THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: September 4, 2012

Sanctions Board Decision No. 53
(Sanctions Case No. 112)
IBRD Loan No. 4012-RU
Russia

Decision of the World Bank Group Sanctions Board declaring the respondent entity in Sanctions Case No. 112 ("Respondent") (together with any entity that is an Affiliate[1] Respondent directly or indirectly controls) conditionally ineligible for a period of one (1) year (i) to be awarded a contract for any Bank-financed or Bank-executed project or program governed by the Bank's Procurement Guidelines, Consultant Guidelines or Anti-Corruption Guidelines (hereinafter collectively referred to as "Bank-Financed Projects"),[2] (ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider[3] of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects; such ineligibility to apply only if, by the expiration of a period of one (1) year from the date of this decision, Respondent has not, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated it has (i) restituted an amount of US$144,546 (one hundred and forty-four thousand, five hundred and forty-six US dollars) to the Borrower and (ii) adopted and implemented, in a manner satisfactory to the World Bank, an effective integrity compliance program including the compliance measures Respondent represented to the Sanctions Board as having been implemented to date. This sanction is imposed on Respondent for fraudulent practices as defined in Paragraph 1.25(a)(ii) of the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997) (the "January 1997 Consultant Guidelines").

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[1] In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted January 1, 2011, and amended July 8, 2011 (the "Sanctions Procedures"), the term "Affiliate" means "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank."

[2] As in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both the International Bank for Reconstruction and Development ("IBRD") and the International Development Association ("IDA"). See Sanctions Procedures at Section 1.01(a), n.1.

[3] In accordance with Section 9.01(c)(i), n.14 of the Sanctions Procedures, a nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one that 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.

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on June 7, 2012, at the World Bank's headquarters in Washington, D.C., to review this case. The Sanctions Board was represented by L. Yves Fortier (Chair), Hassane Cissé, Marielle Cohen-Branche, Patricia Diaz Dennis and Hoonae Kim.

2. A hearing was held at the request of Respondent and of the World Bank's Integrity Vice Presidency ("INT"), in accordance with Article VI of the Sanctions Procedures. INT participated in the hearing through its representatives attending in person. Respondent was represented by outside counsel, by the Director of Respondent's parent company, and by the General Counsel/Chief Compliance Officer of the same. The Sanctions Board deliberated and reached its decision based on the written record and the evidence and 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") to Respondent on August 4, 2011 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT;

ii. Explanation submitted by Respondent to the EO, dated September 20, 2011 (the "Explanation");

iii. Response submitted by Respondent to the Secretary to the Sanctions Board, dated November 16, 2011 (the "Response");

iv. Reply in Support of Notice of Sanctions Proceedings, submitted by INT to the Secretary to the Sanctions Board, dated March 15, 2012 (the "Reply");

v. Supplemental Submission, submitted by Respondent to the Secretary to the Sanctions Board, dated June 1, 2012 (the "Supplemental Submission"); and

vi. INT's objection to Respondent's Supplemental Submission, dated June 4, 2012 (the "Objection").

4. Pursuant to Section 4.01(c), Section 9.01, and Section 9.04 of the Sanctions Procedures, the EO recommended in the Notice that Respondent (together with any Affiliate Respondent directly or indirectly controls) be declared ineligible to (i) be awarded a contract for any Bank-Financed Projects, (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, after a minimum period of ineligibility of five (5) years, Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions

Procedures, demonstrated to the Bank Group's Integrity Compliance Officer it has (a) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (b) put in place an effective integrity compliance program acceptable to the Bank and implemented this program in a manner satisfactory to the Bank.

5. Upon review of Respondent's Explanation, the EO determined there were additional mitigating factors that warranted a revision of the recommended sanction pursuant to Section 4.03(a)(ii) of the Sanctions Procedures. The EO revised the minimum period of ineligibility from five (5) years to three (3) years, leaving all other terms and conditions of the recommended sanction the same.

6. Effective August 4, 2011, Respondent (together with any Affiliate Respondent directly or indirectly controls) was temporarily suspended from eligibility to be awarded additional contracts for Bank-Financed Projects or participate in new activities in connection with Bank-Financed Projects pending the outcome of this sanctions proceeding.

