THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: May 30, 2012

Sanctions Board Decision No. 48
(Sanctions Case No. 118)
MDTF-SS Grant No. TF056051
Sudan

Decision of the World Bank Group Sanctions Board declaring the respondent entity in Sanctions Case No. 118 ("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 two (2) years, provided, however, after one (1) year of such ineligibility, the period of ineligibility may be reduced by up to one (1) year only if Respondent 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

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[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").

whether to enforce the declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[5] 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, revised October 2006) (the "October 2006 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 3, 2011, at the World Bank's headquarters in Washington, D.C., to review Sanctions Case No. 118. 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 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 attending in person. Three representatives of Respondent, including Respondent's General Manager, participated in the hearing on Respondent's behalf by videoconference. 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 and to the Deputy General Manager (Commercial) of Respondent's Uganda Branch Office (the "Deputy General Manager") 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 6, 2011 (the "Explanation");

iii. Letter submitted by Respondent to the Secretary to the Sanctions Board, dated May 5, 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 June 8, 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 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 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 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.

6. Pursuant to Section 4.01(c), Section 9.01 and Section 9.04 of the Sanctions Procedures, the EO further recommended in the Notice that the Deputy General Manager (together with any Affiliate the Deputy General Manager directly or indirectly controls) be debarred for a minimum period of three years, subject to conditional release. The Deputy General Manager did not submit a written response to the Sanctions Board in accordance with Section 5.01(a) of the Sanctions Procedures to contest the accusations or the sanction recommended by the EO. Pursuant to Section 4.04 of the Sanctions Procedures, the sanction recommended by the EO against the Deputy General Manager therefore entered into force as of May 11, 2011.[6]

II. GENERAL BACKGROUND

7. This case arises in the context of the Sudan Emergency Transport and Infrastructure Development Project (the "Project"). In December 2005, IDA and the Government of Southern Sudan ("GoSS") entered into a Memorandum of Agreement to provide US$50 million for the Project through the Multi-Donor Trust Fund for Southern Sudan ("MDTF-SS"). The Project seeks to (i) rehabilitate and develop critical roads and transport infrastructure in Southern Sudan; (ii) improve critical urban infrastructure in the major towns of Southern Sudan; and (iii) build capacity for planning, construction, and the sustainable operation, maintenance and management of the infrastructure in Southern Sudan. The relevant project documentation specified the procurement of goods, works and services for the

[6] EO Determination in Sanctions Case No. 118 (May 11, 2011). Published determinations issued by the EO are available at http://go.worldbank.org/G7EO0UXW90.

Project would be conducted in accordance with relevant provisions of the October 2006 Procurement Guidelines.

8. The tender now at issue was for a contract to reconstruct a section of road in Southern Sudan (the "Tender"). The Tender required bidders to demonstrate "experience in works of a similar nature and size for each of the last five years." On March 17, 2008, Respondent submitted a bid for the Tender signed by the Deputy General Manager as Respondent's authorized signatory. Pursuant to the Tender requirements, Respondent's bid included as proof of prior work experience a purported contract agreement with a Nigerian state government for a road project in that state (the "Contract Agreement"). It is uncontested the Deputy General Manager forged the Contract Agreement by substituting the name of the actual contractor with that of Respondent's Nigerian subsidiary.

9. With the belief that the Contract Agreement was genuine, the Bid Evaluation Committee ("BEC") requested a no-objection letter from the World Bank to award the Tender to Respondent. The Bank requested further documentation to clarify what percentage of work Respondent had completed on the Nigerian road project. In response, Respondent provided three letters purportedly issued by the Nigerian state government to confirm Respondent's substantial completion of the Nigerian road project, and a fourth letter in Respondent's name itemizing its work details for the project.

10. Based on Respondent's documentation, the BEC again requested a no-objection letter from the Bank. After additional due diligence, however, the BEC concluded several of the letters contained false and/or misleading information. The BEC revised its recommendation, and the Tender was awarded to another bidder.

III. APPLICABLE STANDARDS OF REVIEW

11. 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.

12. 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.

13. The alleged sanctionable practice in this case has the meaning set forth in the October 2006 Procurement Guidelines, which governed the Project's procurement. Paragraph 1.14(a)(ii) of these Guidelines defines the term "fraudulent practice" as "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation."

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

14. INT argues it is more likely than not Respondent engaged in misrepresentations that knowingly or recklessly misled or attempted to mislead public officials to influence the procurement process for the Tender by submitting four forged documents and one misleading letter. INT relies primarily on the following assertions.

i. As shown by Respondent's own admissions as well as confirmation from the Nigerian state government involved, Respondent engaged in multiple misrepresentations by submitting a forged Contract Agreement for the Nigerian road project, three forged supporting letters supposedly issued by the Nigerian state government to certify Respondent's work on that project, and a fourth misleading letter in its own name detailing its supposed work on that project.

ii. Respondent's bid preparation team and Deputy General Manager in the Uganda Branch Office intentionally used the forged Contract Agreement and other documents to "mislead public officials overseeing the procurement process into believing Respondent . . . had the required past experience in works of a similar nature and size."

