THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: May 30, 2012

Sanctions Board Decision No. 46
(Sanctions Case No. 151)
IDA Credit No. 4085-UNI
Nigeria

Decision of the World Bank Group Sanctions Board declaring the respondent entity in Sanctions Case No. 151 ("Respondent"), together with any entity that is an Affiliate[1] Respondent directly or indirectly controls, ineligible (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, for a period of six (6) months. The ineligibility shall extend across the operations of the World Bank Group.[4] This sanction is imposed on Respondent for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) (the "May 2004 Procurement Guidelines"). The period of ineligibility shall begin on the date this decision issues.

I. INTRODUCTION

1. The Sanctions Board met in plenary session on October 6, 2011, at the World Bank's headquarters in Washington, D.C., to review this case. The Sanctions Board was represented

[1] In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted January 1, 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.

[4] In accordance with Section 1.02(a) of the Sanctions Procedures, the term "World Bank Group" means, collectively, IBRD, IDA, the International Finance Corporation ("IFC") and the Multilateral Investment Guarantee Agency ("MIGA"). The term includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes ("ICSID").

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2. A hearing was held at Respondent's request and in accordance with Article VI of the Sanctions Procedures. The World Bank's Integrity Vice Presidency ("INT") participated in the hearing through its representatives. Respondent was represented by its Managing Director and counsel. 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 ("EO") to Respondent on March 31, 2011 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT;

ii. Letter submitted by Respondent to the Secretary to the Sanctions Board, dated June 24, 2011 (the "Response"); and

iii. Reply in Support of Notice of Sanctions Proceedings, submitted by INT to the Secretary to the Sanctions Board, dated July 26, 2011 (the "Reply").

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 (i) to be awarded a contract for any Bank-Financed Projects, (ii) to 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) 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; provided, however, after a minimum period of ineligibility of two (2) 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 complied with the following conditions: (a) Respondent has taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned; and (b) Respondent has put in place an effective integrity compliance program acceptable to the Bank and has implemented this program in a manner satisfactory to the Bank.

5. Effective March 31, 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

6. This case arises in the context of the Nigerian National Energy Development Project ("NEDP" or the "Project"). On July 15, 2005, IDA and the Federal Republic of Nigeria (the

"Borrower") entered into a Development Credit Agreement (the "DCA") to provide US$172 million equivalent in financing for the Project. The Project seeks, in relevant part, to "facilitate a smooth transition to the new market and to increase efficiency in the power sector." The DCA required all goods, works and services (other than consultants' services) to be procured in accordance with, inter alia, the provisions of Section I of the May 2004 Procurement Guidelines regarding fraud and corruption. As part of the Project, IDA signed a Project Agreement with the National Electric Power Authority, now known as the Power Holding Company of Nigeria Plc ("PHCN").

7. On January 30, 2007, Respondent submitted to PHCN a bid for a contract for the "Supply and Installation of Pre-Paid Meters in Abuja" (the "Contract"). The bid, signed by a manager of Respondent (the "Manager") purported to be on behalf of a joint venture ("JV") between Respondent and another firm (the "Proposed JV Partner"). The Bidding Documents required joint ventures to include a copy of the JV agreement and a signed and notarized power of attorney in their bids. Respondent submitted these documents with its bid, each with the Proposed JV Partner's purported signature.

8. When the bids were opened, PHCN noted the Proposed JV Partner was named as a JV partner in two different bids: one for Respondent and one for a consortium with three other firms. Upon PHCN's inquiries, the Proposed JV Partner confirmed it had entered into a JV with the latter consortium only, and its purported signatures on the JV documents in Respondent's bid were false. PHCN rejected Respondent's bid due to the misrepresentations in its JV documentation. INT alleges the JV agreement and power of attorney submitted with Respondent's bid were fraudulently signed in the Proposed JV Partner's name by Respondent, in violation of the May 2004 Procurement Guidelines.

III. APPLICABLE STANDARDS OF REVIEW

9. Section 8.02(b)(i) of the Sanctions Procedures requires the Sanctions Board to determine whether the evidence presented by INT, as refuted 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.

10. 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.

