THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: May 30, 2012

Sanctions Board Decision No. 47
(Sanctions Case No. 121)
IDA Credit No. 2936 – IN
IDA Credit No. 4228 – IN
India

Decision of the World Bank Group Sanctions Board declaring the respondent entity in Sanctions Case No. 121 ("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, provided, however, after a minimum period of ineligibility of three (3) years, Respondent may be released from 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. The ineligibility shall extend across the operations of the World Bank Group.[4] 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 they may determine whether to enforce the declaration of ineligibility with respect to their own

[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 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.

[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").

operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[5] This sanction is imposed on Respondent for fraudulent practices as defined in Paragraph 1.15(a)(ii) of the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (January 1995, revised January and August 1996) (the "August 1996 Procurement Guidelines") and/or 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 Sanctions Case No. 121. The Sanctions Board was represented by Fathi Kemicha (Chair), Hassane Cissé, Marielle Cohen-Branche, Patricia Diaz Dennis and Hartwig Schafer.

2. A hearing was held at the request of both parties, Respondent and the World Bank's Integrity Vice Presidency ("INT"), and in accordance with Article VI of the Sanctions Procedures. INT participated in the hearing through its representatives attending in person. Respondent participated in the hearing through its representatives via audioconference, with an additional representative attending in person as an observer only. The Sanctions Board deliberated and reached its decision based on the written record and the arguments and evidence 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 February 4, 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 EO, dated March 17, 2011 (the "Explanation");

iii. Letter submitted by Respondent to the Secretary to the Sanctions Board, dated May 7, 2011 (the "Response"); and

[5] 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 any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the "opt out" clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank's external website (http://go.worldbank.org/B699B73Q00).

iv. Reply in Support of Notice of Sanctions Proceedings, submitted by INT to the Secretary to the Sanctions Board, dated July 1, 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 under any Bank-Financed Project, (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 Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Project; provided, however, after a minimum period of ineligibility of four (4) 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 February 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

6. This case arises in the context of the India Tuberculosis Control Projects I and II ("TB I" and "TB II") (together, the "Projects"), each financed by a Development Credit Agreement ("DCA") entered into between the Republic of India (the "Borrower") and IDA. TB I, which closed in March 2006, sought to cure and control tuberculosis by strengthening chemotherapy treatment regimens. TB II, scheduled to close in September 2012, seeks to reduce the incidence of tuberculosis by identifying and treating undetected cases in underserved population groups and supporting the treatment of pediatric cases.

7. Respondent submitted bids to supply anti-tuberculosis pharmaceuticals in tenders under TB I in June 2000 and TB II in August 2007. Respondent was awarded one contract under TB I in December 2000; and a number of contracts ("schedules") under TB II in March 2008. The combined value of the contracts awarded to Respondent was approximately US$4.9 million. INT alleges Respondent engaged in fraudulent practices in connection with both Projects by intentionally or recklessly submitting at least eighteen forged or otherwise deceptive performance certificates and orders in support of its bids under the two projects.

III. APPLICABLE STANDARDS OF REVIEW

8. Section 8.02(b)(i) of the Sanctions Procedures requires the Sanctions Board to determine 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.

9. 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.

10. The TB I DCA and the TB I tender's Instructions to Bidders provided that the TB I tender would be conducted pursuant to the August 1996 Procurement Guidelines. Accordingly, the definition of "fraudulent practices" governing INT's allegations in connection with TB I may be found in Paragraph 1.15(a)(ii) of the August 1996 Procurement Guidelines, which in relevant part defines a fraudulent practice as "a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower."

11. The TB II DCA provided that the TB II tender would be conducted pursuant to the May 2004 Procurement Guidelines, which at Paragraph 1.14(a)(ii) defines a fraudulent practice as "a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract." Detriment to the Borrower is not required. The TB II tender's Instructions to Bidders incorporated this less stringent definition from the May 2004 Procurement Guidelines. The General Conditions of Contract for Respondent's TB II contracts, however, contained the older, more stringent definition of "fraudulent practices" in the August 1996 Procurement Guidelines, which requires proof of detriment to the Borrower. While INT asserts Respondent's conduct under both TB I and TB II in fact violated the more stringent August 1996 definition, it argues the less stringent May 2004 definition legally governs the allegations pertaining to Respondent's conduct under TB II.

