside consultant in January 2015, anticipating implementation of certain ethical systems and procedures. However, none of the Respondent's asserted compliance measures appears to address the risk of fraud in bank security or other bid-related documents, connects directly to any of the elements set out in the Integrity Compliance Guidelines, or otherwise substantiates or illustrates the Respondent's asserted "aggressive corrective actions." Taking into account all of the evidence presented before, during, and following the hearing, the Sanctions Board does not find the record to support mitigation on this basis.

e. Cooperation

65. *Assistance with investigation*: 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.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, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance."

66. The Respondent requests mitigation on the basis of the Respondent's (i) correspondence with the World Bank's task team leader for the Project after the Security Documents were rejected by their respective purported issuers, (ii) response to INT's show-cause letter, and (iii) provision of unspecified "documentary evidence." INT argues that any mitigation for assistance with the investigation should be limited because the Respondent's correspondence

---

[42] See, e.g., Sanctions Board Decision No. 95 (2017) at para. 44.

[43] See, e.g., Sanctions Board Decision No. 94 (2017) at para. 46.

[44] See, e.g., Sanctions Board Decision No. 92 (2017) at para. 118.

[45] See, e.g., Sanctions Board Decision No. 90 (2016) at para. 42.

with the World Bank prior to INT's investigation "was primarily a lobbying effort to avoid adverse contractual consequences." The record reflects that the Respondent sent a reply to INT's show-cause letter, but did not specifically comment on the Security Documents or otherwise assist the investigation. In these circumstances, and consistent with precedent,[46] the Sanctions Board finds limited mitigation appropriate.

f. Temporary Suspension

67. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the Respondent has been temporarily suspended since the EO's issuance of the Notice on August 31, 2015. The Sanctions Board notes that the length of the sanctions proceedings, and therefore the period of temporary suspension, was prolonged by approximately six months due to the Respondent's requests for extensions and postponement of the hearing, which was rescheduled from its original date in September 2016.

g. Other Considerations

68. 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."

69. *Change in management/corporate identity*: The Sanctions Board has previously applied mitigation where the record demonstrated a corporate "restructuring" and changes in the respondent's management, particularly with respect to individuals involved in the misconduct.[47] The Respondent asserts that, following its bankruptcy proceedings in Spain, the company underwent a corporate acquisition that has led to tighter fiscal controls, structured corporate oversight, and a complete change in administration. INT submits that a change in ownership in and of itself should not necessarily impact a respondent's sanction, particularly where the sanction is applied to a respondent and not its parent company, unless the acquisition were followed by compliance improvements. In a post-hearing submission, the Respondent provides evidence of its acquisition in 2015 by a privately-held investment group. This holding company assertedly follows a "decentralized management" approach and allows held companies to retain "high management autonomy," but also provides certain management oversight and financial monitoring with respect to held companies, including standards relating to ethics and compliance. The Sanctions Board finds a degree of mitigation appropriate in these circumstances, noting the Respondent's bankruptcy proceedings, subsequent acquisition by a holding company, and resulting changes in leadership and management practices.

70. *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 World Bank's awareness of the potential sanctionable practices, to the initiation of sanctions

---

[46] Sanctions Board Decision No. 51 (2012) at para. 54.

[47] Sanctions Board Decision No. 66 (2014) at para. 49.

proceedings.[48] 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.[49] The Respondent requests mitigation under this factor and INT agrees that some mitigation is warranted. At the time of the EO's issuance of the Notice in August 2015, more than five years had elapsed since the Respondent submitted the Security Documents in March 2010; and approximately four years had elapsed since the World Bank learned about the misconduct in August-September 2011. The Sanctions Board finds mitigation appropriate in these circumstances.

71. *Record of general performance*: The Respondent requests mitigation on the basis of its asserted "long history of successful work, with no history of impropriety, on complex projects for a variety of public and private customers across the globe." INT opposes mitigation on this basis. Consistent with past precedent rejecting the quality of performance in other projects as a mitigating factor, the Sanctions Board declines to apply mitigation on this ground.[50]

72. *Adverse consequences of debarment*: The Respondent submits that a continuation of its ineligibility would harm the company and imperil its survival as a business. Consistent with past precedent, the Sanctions Board declines to apply mitigation on this ground.[51]

E. Determination of Liability and Appropriate Sanction

73. 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;[52] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[53] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of three (3) years beginning on the date of this decision, the Respondent may be released from

---

[48] See, e.g., 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).

[49] See, e.g., Sanctions Board Decision No. 83 (2015) at para. 102.

[50] See, e.g., Sanctions Board Decision No. 92 (2017) at para. 133.

[51] See, e.g., Sanctions Board Decision No. 92 (2017) at para. 131.

[52] The Respondent's ineligibility to be awarded a contract includes, 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.

[53] 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.

ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the October 2006 Procurement Guidelines.

74. The Respondent's ineligibility shall extend across the operations of the World Bank Group. 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 determine whether to enforce the declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[54]

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
Catherine O'Regan

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