II. GENERAL BACKGROUND

7. This case arises in the context of the Russian Enterprise Housing Divestiture Project ("EHDP" or the "Project"). On July 29, 1996, IBRD and the Russian Federation (the "Borrower") entered into a Loan Agreement to provide approximately US$300 million in support of the Project. The Project sought to "accelerate the sustainable divestiture of enterprise housing throughout Russia by demonstrating within the Participating Cities a combination of housing reforms and investments designed to transfer housing to the private sector and lower its operating cost." The Loan Agreement, as amended, required consulting services to be procured in accordance with the January 1997 Consultant Guidelines.

8. On November 26, 1999, six Russian cities and the project implementation unit for the Project (the "PIU"), acting as Project Manager, entered into a contract (the "Contract") with a consortium of consulting companies to provide technology advisory services to monitor the effectiveness of energy efficiency improvements in residential buildings. The consortium was a joint venture (the "Joint Venture") between Respondent's legal predecessor and two other consultants, with participation from a sub-consultant. Respondent's legal predecessor was the lead Joint Venture partner, responsible for collecting invoices from the other consultants, invoicing the PIU and paying the consultants based on the invoices presented to the PIU. Payment under the Contract was based on actual work performed and expenses incurred, subject to a ceiling of US$2,236,860. The Contract began on November 29, 1999, and expired on November 28, 2001.

9. Between November 1999 and December 2001, Respondent's legal predecessor (and in one case, the sub-consultant) submitted invoices requesting payment for US$1,977,013 in remuneration and expenses. INT alleges these submissions included some falsified invoices, timesheets and monthly status reports used to overbill the PIU for 159 work days totaling US$144,546.

III. APPLICABLE STANDARDS OF REVIEW

10. 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 it is "more likely than not" such 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 the respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, the Sanctions Board has discretion to determine the relevance, materiality, weight and sufficiency of all evidence offered; formal rules of evidence do not apply.

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

12. The alleged sanctionable practice at issue has the meaning set forth in the January 1997 Consultant Guidelines, which governed the Project's procurement under the Loan Agreement as amended. As set forth in Paragraph 1.25(a)(ii) of these Guidelines, the term "fraudulent practice" is defined as a "misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Borrower." This definition does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward.[4] The Sanctions Board has previously held the "knowing or reckless" standard may be implied under the pre-October 2006 definitions, however, because the legislative history of these definitions reflects the October 2006 incorporation of this standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.[5]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

13. INT asserts it is more likely than not Respondent, through its legal predecessor, engaged in fraudulent practices by knowingly falsifying invoices and supporting documents to obtain remuneration for days not actually worked. INT relies primarily on the following assertions:

i. Documentary evidence shows Respondent billed the PIU for 159 days more than the consultants actually worked under the Contract; and used falsified timesheets and monthly reports to support the fraudulent invoices.

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[4] The definition of fraudulent practices in Paragraph 1.14(a)(ii) of the 2006 Procurement Guidelines is "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" (emphasis added).

[5] See Sanctions Board Decision No. 41 (2010) at para. 75.

ii. Respondent knowingly submitted these falsified documents to influence the payment component of Contract execution and receive unjustified excess payments totaling US$144,546.

iii. Respondent's actions caused financial detriment to the Borrower, as the Borrower was under no obligation to pay for work not performed and yet paid Respondent US$144,546 for time not actually worked.

14. INT further argues Respondent failed to justify its misrepresentations by asserting it overbilled the PIU pursuant to an informal agreement to create a "reserve" fund that would allow Respondent to continue working on the Contract after its expiration and without a formal extension. INT asserts the evidence of such an agreement was not credible and Respondent did not provide sufficient evidence of such work done after the Contract expired.

15. INT asserts three aggravating factors apply. First, INT argues Respondent repeatedly submitted invoices overbilling the PIU and supported those invoices with falsified timesheets and monthly reports. Second, INT asserts Respondent's fraud was sophisticated in that Respondent "generated additional fraudulent documents to justify those invoices and conceal its initial misrepresentations." Finally, INT posits Respondent's management was aware of the fraud and, when confronted by INT, attempted to explain it with an inconsistent story.