12. The definitions of fraud under Paragraph 1.15(a)(ii) of the August 1996 Procurement Guidelines and under Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines do not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward.[6] The Sanctions Board has previously held that 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.[7]

---

[6] 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).

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

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

13. INT asserts it is more likely than not Respondent engaged in fraudulent practices by intentionally or recklessly submitting at least eighteen forged or otherwise deceptive performance certificates and orders in support of its bids under the Projects. Specifically, INT alleges Respondent submitted at least five forged performance certificates and eight forged orders in its TB I bid; and at least three forged and two otherwise deceptive performance certificates in its TB II bid. INT relies primarily on the following assertions:

i. Respondent's bids included at least sixteen performance certificates and orders that showed physical indicia of fraud and whose authenticity was denied by their purported issuers, as well as two additional performance certificates whose use was deceptive.

ii. The use of forged and otherwise misleading documents in a systematic and repetitive manner, with subsequent efforts at concealment, shows Respondent engaged intentionally in fraudulent practices. Alternatively, Respondent acted at least recklessly in using unverified documents.

iii. Respondent submitted the documents in order to influence the procurement process insofar as the Invitations to Bid under both Projects required evidence regarding each bidder's manufacturing, marketing and supply experience for similar pharmaceuticals and vaccines.

iv. Respondent's actions caused detriment to the Borrower by influencing procurement authorities to award contracts to Respondent based on false information, with the result that the Borrower awarded two contracts to supply critical anti-tuberculosis drugs to a firm that had repeatedly engaged in fraudulent behavior.

14. INT asserts three aggravating factors should be considered in sanctioning Respondent: (i) the "repetitive and long-standing nature" of Respondent's alleged fraudulent acts; (ii) Respondent's receipt of contracts totaling US$4.9 million, which shows successful deception and harm to the Borrower in a critical area; and (iii) Respondent's alleged attempts to pressure witnesses and thereby obstruct INT's investigation. INT offers as a mitigating factor the fact that Respondent's representatives met with INT investigators on three occasions and provided two letters of clarification with attached documents.

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

15. Respondent does not deny it may have submitted falsified or inaccurate documents, but contends it should not be held liable for any sanctionable practices. With respect to the TB I tender, which dates back to 2000, Respondent argues the allegations are time-barred under the Sanctions Procedures; and the passage of time calls into question the validity of INT's evidence and limits Respondent's ability to defend itself against the charges. With

respect to TB II, Respondent does not concede it used any false or inaccurate certificates. Respondent further asserts:

i. INT fails to show any misrepresentations by Respondent. Respondent actually did business with some of the issuers; even if certain documents were falsified, there is no proof that Respondent falsified them; and some of the witnesses INT relied upon to contest the authenticity of the documents were unreliable.

ii. Respondent had no need or intent to commit fraud. It could have obtained valid documents at any time; the staff directly responsible for the bids at issue did not understand the implications of submitting unverified documents; and any falsification of documents must have been committed earlier, prior to the bids at issue, by junior staff acting without the direction or knowledge of management.

iii. Respondent's use of the documents in question did not influence the procurement process because the documents were "neither a condition of tender submission nor a part of evaluation criteria"; Respondent had the necessary manufacturing and supply qualifications; and it would have won the tenders without submitting the documents, which were only a small part of the overall bid packages.

iv. There was no detriment to the Borrower because Respondent in fact provided the lowest prices; the products delivered were of good quality; and the bid evaluations were done on the basis of the criteria set out by the World Bank.

16. With respect to potential aggravating and mitigating factors, Respondent rejects INT's suggestion it sought to obstruct the investigation when it was only carrying out its own inquiries in response to INT's allegations. Respondent asserts as mitigating factors the small number of disputed certificates relative to the total numbers in Respondent's archives or submitted with the bids at issue; its satisfactory performance under the Projects; lack of involvement of its management in any intentional mistakes; its implementation of remedial measures, including new quality controls for tenders; its cooperation in making current and former employees available for interviews and providing business records; and its overall record of quality, prices and dependability.