11. The alleged sanctionable practice in this case has the meaning set forth in the May 2004 Procurement Guidelines, which governed the Project's procurement under the DCA. Paragraph 1.14(a)(ii) of these Guidelines defines the term "fraudulent practice" as "a misrepresentation or omission of facts in order to influence a procurement process or the

execution of a contract." This definition of fraud does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward.[5] 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.[6]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

12. INT argues the record shows it is more likely than not Respondent engaged in fraudulent practices by knowingly submitting with its bid a JV agreement and power of attorney with fraudulent signatures for the JV Partner in order to influence the procurement process for the Contract. INT relies primarily on the following assertions:

i. Respondent's bid included a JV agreement and power of attorney with unauthorized signatures, as the Proposed JV Partner later confirmed and Respondent admits.

ii. A Logistics Officer of Respondent (the "Logistics Officer") signed and submitted the documents without the Proposed JV Partner's authorization to sign and without confirmation the Proposed JV Partner would participate in Respondent's proposed JV, which shows the misrepresentation was made knowingly.

iii. The Logistics Officer signed and submitted the documents in order to have Respondent's bid considered timely and in conformity with JV documentation requirements, thereby seeking to influence the procurement process with the unauthorized signatures.

iv. The Logistics Officer acted as Respondent's representative, so Respondent is liable for the Logistics Officer's actions.

13. INT does not assert any aggravating factors. INT asserts the "fact that the Respondent communicated and cooperated with INT during the investigation is a mitigating factor."

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[5] See, e.g., the definition of fraudulent practices set out in Paragraph 1.14(a)(ii) of the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 2006): "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).

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

B. Respondent's Principal Contentions in the Response

14. Respondent mentions at the outset the sudden death of the Manager, whom it describes as "mainly responsible for handling the submission of the Bid and the matters related therewith."

15. In response to the allegations, Respondent first asserts it "had no intention at any stage to submit the Bid without a duly signed power of attorney and joint-venture agreement between the Respondent and [the Proposed JV Partner] . . . , which was always understood to be one of the pre-requisites of the Bid." On the specific events in question, Respondent states:

i. The Manager expected to receive the Proposed JV Partner's duly signed JV agreement and power of attorney "on or around the last date" for bid submission. The day before bids were due, she sent the Logistics Officer to Abuja – approximately four to five hours from Respondent's main office in Port Harcourt – so as to ensure the bid would be timely submitted there.

ii. The Logistics Officer had clear instructions to replace the unsigned pages of the JV agreement and power of attorney he carried to Abuja with versions signed by the Proposed JV Partner before bid submission.

iii. When "[i]t was revealed to [the Manager] at the last moments that [the Proposed JV Partner] had changed its position and had refused to sign the Joint Venture Agreement," the Manager contacted the Logistics Officer to stop the submission of the bid.

iv. The Logistics Officer then informed the Manager "he had already submitted the Bid by way of initialing the Joint Venture Agreement, with the understanding that such initialed agreement will be replaced with the signed version in due course." An affidavit from the Logistics Officer shows he "took the initiative of initialing this Joint Venture Agreement without any knowledge whatsoever . . . that [the Proposed JV Partner] had refused to provide the signed version of the agreement." Thus it may not be correct to infer he knowingly signed the documents "without confirmation that there was a JV Agreement in place and without being given authority to sign on behalf of [the Proposed JV Partner]."

v. Respondent took "serious action" against the Logistics Officer "by way of seeking a formal explanation" in the matter; and "[s]oon thereafter [the Logistics Officer] left the Company's employment."

16. Respondent asserts it subsequently "introduced very clear policies and procedures with regards to submission of bids," now prohibiting dispatch or release of bid-related documents "until such time that the completeness of such bid documents is approved by two senior officials of the Company including the Managing Director."