16. With regard to mitigating factors, INT acknowledges Respondent cooperated insofar as Respondent's managers met with INT on several occasions and provided INT with relevant information and documents.

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

17. In its Explanation and Response, Respondent admits its legal predecessor knowingly billed the PIU for time not actually worked, and Respondent is responsible for its legal predecessor's acts.

18. Respondent argues, however, those misrepresentations were not to the detriment of the Borrower, because they were made pursuant to a mutual agreement with the PIU. Specifically, Respondent argues the PIU informally agreed the funds accrued through overbilling would be used to create a "reserve" fund to permit extended work on the Contract without a formal amendment. According to Respondent, this agreement is evidenced by contemporaneous communications with the PIU; Respondent's expenditures on the Contract after its expiration in November 2001; the transfer of equipment used in the Contract from Respondent to the client cities in March 2002, three months after the Contract expired; and a delay in payments to Respondent until the summer of 2002, for which Respondent did not claim any contractual penalties for late payments.

19. Respondent further argues three mitigating factors apply. First, after it became fully part of its current corporate group (the "Group"), Respondent purportedly began to implement the Group's "Compliance Management System" in 2008, well before a Notice of Sanctions Proceedings was issued. Second, Respondent asserts it would suffer considerable adverse consequences from any term of debarment, as its business is to a considerable extent linked to

projects supported by the multilateral development banks. Finally, Respondent argues it is a different company now from the one that overbilled. Respondent asserts it has evolved out of a complex corporate restructuring process and therefore a sanction would affect not the perpetrator but rather "the respectable company which [Respondent] is today." Respondent also states that, with the exception of a single staff member who was a technical consultant on the Contract, the staff members and executives responsible for the conduct at issue are no longer with the company.

20. Respondent argues conditional non-debarment is appropriate, because there is no risk of misconduct occurring again due to the company's changes and significant improvement of its business governance and corporate compliance.

21. Finally, Respondent offers to make compensation of US$144,545 (approximately the total amount INT alleges to have been overbilled).

C. INT's Reply

22. In its Reply, INT principally asserts the following:

i. Respondent's evolutionary history does not preclude use of sanctions. As the legal successor to the party that signed the Contract, Respondent bears full responsibility for the sanctionable practices. None of the changes in Respondent's organization and personnel affect its liability for the conduct at issue, because all improvements were implemented after the conduct occurred.

ii. Respondent's assertion there was no detriment to the Borrower is incorrect because, as a result of Respondent's conduct, the Borrower had to pay US$144,546 for work not actually performed, thus incurring a financial loss. Respondent's assertion this overbilling was based on a mutual amendment of the Contract is without evidentiary support, and the fraudulent billing is a detriment to the Borrower in and of itself. Respondent's assertion it conferred a benefit on the Borrower by providing services and expending funds after the expiration of the Contract is without merit because, as Respondent admits, it cannot fully account for and quantify this purported benefit, and the documents Respondent provided do not cover the full amount of overbilling.

iii. With respect to Respondent's arguments for mitigation, the EO's revised recommendation (from a five-year to a three-year debarment with conditional release) has already included mitigation for, inter alia, Respondent's compliance program and the passage of time since the original investigation. Finally, the alleged consequences of debarment, including business losses and reputational damage, are not a basis for further mitigation.

D. Respondent's Supplemental Submission and INT's Objection

23. In its Supplemental Submission, Respondent requested authorization to submit additional materials pursuant to Section 5.01(c) of the Sanctions Procedures. Respondent principally argued the case involved an unjustified, unprecedented delay by INT in initiating sanctions proceedings, which affects the procedural fairness of the proceedings; impairs Respondent's ability to discover exculpatory evidence; and diminishes the weight the Sanctions Board should attach to INT's evidence. Respondent also asserted its losses during the period of temporary suspension militate against imposing a sanction of debarment. Respondent argued the Sanctions Board should consider these points as exculpatory or at least mitigating factors, and therefore apply either no sanction or at most a conditional non-debarment.

24. In its Objection, INT objected to Respondent's request for authorization to submit the Supplemental Submission, because such materials were not timely submitted and Respondent had already presented most of the arguments. Should the Sanctions Board authorize the Supplemental Submission, INT requested permission to respond to it.