C. INT's Reply

17. In its Reply, INT argues that Respondent has failed to meet the shifted burden of proof to show it is more likely than not Respondent did not engage in fraudulent practices. Among other points, INT challenges the factual basis for Respondent's claims of witness bias or incompetence; counters Respondent's contention it should not be held liable for inaccurate documents generated or submitted by its employees; cites tender requirements for the Projects to refute Respondent's assertions that the performance certificates at issue were not required for the tenders; and reiterates that the record shows procedural harm constituting detriment to the Borrower as required under TB I.

D. Presentations at the Hearing

18. At the hearing, INT clarified it was alleging sixteen (not eighteen) instances of fraud, excluding the two allegedly deceptive but not technically fraudulent performance certificates noted under TB II. Citing Respondent's failure to contest five instances of alleged forgeries under TB I, INT asserted the issue presented was not whether Respondent had engaged in fraud, but how many times it had engaged in fraud and what sanction would be appropriate. INT argued that forgery of performance certificates, even where the claimed performance took place, vitiates the value of a third-party certification. Further, INT argued, a sanctions determination should take into account the sensitive nature of the Projects, involving vulnerable, high-risk areas in a key sector.

19. Respondent's presentation emphasized Respondent's long experience and credentials as a brand leader in the pharmaceutical industry, which, according to Respondent, benefited the projects and the Borrower; its acknowledgment of mistakes in TB I, which should be balanced against its lack of fraudulent intent or management awareness of the issues at the time of either tender, and its substantially improved controls now; and evidentiary flaws in INT's case. Respondent also elaborated upon its business and recordkeeping practices, and spoke to INT's accusations regarding witness intimidation or attempted obstruction of investigation.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

20. The Sanctions Board must address as a threshold matter Respondent's jurisdictional challenge to the allegations pertaining to Respondent's conduct under TB I, which Respondent argues are barred by the ten-year statute of limitations under the Sanctions Procedures. Section 4.01(d)(i) of the Sanctions Procedures mandates that for cases brought under the Bank's Procurement or Consultant Guidelines, sanctions proceedings shall be closed if they involve a sanctionable practice "in connection with a contract the execution of which was completed more than ten (10) years prior to the date on which the [SAE] was submitted to the [EO]." In the present case, the SAE was submitted to the EO on March 1, 2010. Therefore, the allegations against Respondent would be time-barred if Respondent had completed execution of its TB I contract before March 1, 2000. The record shows Respondent signed the contract for TB I in December 2000 – so could not have begun, let alone completed, execution of the TB I contract until after March 1, 2000. The Sanctions Board accordingly finds the SAE was submitted within the prescribed statute of limitations for TB I as well as TB II.

21. In reviewing the merits of INT's allegations against Respondent, the Sanctions Board considers first whether the submission of the bidding documents at issue may constitute fraudulent practices as defined under the applicable Procurement Guidelines. Next, the Sanctions Board considers whether Respondent may be held liable for the acts of its employees in making any such submissions. Finally, the Sanctions Board considers what sanctions, if any, should be imposed on Respondent.

A. Evidence of Fraudulent Practices

22. As stated earlier, for allegations of fraudulent practices governed by the August 1996 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 (iv) to the detriment of the Borrower. For allegations governed by 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. Considering the detailed arguments and evidence presented by the parties with respect to each of the sixteen allegedly fraudulent documents at issue, the Sanctions Board finds the record shows it is more likely than not Respondent made misrepresentations of fact as to eight performance certificates and eight orders submitted in its bids for the Projects.