C. INT's Reply

17. In its Reply, INT argues Respondent has failed to meet the shifted burden of proof to show its conduct did not amount to a sanctionable practice. INT's main contentions are:

i. Respondent "effectively admits the misconduct" by stating the Logistics Officer, its authorized employee, initialed the unsigned JV agreement to submit with the bid.

ii. The record shows the Logistics Officer intended to deceive PHCN, insofar as he presumed the bid would be rejected without the documents and thus proceeded to sign for the Proposed JV Partner while knowing he lacked the latter's authorization to do so.

iii. The Logistics Officer's assertion he initialed and submitted the documents "on the presumption that the parties would have a properly signed version before the opening of the bid and such signed agreement could then replace the initialed version" lacks credibility because the documents were key requirements for joint ventures; the Logistics Officer did not disclose to PHCN that the documents were not properly signed by the Proposed JV Partner and that signed versions were forthcoming; and there was a deadline by which all bidders had to submit complete bids.

D. Presentations at the Hearing

18. At the hearing, INT summarized the main issues as whether the Logistics Officer acted knowingly or at least recklessly in misrepresenting the JV arrangements; whether Respondent had provided sufficient controls or supervision to prevent misconduct; and what an appropriate sanction would be. In its oral presentation, Respondent asserted the circumstances of the matter justified leniency, particularly given that neither the Logistics Officer nor the Manager involved had acted in bad faith; neither was with the company any longer; and the Logistics Officer had acted contrary to express instructions, and therefore outside the course of his employment. Respondent's representatives further spoke of the voluntary corrective actions taken since Respondent had learned of the misconduct at issue, and the potential effect of sanctions on the company and its several hundred employees.

19. In correspondence preceding the hearing, Respondent had offered to make the Logistics Officer available for questioning by the Sanctions Board at the hearing. As provided in Section 6.03(b)(iv) of the Sanctions Procedures, which addresses live testimony at hearings: "No live witness testimony shall be taken, except that one or more witnesses may be called and questioned by members of the Sanctions Board only." INT objected that live testimony from the Logistics Officer was unnecessary, given his previous statements in the written record; and that if the live testimony presented new evidence at the hearing, INT would not have had prior notice or opportunity to evaluate it or gather other evidence for a rebuttal. INT argued the case "does not seem to present any exceptional circumstances that would justify departing from the general rule that no live witness testimony shall be taken."

20. At the start of the hearing, the Sanctions Board reaffirmed it may call any witness to testify at its discretion, consistent with Section 6.03(b)(iv). Regardless of who may have initially proposed a particular witness to testify, it is for the Sanctions Board to determine whether such testimony may be useful and permitted. In the present case, considering the sufficiency of the information in the written record and the parties' responses to the Sanctions Board's questions at the hearing, the Sanctions Board ultimately determined not to exercise its discretion to call the witness.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

21. The Sanctions Board considers first whether the submission of the JV agreement and power of attorney purportedly signed by the Proposed JV Partner in support of a bid constitutes a "fraudulent practice" as defined under the May 2004 Procurement Guidelines. Next, the Sanctions Board considers whether Respondent may be held liable for the acts of the Logistics Officer as its employee. Finally, the Sanctions Board determines what sanctions, if any, should be imposed on Respondent.

A. Evidence of Fraudulent Practices

22. In accordance with the allegations in the SAE and the applicable definition of fraudulent practices under the May 2004 Procurement 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 the procurement process.

1. "Misrepresentation of facts"

23. In past cases finding fraudulent bid documents, the Sanctions Board stated it relied primarily on written statements from the parties named in or supposedly issuing the allegedly fraudulent documents, as well as the respondents' own admissions.[7] Here, the record contains admissions from Respondent and the Logistics Officer that the Logistics Officer signed the JV agreement and power of attorney on behalf of the Proposed JV Partner, without the latter's authorization or agreement, and submitted them with Respondent's bid for the Contract. In addition, the record includes certified written submissions from the Proposed JV Partner confirming the purported signatures were false and unauthorized, and it had never accepted Respondent's proposed JV arrangements. The Proposed JV Partner further provided names and specimen signatures for its several authorized representatives, past and present – none of which matched the purported signatures submitted with Respondent's bid. Considering the above evidence from Respondent, the Logistics Officer and the Proposed JV Partner, the Sanctions Board finds it more likely than not Respondent's bid contained documents

[7] See, e.g., Sanctions Board Decision No. 2 (2008) at para. 4 (stating the Sanctions Board "relied primarily" on the written statement of the bank that had supposedly issued the bid securities stating the securities had been forged, as well as the respondent's oral and written admissions); Sanctions Board Decision No. 6 (2009) at para. 6 (stating the Sanctions Board "relied primarily" on the written statement of the individual named in the CV stating the CV had been falsified, contained a forged signature and had been submitted without her consent, as well as the admission of the respondent's director who had falsified and submitted the CV).

falsifying the Proposed JV Partner's signatures and misrepresenting its participation in the claimed JV arrangements.