25. The Sanctions Board Chair authorized Respondent to submit the materials presented in its Supplemental Submission, and allowed INT the opportunity to respond at the hearing.

E. Presentations at the Hearing

26. At the hearing, INT reiterated its principal arguments from the written pleadings, including with respect to the asserted aggravating factors of repetition, sophistication, role of management, and magnitude of harm caused. INT also asserted the extended lapse of time from when the Bank became aware of the misconduct until the Notice of Sanctions Proceedings issued does not void Respondent's liability for the acts of its legal predecessor, as the matter remains within the statute of limitations in Section 4.01(d) of the Sanctions Procedures. INT stated mitigation may be accorded for the delay, however, as well as for Respondent's internal investigation and implementation of a compliance program.

27. In turn, Respondent asserted it should not be found culpable for fraudulent practices, despite the admitted misrepresentations, as it lacked any intent to defraud and caused no detriment to the Borrower. Respondent also reiterated its principal arguments as to the prejudicial effects of INT's delay in pursuing sanctions proceedings and flaws in INT's investigation; the corporate changes in Respondent's organization since the conduct at issue; the presence of various grounds for mitigation; and the asserted lack of aggravating factors. Respondent argued for no sanction or, in the alternative, conditional non-debarment at most.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

28. The Sanctions Board first considers whether the record contains sufficient evidence to show it is more likely than not Respondent engaged in fraudulent practices as defined under the January 1997 Consultant Guidelines. Next, the Sanctions Board considers what sanctions, if any, should be imposed on Respondent.

A. Evidence of Fraudulent Practices

29. In accordance with the definition of fraudulent practices under the January 1997 Consultant Guidelines, INT bears the initial burden to show Respondent (i) made a misrepresentation of facts (ii) that was knowing or reckless (iii) in order to influence a selection process or the execution of a contract (iv) to the detriment of the Borrower.

1. Misrepresentation of facts

30. Considering the detailed arguments and evidence presented by the parties, the Sanctions Board finds it more likely than not Respondent made misrepresentations of facts by submitting falsified invoices, timesheets and status reports to the PIU as INT has alleged.

31. Under the Contract, the Joint Venture was entitled to remuneration for actual work performed and reimbursement for travel, office equipment, communications and other expenses actually incurred, up to a contract ceiling. As the lead Joint Venture partner responsible for invoicing the PIU, Respondent submitted twenty-three monthly invoices between December 1999 and November 2001, totaling nearly US$2 million for claimed work and expenses. The record of documentary evidence, combined with Respondent's admissions in the written pleadings and at the hearing, shows it is more likely than not Respondent submitted falsified invoices, timesheets and monthly status reports to overbill the PIU for about 159 work days, thus obtaining excess payments of US$144,546.

2. Made knowingly or recklessly

32. Respondent argues it lacked the requisite mens rea to commit fraud because it had no intention to defraud. The issue, however, is whether Respondent, when it submitted the invoices, timesheets and monthly status reports to the PIU, either knew these documents included misrepresentations of facts, or recklessly disregarded whether they were true or false.

33. Respondent states the misrepresentations were the result of an agreement with the PIU on a "reallocation of the project budget." While Respondent thus offers an explanation as to the motives behind the misrepresentations, such assertions confirm Respondent's predecessor knew the invoices, timesheets and monthly reports it was submitting to the PIU were false.

34. On this record, the Sanctions Board finds it more likely than not Respondent made the misrepresentations knowingly, thereby showing the requisite mens rea.

3. In order to influence the execution of a contract

35. According to the Contract, payments were subject to the submission of invoices and adequate documentation to the PIU. Respondent's misrepresentations in the invoices and supporting documentation may thus be construed as intended to influence – and inflate – payments made under the Contract.

36. In addition, Respondent claimed the misrepresentations were designed to allow for an informal extension of the Contract past the formal end date. Respondent stated the goal of its

purported agreement with the PIU was to avoid the normal procedure for an extension, because of the time this procedure would have required. Respondent's explanation thus indicates another way in which it intended the misrepresentations to impact Contract execution.

37. The Sanctions Board therefore finds it more likely than not Respondent's misrepresentations were made in order to influence the execution of the Contract.