24. First, the record contains oral statements and/or written attestations from representatives of each of the eight purported issuers of the sixteen documents in question, stating that the documents contained false information and/or signatures. The Sanctions Board notes the form of testimonial evidence presented by INT varies between verbatim transcripts of interview for two witnesses, summary records of interview prepared by INT for other witnesses, and signed attestations from most of the witnesses. In determining the appropriate weight to afford to testimonial evidence, the Sanctions Board has recognized that summary records of interview lack the intrinsic accuracy of verbatim transcripts, especially where there is no indication that such records of interview were reviewed or signed by the interviewees to attest to their basic accuracy.[8] In this case, the majority of witnesses for whom INT presented summary records of interview also provided signed attestations, but these attestations are standardized texts pre-printed on World Bank letterhead for witnesses to sign, which do not carry the weight of witnesses' personal attestations in their own words.[9] Nevertheless, the Sanctions Board finds the totality of evidence presented from the purported issuers sufficiently consistent and credible with regard to each instance of alleged falsification.[10]

25. The record also shows circumstantial evidence of falsification, including identical language and similar signatures in documents supposedly issued from different sources; documents lacking the purported issuers' official stamps, correct letterhead or standard reference numbers; and unexplained inconsistencies in certain documents, such as certificates

---

[8] See 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.

[9] See Sanctions Board Decision No. 37 (2010) at para. 43 (noting "it is preferable for interviewees to write their attestations in their own words").

[10] See id. at paras. 14-24, 43 (finding sufficient evidence of fraud, other than standard attestations of false documents, where the record included, inter alia, correspondence and/or transcripts of interview with the purported issuers in which they denied having issued the certificates in question).

pre-dating the establishment of two purported issuers, and one order for an amount exceeding the purported issuer's total turnover at the time in question.

26. The above evidence enables INT to carry its initial burden of proof. From its side, Respondent did not adequately counter the evidence of misrepresentations in these sixteen instances. Respondent conceded in its Response and at the hearing its TB I bid may have contained falsified or inaccurate documents. It presented no counterevidence or arguments regarding five of the sixteen documents, which purportedly came from one issuer and were submitted under TB I. With regard to one of the TB II certificates INT alleges was among the sixteen forged documents, Respondent correctly points out the issuer in that case attested it had signed and issued the certificate in question. Because that issuer also attested Respondent had obtained the certificate under "false pretenses" and stated the information in the certificate was false, however, the record supports a finding that even though the certificate itself was not forged, Respondent's use of such certificate was a misrepresentation. With respect to the remaining documents at issue, Respondent seeks to rebut INT's evidence of forgery by showing that Respondent had in fact engaged in business with those issuers. The Sanctions Board rejects the suggestion that performance certificates cannot be considered false or fabricated, regardless of their origin or signature, so long as the substance of the claimed performance and association with the purported issuer is correct.[11]

2. "Made knowingly or recklessly"

27. Respondent concedes that some documents may have been "manipulated" or falsified prior to TB I by low-level staff operating "out of recklessness and immaturity," and that the certificates and orders were then submitted with the TB I bid by a manager who admittedly made no efforts to verify their authenticity. The record indicates similar use of falsified documentation for TB II without verification efforts. Respondent does not present any justification for the lack of verification. Notably, failure to verify the certificates and orders occurred despite the admitted absence of controls over their initial collection; and despite the physical indicia of falsification apparent from the face of some of the documents, such as identical language, similar signatures and lack of stamps. The record thus supports a finding Respondent acted at least recklessly, if not knowingly, in using the falsified performance certificates and orders to support its bids under the Projects.

3. "In order to influence the procurement process"

28. The record supports a finding Respondent submitted the false and/or misleading performance certificates and orders to influence the procurement process under the Projects. Although Respondent argues the documents were unnecessary to the bids, both tenders expressly required bidders to submit documentary evidence of their past performance and experience. Moreover, Respondent itself states the certificates were gathered and submitted "to underscore our market standing." Respondent also argues that because the original

[11] See id. at paras. 29, 44 (finding sufficient evidence of fraud in the respondent's use of forged performance certificates despite the respondent's claims that (i) the purported issuers of the certificates were in fact clients of the respondent and (ii) the respondent had fulfilled all of its obligations toward the issuers to their satisfaction).

falsification of documents took place years prior to TB I, it cannot be found to have engaged in any misrepresentations with the requisite intent to influence the Projects specifically. Such argument is not persuasive. Regardless of the original intent of its employees in falsifying the underlying documents, the relevant point of intent for Respondent lies in its managers' subsequent use of the falsified documents to compete for contracts under the Projects.