2. "Made knowingly or recklessly"

24. Respondent argues the Logistics Officer did not know the Proposed JV Partner had refused to sign Respondent's proposed JV agreement and power of attorney, so he did not make any knowing misrepresentations as to the fact of their JV participation. Respondent does not dispute the Logistics Officer knew he lacked authority to sign on behalf of the Proposed JV Partner, however, even if the latter had agreed to enter into the JV. In fact, the record of Respondent's internal findings indicates the Logistics Officer's contemporaneous awareness of wrongdoing. He stated that when the Manager contacted him after the bidding deadline, he chose not to inform the Manager that he had already signed the documents on behalf of the Proposed JV Partner and submitted them with the bid, "because he was not authorized to do so . . . and he did not want to take the blame for the failure of the bid." The evidence thus supports a finding the Logistics Officer acted knowingly in misrepresenting the Proposed JV Partner's signatures.

3. "In order to influence the procurement process"

25. The record contains an affidavit from the Logistics Officer in which he stated he signed and submitted the documents "to ensure timely submission of the bid, as without which, I presumed that the bid would not be entertained." The Logistics Officer's statements on record suffice to show he falsified the Proposed JV Partner's signatures with the requisite intent to influence the procurement process so that Respondent's bid would be considered eligible.

B. Respondent's liability for the acts of its employee

26. INT asserts Respondent is responsible for the Logistics Officer's actions in submitting bid documents with fraudulent signatures because he was "acting as [Respondent's] representative." In its Response to the Notice, Respondent does not directly address the issue of its potential liability as an employer for the acts of the Logistics Officer as its employee. In its earlier response to INT's show-cause letter, Respondent had stated it "accept[ed] ultimate responsibility for [the Logistics Officer's] conduct" even though it did not "authorize, encourage or permit such conduct by its staff" and the Logistics Officer had specifically been instructed to wait for the Proposed JV Partner's properly signed documents.

27. The Sanctions Board has previously recognized the potential liability of an employer for the acts of its employees under the doctrine of respondeat superior, including in multiple cases of forgery or other fraudulent practices.[8] In such cases, the Sanctions Board has placed particular emphasis on whether the record includes evidence showing the employer "at any time implemented any controls reasonably sufficient to prevent or detect the fraudulent

[8] See, e.g., Sanctions Board Decision No. 31 (2010) at para. 24; Sanctions Board Decision No. 36 (2010) at para. 39; Sanctions Board Decision No. 37 (2010) at para. 41; Sanctions Board Decision No. 39 (2010) at para. 56; Sanctions Board Decision No. 44 (2011) at para. 52.

practices alleged."[9] Where an employer asserted it simply relied upon the honesty of its employees, and failed to implement any controls such as "a basic 'four-eye-principle' (i.e., a review by someone other than the individual who forged each Authorization . . .)," for example, and the Sanctions Board found no evidence supporting a "rogue employee" defense or or any other defense, it ultimately found the employer should be held responsible for the actions of its employees acting on its behalf.[10]

28. In the present case, the record reflects Respondent specifically charged the Logistics Officer with physically submitting the bid in question by the deadline, as well as representing Respondent at the bid opening on January 30, 2007. On January 29, the day prior to bid close, the Manager gave the Logistics Officer all the bidding documents, including an unsigned JV agreement and power of attorney; sent him from Port Harcourt to Abuja, where bids were to be submitted; and instructed him to "replace the unsigned pages of the Joint Venture Agreement with the signed version (when received) before submission of the Bid." The Logistics Officer stated in his affidavit that "neither [the Manager] nor any other staff of [Respondent] had ever instructed and/or encouraged me to sign on behalf of [the Proposed JV Partner] under any circumstances whatsoever." The record also reflects, however, that the Manager was not available to give further instructions to the Logistics Officer in the critical time period immediately prior to the bid submission deadline, when the Logistics Officer had not received the documents signed by the Proposed JV Partner as expected. Rather, the record shows it was only after the bidding deadline had passed that the Manager contacted the Logistics Officer to relay that the Proposed JV Partner had refused to sign the JV documents, and thus the Logistics Officer should not have submitted the bid.