4. To the detriment of the Borrower

38. The Sanctions Board has previously concluded the element of "detriment to the Borrower" may be satisfied by a showing of tangible or intangible harm.[6]

39. Respondent argues the Borrower suffered no detriment because there was a mutual understanding and/or oral agreement the overbilling was intended to provide a "reserve" fund to pay for work that would be carried out after the expiration of the Contract in November 2001. Respondent's evidence of such an agreement, however, is limited to discussions of the need to prolong the Contract, and various communications proposing to create a "reserve" fund consisting of the difference between planned work days and actual work days. Nowhere do these communications indicate the PIU consented to a proposal that Respondent would submit invoices for days not actually worked.

40. Moreover, many of the communications to which Respondent refers as evidence of an agreement post-date February 2001, the first month for which Respondent submitted a falsified invoice. In fact, a document dated July 9, 2001, references the "possible project-extension-proposal," and states the "proposal" was in the "preparation phase" and would soon be sent to the cities for agreement. This document indicates no agreement – formal or informal – had yet been reached as of early July 2001, although Respondent had by then already submitted false invoices and supporting documentation for several months.

41. Finally, according to INT's records of separate interviews with two PIU officials, Respondent's proposal to extend the Contract was discussed, but had been rejected by some of the cities that were signatories to the Contract. Accordingly, the Contract was never amended.

42. Referring to Sanctions Board precedent, Respondent challenges the reliability of INT's records of interview because they depend on INT investigators' recollection of these interviews and therefore lack the accuracy of verbatim transcripts. Respondent also challenges the credibility of the PIU interviewees due to their personal involvement.

43. As the Sanctions Board has held before, the appropriate weight to be accorded such evidence must take into account that summary records of interview lack the intrinsic accuracy of verbatim transcripts, particularly where – as here – there is no indication the summary was

[6] See Sanctions Board Decision No. 41 (2010) at paras. 70-72 (interpreting "detriment to the Borrower" under the 1999 Procurement Guidelines).

reviewed or signed by any of the interviewees to attest to its basic accuracy.[7] The Sanctions Board takes this factor into consideration when weighing the probative value of the records of interviews Respondent challenges. The Sanctions Board also takes into account Respondent's claim that the witnesses' involvement in the facts giving rise to the sanctions proceedings may affect their credibility. The Sanctions Board nonetheless finds the totality of contemporaneous documentary evidence and witness statements sufficiently consistent and credible to show it more likely than not Respondent submitted falsified invoices without the PIU's agreement or authorization.

44. As further evidence of its purported agreement with the PIU and the lack of detriment, Respondent provided documentation indicating an amount of US$27,961.57 in salaries and other expenses incurred after the Contract expired in November 2001. Respondent's documentation, however, accounts for only a small percentage of the amount overbilled (US$27,961.57 out of US$144,546).

45. Considering the above, the Sanctions Board finds it more likely than not Respondent's misrepresentations caused financial detriment to the Borrower. The Sanctions Board also considers the intangible harms resulting from Respondent's conduct.[8] By submitting falsified records, overbilling the Borrower, and seeking to circumvent formal restrictions governing the Contract and its expiration, Respondent exposed the Borrower to reputational and operational risks for the immediate Project and potentially similar projects thereafter.

46. For the reasons set out above, the Sanctions Board concludes the evidence shows it is more likely than not Respondent engaged in fraudulent practices in relation to the Contract. The Sanctions Board must therefore determine an appropriate sanction or sanctions.

B. Determination of Appropriate Sanctions

1. General framework for determination of sanctions

47. Where the Sanctions Board determines it is more likely than not 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 possible sanctions set out in Section 9.01 are: (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.

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[7] See, e.g., Sanctions Board Decision No. 40 (2010) at para. 26; Sanctions Board Decision No. 41 (2010) at para. 45; Sanctions Board Decision No. 45 (2011) at para. 34; Sanctions Board Decision No. 50 (2012) at para. 40.

[8] See, e.g., Sanctions Board Decision No. 41 (2010) at paras. 70-72 (concluding the element of "detriment to the Borrower" may be satisfied by a showing of tangible or intangible harm; and finding the respondents' use of forged bank guarantees served to distort the selection process, deprived the borrower in each instance of the benefits of a fair procurement process, caused borrowers to expend resources to review and evaluate the respondents' invalid bids and, in those instances where the respondents ultimately received the contract, misled the borrowers to contract with a bidder willing to engage in unethical behavior).