4. "To the detriment of the Borrower"

29. The Sanctions Board finds the record contains sufficient evidence to show detriment to the Borrower. As previously interpreted, "detriment to the Borrower" may include not only tangible or quantifiable harms, but also intangible harms.[12] The Sanctions Board has found the standard met where the respondents' use of forged documents served to distort a selection process, deprived borrowers of the benefits of a fair procurement process, caused borrowers to expend resources to review and evaluate invalid bids, and – where the respondents ultimately received the contract – misled the borrowers to contract with a bidder willing to engage in unethical behavior.[13] The record shows similar types of harm to the Borrower and its tender processes in the instant case. As INT asserts, Respondent's use of falsified performance certificates and orders distorted the TB I and TB II tender processes, and induced the Borrower to contract with a firm willing to use falsified documentation. The Borrower therefore suffered cognizable harm in the course of procurement, even if Respondent ultimately provided the goods for which it had contracted.

30. Because the record supports a finding of such detriment with regard to both TB I and TB II, it is unnecessary to determine whether the allegations pertaining to Respondent's conduct under TB II are governed by the August 1996 Procurement Guidelines definition of fraud included in Respondent's TB II contract conditions, which would require such showing, or the less stringent May 2004 Procurement Guidelines definition referenced in the TB II DCA and Instructions to Bidders.

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

31. INT argues Respondent should be held liable for the fraudulent practices carried out by its staff. Respondent posits that any falsification of documents was originally carried out by low-level field staff only, "not at the insistence of our Manager and definitely not with the knowledge of management"; and that the later use of such documents for the Projects was "without knowledge of the company and without understanding implications" on the part of the manager responsible.

32. 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.[14] In such cases, the Sanctions Board has placed

[12] See Sanctions Board Decision No. 41 (2010) at para. 71.

[13] See id. at para. 72.

[14] 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.

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 practices alleged."[15] 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 with respect to a "rogue employee" defense or any other defense, it ultimately found the employer should be held responsible for the actions of its employees acting on its behalf.[16]

33. In the present case, Respondent states it entrusted "very junior people working at the lowest rung of the organization" with the task of collecting performance certificates and orders. Despite Respondent's own view that such low-level staff showed "neither . . . much intelligence nor . . . loyalty to the company," Respondent admits it used the documents they compiled without any verification process or safeguards. Respondent further concedes that the manager responsible for preparing its TB I bid acted with a similar excess of "enthusiasm" and lack of relevant experience, supervision or guidance, which resulted in his use of unverified documents in Respondent's bid. The record does not show Respondent had adequate controls or supervision in place up to or through the time of either of the tenders to prevent or detect the use of fraudulent documents in its bids. Rather, the record indicates that in each case, the employees whom Respondent entrusted to obtain and use performance certificates and orders carried out their duties on behalf of the company without adequate training, oversight or controls. The record thus supports holding Respondent liable for the fraudulent practices committed by its employees.[17]

34. 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 in relation to TB I and TB II. The Sanctions Board therefore must determine an appropriate sanction.

C. Determination of Appropriate Sanctions

1. General framework for determination of sanctions

35. 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.

---

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

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

[17] See Sanctions Board Decision No. 46 (2012) at para. 29 and n.11 (discussing grounds for finding a respondent firm vicariously liable for employee misconduct).

36. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.[18] The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented.[19]

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

38. 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

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

a. Severity of the misconduct

40. Section 9.02(a) of the Sanctions Procedures requires consideration of "the severity of the misconduct" in determining a sanction. Section IV.A.1 of the Sanctioning Guidelines cites a "Repeated Pattern of Conduct" as an example of severity.

41. INT asserts the "repetitive and long-standing nature of the Respondent's fraudulent acts" as grounds for aggravating treatment, pointing to the sixteen instances of fraud discussed above as occurring between the 2000 TB I tender and 2007 TB II tender, as well as the two additional instances of "deceptive" documents INT alleged under TB II. As Respondent denies that any of the TB II documents were falsified or inaccurate, it does not agree there was any repetition of misconduct after TB I. Respondent further argues that, out of the hundreds of certificates in its archive, only a few were found to be controversial; and those were an insignificant subset of the documents submitted with its bids.