29. On this record, the Sanctions Board concludes Respondent may be held liable for the acts of the Logistics Officer in submitting a bid with fraudulent signatures. First, the record shows the Logistics Officer acted on behalf of the firm. When he signed the JV documents and submitted them with Respondent's bid to make the deadline, he was apparently motivated, at least in part, by a purpose to serve the company. Second, the Logistics Officer's actions were closely aligned to the functions Respondent had charged him to perform. INT is not required to show a particular employee was specifically authorized or instructed to commit the fraudulent or other sanctionable practices at issue. Here, the relevant consideration is that the Logistics Officer's fraudulent conduct was a mode, albeit an improper mode, of carrying out his responsibilities to fill in the missing JV documentation for the bid and submit a complete bidding package by the deadline.[11] Third, the record reflects a

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[9] Sanctions Board Decision No. 37 (2010) at para. 42; see also Sanctions Board Decision No. 36 (2010) at para. 39.

[10] Sanctions Board Decision No. 39 (2010) at paras. 56, 58.

[11] See generally John W. Salmond, The Law of Torts: A Treatise on the English Law of Liability for Civil Injuries (1907) at pp. 83-84 (citing general principle that an employer "is liable even for acts which he has not authorised, provided they are so connected with acts which he has authorised, that they may rightly be regarded as modes – although improper modes – of doing them"). See also Roshairee v. Major Mustafa (High Court of Malaya), Part 4 Case 9 (Sept. 25, 1996), para. 18 ("Though the first defendant's acts of assault were unauthorized by the third defendant, they were carried out during the normal course of duty of the first defendant. Such being the case, his unauthorized acts have become so connected with his authorized acts that this court finds them to have become 'modes – although improper modes – of doing

lack of adequate supervision from Respondent, whose Manager failed to take appropriate measures in the critical time period to communicate with and re-direct the Logistics Officer so as to prevent an improper submission. Fourth, Respondent fails to show it had controls in place at the time to address or prevent this type of misconduct. As the employer, Respondent was in the best position to reduce the likelihood of improper business practices by its employees. Respondent, however, does not claim it had established pre-existing controls such as a requirement that bids be reviewed and cleared by another employee or any officer prior to final submission.

30. For the reasons set out above, the Sanctions Board concludes the evidence on record shows it is more likely than not Respondent engaged in fraudulent practices. The Sanctions Board therefore must determine an appropriate sanction.

C. Determination of Appropriate Sanctions

1. General framework for determination of sanctions

31. Where the Sanctions Board determines it is more likely than not 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 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.

32. 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.[12] The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented.[13]

33. 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.

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them.'"); Minister of Finance v. Gore (South Africa Supreme Court of Appeal), Case No. 230/06 (Sept. 8, 2006), paras. 27-28 ("Even though a deliberately dishonest act that, subjectively seen, was committed solely for the employee's own interests and purposes may fall outside the ambit of conduct that renders the employer liable, it is in our law established that liability may nevertheless follow if, objectively seen, there is a 'sufficiently close link' between the self-directed conduct and the employer's business.").

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

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

34. 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

35. The range of factors to be considered under Section 9.02 of the Sanctions Procedures includes a number of factors relevant in this case. The parties have not identified, and the record does not indicate, any applicable aggravating factors. The Sanctions Board addresses other potentially relevant factors in turn below.

a. Minor role in the misconduct

36. Section 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party played a minor role in the misconduct." On this point, Section V.A of the Sanctioning Guidelines refers to situations in which "no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct."