48. 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.[9] The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented.[10]

49. 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 they are not intended to be prescriptive in nature, they provide a point of reference to help illustrate the types of considerations potentially relevant to a sanctions determination. They further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after three years.

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

2. Factors applicable in the present case

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

a. Severity of the misconduct

52. Section 9.02(a) of the Sanctions Procedures requires consideration of "the severity of the misconduct" in determining the appropriate sanction.

53. *Repeated pattern of conduct:* Section IV.A.1 of the Sanctioning Guidelines refers to a repeated pattern of conduct as potential grounds for aggravation. The Sanctions Board agrees with INT that Respondent's repeated submission of several types of falsified documents, including invoices, timesheets and status reports over an extended period, warrants aggravating treatment.

54. *Sophisticated means:* Section IV.A.2 of the Sanctioning Guidelines suggests 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, or level of concealment); and "whether the scheme was developed or lasted over a long period of time." INT asserts the sanction merits an increase under this factor because Respondent not only submitted fraudulent invoices, but supported those invoices with other falsified documents. The Sanctions Board does not find the scheme was so sophisticated or complex as to warrant aggravation on this ground.

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[9] See Sanctions Board Decision No. 40 (2010) at para. 28. See also Sanctions Board Decision No. 41 (2010) at para. 86 (considering the totality of circumstances in determining an appropriate sanction).

[10] See Sanctions Board Decision No. 44 (2011) at para. 56; Sanctions Board Decision No. 45 (2011) at para. 56.

55. *Management's role in misconduct:* Section IV.A.4 of the Sanctioning Guidelines suggests aggravation should apply "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." INT asserts Respondent's management was aware of the false invoices, failed to take corrective action, and attempted to explain away the misconduct with a story inconsistent with the available evidence. Respondent admits members of its former management participated in the misrepresentations, but asserts the individuals are no longer employed by Respondent. The Sanctions Board finds the participation of Respondent's management at the time of the misconduct warrants aggravation.

b. Magnitude of the harm caused by the misconduct

56. Section 9.02(b) of the Sanctions Procedures requires consideration of "the magnitude of the harm caused by the misconduct" in determining the appropriate sanction. INT asserts the magnitude of the harm caused by Respondent's misconduct merits aggravating treatment. Respondent denies any harm resulted from its actions. Although the record does not show Respondent's misconduct caused potential harm to public safety or welfare or delays to the Project, as cited under Section IV.B of the Sanctioning Guidelines, the Sanctions Board takes into account the financial harm inherent in overbilling the Borrower under the Contract.

c. Cooperation

57. 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 suggests cooperation may take the form of assistance with INT's investigation, an internal investigation, acceptance of responsibility, or voluntary restraint.

58. INT acknowledges Respondent's cooperation and internal investigation are mitigating factors, noting Respondent's managers met with INT on several occasions and provided relevant information and documentation. The Sanctions Board applies mitigation for Respondent's cooperation in these respects. Respondent does not receive additional mitigating credit for acceptance of responsibility, however, as it admits to overbilling but maintains it did not commit fraud.[11]

[11] See, e.g., Sanctions Board Decision No. 39 (2010) at para. 60 (taking into account the respondent's cooperation during the investigation, noting the respondent had corresponded extensively with INT, but had not admitted culpability); Sanctions Board Decision No. 45 (2011) at para. 66 (granting limited mitigation for cooperation where the parties agreed the respondent had cooperated in the investigation, but the respondent had never admitted culpability or responsibility for misconduct); Sanctions Board Decision No. 52 (2012) at paras. 42-43 (granting mitigating treatment for cooperation, where the respondent replied to INT's show-cause letter and follow-up inquiries in a timely manner, but denying additional mitigation for acceptance of responsibility, noting that while the respondent acknowledged the bid security was false and expressed apologies and regrets for any inconvenience its misrepresentation may have caused, the respondent did not accept responsibility for any fraudulent practices).