42. The Sanctions Board finds Respondent engaged in a repeated pattern of misconduct warranting aggravating treatment. The Sanctions Board does not accept Respondent's argument that it deserves more lenient treatment because only a small number of misrepresentations was found in a much larger pool. As the Sanctions Board stated in an

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

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

earlier case: "Even a single instance of forgery would constitute sanctionable misconduct. A dozen or more instances is extremely egregious." [20]

b. Magnitude of the harm caused by the misconduct

43. Section 9.02(b) of the Sanctions Procedures requires consideration of "the magnitude of the harm caused by the misconduct" in determining a sanction. As the Sanctions Board has held before, evidence of "detriment to the Borrower," as required in matters governed by earlier definitions of fraudulent practices, may also be considered evidence of harms constituting an aggravating factor in the choice of sanctions.[21]

44. As Respondent asserts, the record does not show evidence of delay or complaints regarding the quality of the products supplied by Respondent under the tenders at issue. INT argues, however, that an increased sanction is appropriate because Respondent's fraudulent practices "successfully deceived the tendering authorities" and led the Borrower to award US$4.9 million in contracts to "a firm that was willing to engage in fraud in supplying the [Borrower] with critically-needed anti-tuberculosis drugs." The Sanctions Board agrees that such consequences – particularly in a sensitive area such as the health sector, and involving the supply of drugs – may be considered not only as detriment to the Borrower for purposes of finding sanctionable practices, but also as an aggravating factor in the choice of sanction.

c. Interference by the sanctioned party in the Bank's investigation

45. Section 9.02(c) of the Sanctions Procedures requires consideration of "interference by the sanctioned party in the Bank's investigation." Section IV.C of the Sanctioning Guidelines describes this factor as including "threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation," or having "caused or threatened causing injury to a witness, his or her assets, employment, reputation, [family] or significant others."

46. INT argues as an aggravating factor that Respondent "attempt[ed] to pressure the firms that purportedly had issued the certificates and that had met with INT into recanting their conclusions of fraud." According to INT, Respondent's conduct "placed a great deal of stress on these firms' representatives"; demonstrates that Respondent "lacked the basic integrity required to implement important contracts"; and "reflects an attempt by the Respondent to obstruct INT's investigation by hiding the truth, which forced INT to deploy additional investigative resources." Respondent argues its contacts with the firms were limited, appropriate, and carried out only to conduct a responsible inquiry into INT's allegations.

47. The Sanctions Board does not find sufficient evidence to merit an increased sanction as requested by INT on this ground. For example, while INT asserts the owner of one firm claimed "severe stress" because Respondent's representative "made frequent telephone calls to him," INT does not provide further information regarding how many such calls were made, or the content or tenor of any discussion that ensued. Similarly, while INT asserts the

[20] Sanctions Board Decision No. 41 (2010) at para. 78.

[21] See Sanctions Board Decision No. 44 (2011) at para. 63.

representative of another firm stated Respondent asked that firm to retract its statements to INT, the record does not contain any evidence to suggest a threat, harassment or intimidation beyond the request itself. Respondent, on the other hand, notes its representatives never visited any of the firms in person. Respondent also credibly pointed out that given the age of INT's allegations relating to the TB I tender in 2000, and the loss of related staff and internal documentation since then, it had no way to evaluate the matter for itself other than by contacting the other firms involved. On the record presented, there is insufficient basis to find Respondent's inquiry into INT's allegations was conducted in an improper or coercive manner.

d. Minor role in the misconduct

48. Section 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party played a minor role in the misconduct." 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."

49. Respondent asserts that any fraudulent acts were carried out by low-level staff acting on their own, and that the absence of "involvement of the Management for any intentional mistake" warrants leniency. The Sanctions Board does not find sufficient evidence to establish that no one with decision-making authority in Respondent's operations participated in, condoned or was willfully ignorant of the repeated use of falsified documents. Accordingly, Respondent fails to show grounds for mitigation on this account.

e. Voluntary corrective action

50. 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 such 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." Respondent bears the burden of presenting evidence to show voluntary corrective actions.[22]

51. Respondent argues that after INT contacted it about the allegations, it put in place a new standard operating procedure to avoid such mistakes in future tenders. INT contends Respondent continues to suffer from a "lack of integrity-related codes and procedures" and fails to address the core issue that its employees created fraudulent documents. Considering the submissions of both parties, the Sanctions Board does not find sufficient evidence to warrant mitigation on this ground. The new standard operating procedure presented by

[22] 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).