37. The Sanctions Board considers some mitigating credit appropriate on this ground. While the record shows Respondent exercised inadequate supervision and controls to prevent fraudulent misconduct, and therefore may be held liable for it, the record does not indicate Respondent's management affirmatively participated in or condoned the Logistics Officer's actions in signing the JV documents for the Proposed JV Partner and submitting them with the bid. To the contrary, the record indicates the Logistics Officer, who was not a high-level employee, acted without the knowledge or approval of his management. Nor does the record support a finding the deficiencies in the Manager's supervision of the Logistics Officer rose to the level of willful ignorance.

b. Voluntary corrective action

38. Section 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party . . . took voluntary corrective action." Section V.B of the Sanctioning Guidelines suggests voluntary corrective actions 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 is warranted only where the 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.[14]

39. Although neither party specifically asserts Respondent's voluntary corrective actions as a mitigating factor in this case, the Sanctions Board finds some evidence to support a

[14] See Sanctions Board Decision No. 45 (2011) at paras. 72-74 (considering the respondent did not carry its burden to show voluntary corrective actions where the first claimed action was unrelated to the misconduct and the second action was a bare assertion the respondent agreed to draft and implement a compliance program in the future).

degree of mitigation on grounds of internal action against the responsible individual and implementation of compliance measures. First, after Respondent became aware of the misconduct at issue, it requested a formal explanation from the Logistics Officer, who subsequently resigned due to the misconduct.[15] Second, Respondent credibly asserted that since the Logistics Officer's resignation, it had introduced strengthened bidding policies and procedures to prohibit the dispatch or release of bid documents until they have been approved by two senior officials of Respondent, including the Managing Director.[16]

c. Cooperation

40. 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.

41. INT acknowledges Respondent "communicated and cooperated with INT during the investigation." The record shows specifically that in response to INT's show-cause letter, Respondent retained counsel to review the matter, demanded the Manager's answer to the issues raised, and located the Logistics Officer for questioning; provided a substantive written response attaching a copy of the Manager's written answer; and expressed its regret and its acceptance of "ultimate responsibility" for the Logistics Officer's "fraudulent" and "unacceptable" conduct. The Sanctions Board has previously accorded mitigating credit for respondents' cooperation in replying to a show-cause letter from INT.[17] Considering Sanctions Board precedent and the instant record, the Sanctions Board finds cooperation to be a mitigating factor for Respondent.

d. Period of temporary suspension already served

42. 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 issued the Notice on March 31, 2011.

e. Passage of time

43. 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." In past decisions, the Sanctions Board

[15] See Sanctions Board Decision No. 6 (2009) at para. 7 (considering as mitigating factor the fact that the respondent's executive director "who had taken responsibility for the fraudulent practice had stepped down from her position and there was no evidence connecting [the respondent's] current management with the misconduct").

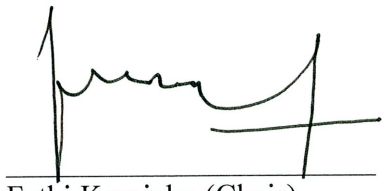
[16] See Sanctions Board Decision No. 2 (2008) at para. 7 (according mitigating credit for a respondent firm's termination of the employee who perpetrated the forgeries at issue, and implementation of corporate compliance measures to prevent recurrence of such misconduct).

[17] See Sanctions Board Decision No. 37 (2010) at para. 45.

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. In Sanctions Board Decision No. 6 (2009), for example, mitigating credit was given for several reasons including the passage of over four years since the fraudulent practices had come to the attention of the Bank.[18] Here, the Sanctions Board takes into consideration that over three years, and possibly closer to four years, elapsed from when the Bank learned of the false signatures between April and July 2007, to the issuance of the Notice at the end of March 2011.

3. Determination of appropriate sanction for Respondent

44. 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, shall be, and hereby declares that it is, ineligible (i) to be awarded a contract for any Bank-Financed Projects, (ii) to 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) 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, for a period of six (6) months. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on Respondent for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines. The period of ineligibility shall begin on the date this decision issues.



Fathi Kemicha (Chair)

On behalf of the
World Bank Group Sanctions Board

Fathi Kemicha
Hassane Cissé
Marielle Cohen-Branche
Patricia Diaz Dennis
Hartwig Schafer

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