d. Voluntary corrective action

59. Section 9.02(e) of the Sanctions Procedures requires consideration of mitigation "where the sanctioned party . . . took voluntary corrective action." Section V.B of the Sanctioning Guidelines suggests such voluntary corrective action may include cessation of misconduct, internal action against a responsible individual, establishment or improvement and implementation of an effective compliance program, and restitution or financial remedy. The Sanctioning Guidelines suggest a reduction would be warranted only where the voluntary corrective action apparently "reflects genuine remorse and intention to reform," rather than "a calculated step to reduce the severity of the sentence." The respondent bears the burden of presenting evidence to show voluntary corrective actions.[12]

60. *Compliance program:* Respondent claims its parent company implemented an enhanced "Compliance Management System" across the Group in 2008. Respondent attached to its Response a copy of its compliance manual and a short presentation describing the compliance system, and described key components of the system at the Sanctions Board's hearing. By Respondent's description, the system includes: a requirement all employees pass corporate compliance training, including a general orientation on Respondent's corporate compliance policies as well as a course tailored to the employee's specific unit; additional compliance training required for employees upon reaching certain managerial levels; provision of quarterly reminders to all employees regarding the corporate compliance program; and periodic checks to ensure new employees receive training. Respondent also asserted every unit manager must annually certify the compliance system has been implemented in the manager's unit, and file annual reports with Respondent's board of directors and audit committee. Respondent further described a cascading reporting system through which each division chief requires the division's unit managers to certify in writing as to any compliance issues, and each unit manager requires a similar certification from all unit employees.

61. INT does not contest that the implementation of this compliance program deserves mitigating credit. Considering Respondent's detailed description and documentation of the compliance system, and the timing of its implementation prior to INT's initiation of the current sanctions proceedings, the Sanctions Board finds Respondent's enhanced corporate compliance program warrants mitigating credit.

62. *Restitution:* Respondent offers compensation for damages up to US$144,545 to demonstrate its willingness to take responsibility for the acts of its legal predecessor. The Sanctions Board finds Respondent's offer of restitution justifies additional mitigating treatment. The Sanctions Board also considers that requiring Respondent to restitute the full amount overbilled to the Borrower would be an appropriate element of the sanction to be imposed, in accordance with Section 9.01(e) of the Sanctions Procedures. As Section 9.01(e) provides, a respondent may be "required to make restitution to the Borrower or to any other party or take actions to remedy the harm done by its misconduct." Considering the delays in

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

INT's initiation of sanctions proceedings as further discussed below, however, the Sanctions Board will not require Respondent to make such restitution with interest.

e. Period of temporary suspension already served

63. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by the sanctioned party. Respondent has been temporarily suspended since the EO's issuance of the Notice on August 4, 2011.

f. Other considerations

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

65. *Passage of time:* In numerous past decisions, the Sanctions Board has considered as a mitigating factor the passage of significant time from when the Bank became aware of potential sanctionable misconduct, to the point of sanctions proceedings.[13] The Bank first became aware of the misconduct here as early as 2004, when it interviewed representatives of Respondent in January 2004 and the PIU in September 2004. The Notice of Sanctions Proceedings issued nearly seven years later, on August 4, 2011. The Sanctions Board also takes into account the Notice issued nearly a decade after the final invoice concerned was submitted in December 2001. Such a long delay from the misconduct clearly impacts Respondent's ability to investigate the matter, gather evidence and defend itself.[14] The Sanctions Board furthermore considers that Respondent's corporate structure and personnel have substantially evolved over the past decade since the misconduct. For all these reasons, the extended delays in this case warrant substantial mitigation.

66. *Change in management/corporate identity:* Respondent argues that while it is responsible for the acts of its legal predecessor, the staff responsible for the misconduct are no longer working for Respondent, and a debarment "would after all not affect the perpetrator but the respectable company which [Respondent] is today." The Sanctions Board has previously recognized as a mitigating factor the lack of evidence connecting a respondent's current

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[13] See, e.g., Sanctions Board Decision No. 6 (2009) at para. 7 (considering as a mitigating factor the lapse of over four years since the fraudulent practices came to the Bank's attention); Sanctions Board Decision No. 46 (2012) at para. 43 (taking into consideration that over three years, and possibly closer to four years, elapsed from when the Bank learned of the false signatures to the issuance of the Notice of Sanctions Proceedings); Sanctions Board Decision No. 48 (2012) at para. 48 (taking into consideration almost three years had elapsed from when the Bank learned of the falsified documents to the issuance of the Notice of Sanctions Proceedings); Sanctions Board Decision No. 50 (2012) at para. 71 (considering as a mitigating factor that approximately five years elapsed from when the Bank became aware of the allegations to the issuance of the Notice of Sanctions Proceedings).