Respondent provides that "marketing certificates" shall not be used without prior verification and, if such documents would be more than six months old by the date of tender opening, prior notice to the relevant issuer. As INT points out, however, Respondent does not present evidence of more comprehensive measures to ensure improvement of its processes for obtaining, retaining or submitting performance certificates and orders. Nor does the record support Respondent's contention it may be credited for cessation of misconduct because its TB II tender did not include any falsified documents. Accordingly, Respondent fails to meet its burden of showing meaningful corrective actions.

f. Cooperation

52. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C of the Sanctioning Guidelines suggests cooperation may take the form of assistance with INT's investigation, an internal investigation, acceptance of responsibility, or voluntary restraint.

53. Respondent argues it cooperated with INT's investigation by meeting as many times as INT wanted, organizing an interview with a witness who had retired four years earlier, and providing business records to INT. INT asserts that while Respondent's cooperation may be considered a mitigating factor, the value of its cooperation is undercut by Respondent's attempts to "coerce or otherwise convince witnesses to change their statements to INT." The Sanctions Board finds mitigation warranted in view of Respondent's cooperation with INT's investigation. As noted above, the record does not contain sufficient evidence to find Respondent's inquiry into INT's allegations was conducted in an improper or coercive manner.

g. Period of temporary suspension already served

54. 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 February 4, 2011.

h. Other considerations

55. 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."

56. In prior 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.[23] As the Sanctions Board has found, "such passage of time may, but does not necessarily, impact on the weight the Sanctions Board attaches to the evidence thus presented, and also may impact on the fairness of the process for

[23] See Sanctions Board Decision No. 2 (2008) at para. 7; Sanctions Board Decision No. 6 (2009) at para. 7; Sanctions Board Decision No. 38 (2010) at para. 54.

the named Respondents."[24] The Sanctions Board considers the passage of time a relevant factor in this case. INT's submission of its SAE in March 2010 came close to exceeding the ten-year statute of limitations for the TB I claims. When the Notice of Sanctions Proceedings was issued to Respondent in February 2011, almost eleven years had elapsed from the date of Respondent's TB I bid in June 2000, and almost three and a half years had elapsed from the date of its TB II bid in August 2007. The record on appeal here does not make clear precisely when the Bank may have become aware of the fraudulent practices at issue. Nevertheless, the Sanctions Board finds the passage of substantial time since the underlying conduct at issue warrants consideration as it clearly impacts upon Respondent's ability to defend itself in these proceedings.

57. Respondent argues generally that its past history of innovation and its overall record of performance, quality, prices and dependability should be considered a mitigating factor in this case. INT argues such considerations are not mitigating factors under the Sanctioning Guidelines. As stated above, Section 9.02(i) of the Sanctions Procedures provides the Sanctions Board may consider "any other factor," in addition to those listed elsewhere in Section 9.02, that the Sanctions Board "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice." The Sanctions Board is thus not limited to considering only those factors specifically named in Section 9.02 of the Sanctions Procedures, let alone the subset of Section 9.02 factors addressed in the Sanctioning Guidelines. Based on the record presented here, however, and recognizing Sanctions Board precedent has not previously acknowledged a respondent's claimed record of general performance as a relevant mitigating factor, the Sanctions Board does not consider Respondent's asserted history of innovation and performance as grounds for further mitigation.

3. Determination of appropriate sanction for Respondent

58. 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 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 Bank or otherwise to 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, Respondent may be released from 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. The 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 MDBs that are party to the Cross-Debarment Agreement so they may determine whether to enforce the declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures. This sanction is imposed on Respondent for fraudulent

[24] Sanctions Board Decision No. 38 (2010) at para. 54.

practices as defined in Paragraph 1.15(a)(ii) of the August 1996 Procurement Guidelines and/or 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