[14] See Sanctions Board Decision No. 47 (2012) at para. 56 (finding "the passage of substantial time since the underlying conduct at issue warrants consideration as it clearly impacts upon [the respondent's] ability to defend itself").

management with the misconduct.[15] Based on the record, the Sanctions Board considers the successive changes in Respondent's management since the time of the misconduct a decade ago justify mitigating treatment.

67. *Completion of work under the Contract:* Respondent argues its misconduct was not severe, because the Project was completed to the satisfaction of the Borrower. Respondent also argues the amount of overbilling should be mitigated to account for the work performed after the Contract closed. In support of its argument, Respondent submitted evidence it expended US$27,961.57 in wages and expenses from December 2001. Even considering the work Respondent carried out after submitting falsified invoices, however, Respondent fails to account for the large majority of the amount overbilled. Nor does the Sanctions Board find Respondent's purported satisfactory completion of the Contract to be a persuasive ground for mitigation. While delays or incomplete performance in a project as a result of a respondent's misconduct may be considered an aggravating factor, the Sanctions Board has not generally found completion of contractual obligations a mitigating factor in itself.[16]

68. *Absence of past misconduct:* Respondent's assertion its misrepresentation concerned only one project among the numerous Bank-Financed Projects in which it has participated does not justify mitigation. As the Sanctions Board has previously stated, even a single instance of submitting falsified documents would constitute sanctionable misconduct, even where a respondent may have participated extensively in Bank-financed contracts over the years.[17]

69. *Adverse consequences of debarment:* Respondent argues the consequences of a debarment for its business, including lost revenues, would be disproportionately harsh. INT argues the consequences of debarment are not a basis for further reducing the sanction. The Sanction Board does not find Respondent's arguments with respect to losses in revenue or impact on its operations justify mitigating treatment.

3. Determination of appropriate sanction for Respondent

70. Considering the full record and all the factors discussed above, the Sanctions Board hereby determines Respondent (together with any entity that is an Affiliate Respondent directly or indirectly controls) to be conditionally ineligible for a period of one (1) year (i) to be awarded a contract for any Bank-Financed Projects, (ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the

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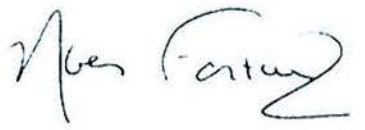
[15] See Sanctions Board Decision No. 6 (2009) at para. 7.

[16] See Sanctions Board Decision No. 52 (2012) at para. 46 (declining to find Respondent's continued performance under the contract warrants mitigation); Sanctions Board Decision No. 44 (2011) at para. 63 (applying aggravation for substantial delays, risks to the contract works and waste of the borrower's time and resources, even though the respondent completed the work, thereby capping, but not negating, the total damages); Sanctions Board Decision No. 29 (2010) at paras. 23, 34 (not specifying the application of any mitigating factor, where respondent asserted it had left no assignment in connection with the project "incomplete or undone").

[17] See Sanctions Board Decision No. 52 (2012) at para. 46; Sanctions Board Decision No. 41 (2010) at para. 78.

Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects; such ineligibility to apply only if, by the expiration of a period of one (1) year from the date of this decision, Respondent has not, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated it has (i) restituted an amount of US$ 144,546 (one hundred and forty-four thousand, five hundred and forty-six US dollars) to the Borrower and (ii) adopted and implemented, in a manner satisfactory to the World Bank, an effective integrity compliance program including the compliance measures Respondent represented to the Sanctions Board as having been implemented to date. This sanction is imposed on Respondent for fraudulent practices as defined in Paragraph 1.25(a)(ii) of the January 1997 Consultant Guidelines.



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

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Hassane Cissé
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Patricia Diaz Dennis
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