15. With regard to a potential sanction, INT suggests aggravating factors include Respondent's submission of multiple forged and misleading documents at separate points in time, as the "willingness to support their initial misrepresentation with additional misleading letters . . . shows a pattern of determined behavior that prolonged and negatively impacted the procurement process." INT also cites the involvement of the General Manager of the Uganda Branch Office (the "Branch General Manager") as an aggravating factor. As mitigating factors, INT notes Respondent admitted the misconduct and accepted responsibility; conducted an internal investigation; cooperated with INT; and appears to have taken disciplinary measures against employees responsible for the forgeries.

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

16. Respondent argues that although false and misleading documents were submitted in support of its bid, the company should not be found liable for the following reasons.

i. The Deputy General Manager exceeded his delegated mandate for personal financial reasons and has taken full personal responsibility for the misconduct.

ii. The Deputy General Manager engaged in the misconduct without Respondent's consent, authorization or even knowledge. While a company may be held liable for the acts of its employees under certain circumstances, in the present circumstances it is more appropriate to place sole liability on the individual to ensure the company is not wrongly held liable for fraudulent conduct that injured the company itself.

iii. Respondent in fact was qualified for the Tender and did not need to win it, so had no reason to falsify information to compete for the Tender.

17. Respondent contends no aggravating factors apply. It asserts as mitigating factors (i) its efforts and achievements in Southern Sudan and contributions to the improvement of living conditions for the poor; (ii) the Deputy General Manager's relative inexperience and unfamiliarity with Respondent's corporate culture and practice and with the World Bank's policies and procedures, and his lack of proper supervision from or linkages with Respondent's Head Office; and (iii) Respondent's willingness to improve its own integrity compliance system and participate in anti-corruption projects as prescribed by the Bank.

C. INT's Reply

18. In its Reply, INT principally argues Respondent should be held liable for engaging in fraudulent practices under the doctrine of respondeat superior. INT asserts an employer cannot avoid liability merely by showing an employee acted contrary to an existing policy, especially where – as in the present case – the record shows (i) the employee acted within the scope of his employment; (ii) his actions were in the interest of the employer; and (iii) control measures and safeguards required to enforce such policies were non-existent or not enforced.

D. Presentations at the Hearing

19. At the hearing, INT emphasized Respondent should be fully credited for its cooperation, early admission of its employee's misconduct, and demonstrated willingness to implement a robust corporate compliance program. Nevertheless, INT asserted Respondent must be held liable for the misconduct in this case, because Respondent failed to apply appropriate supervision or controls in a situation in which its inexperienced Deputy General Manager and bid representative worked in a difficult operating environment with poor communications and a strong financial incentive to bring in contracts. With regard to timing, INT acknowledged the three-month delay in project procurement attributable to the misconduct was not a substantial delay; while the lapse of almost three years from the Bank's awareness of potential misconduct in 2008 to the initiation of sanctions proceedings in 2011 was a significant delay warranting consideration by the Sanctions Board.

20. In its remarks, Respondent emphasized it had no need or intention to make any misrepresentations, especially as it had decades of experience in Bank-financed projects and was already recognized by GoSS as a qualified contractor. Respondent asserted there was no evidence its management was involved in the fraudulent practices, and no basis to sanction Respondent for them. Further, Respondent stated that while the Deputy General Manager had clearly committed a sanctionable practice, in doing so he abused the power given to him and broke Respondent's corporate rules as well as the Bank's rules. Finally, Respondent argued, the individual's misconduct should not be attributed to a lack of experience, supervision or controls; it was a matter of individual weakness and personal choice to engage in wrongdoing.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

21. The Sanctions Board considers first whether the Deputy General Manager's submission of the Contract Agreement and subsequent letters to support Respondent's bid for the Tender constitutes a "fraudulent practice" as defined under the October 2006 Procurement Guidelines. Next, the Sanctions Board considers whether Respondent may be held liable for the acts of the Deputy General Manager. Finally, the Sanctions Board determines what sanctions, if any, should be imposed on Respondent.

A. Evidence of Fraudulent Practice

22. As stated earlier, Paragraph 1.14(a) of the October 2006 Procurement Guidelines defines a fraudulent practice, in relevant part, as "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation." INT thus bears the initial burden to show Respondent (i) made a misrepresentation (ii) that knowingly or recklessly misled or attempted to mislead a party (iii) to obtain a financial or other benefit or avoid an obligation.

1. Misrepresentation

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 Deputy General Manager that the latter submitted four forged documents and one misleading letter in support of Respondent's bid for the Tender. In response to INT's show-cause letter, Respondent's General Manager admitted INT's "allegation of submitting false information . . . is found proved"; stated the Deputy General Manager "forged the documents" without reporting to his supervising officer; and acknowledged Respondent "should bear due responsibilities as [the Deputy General Manager] was authorized by the Company to sign the Bid." The Deputy General Manager himself provided to Respondent a written "apology for making false and misleading documents" in the bid. In addition, INT interviewed three officials from the Nigerian state government that had purportedly entered into the Contract Agreement with Respondent's Nigerian subsidiary. INT's record of interview indicates those officials confirmed the first four documents were forgeries and identified various details of the documents reflecting their lack of authenticity. Considering the above information from Respondent, the Deputy General Manager and the Nigerian state government officials, the Sanctions Board finds it more likely than not Respondent engaged in misrepresentations by submitting five forged and/or misleading documents to support its bid for the Tender.

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[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).

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

24. The record of admissions from Respondent and the Deputy General Manager supports a finding the latter knowingly created false and misleading documents in order to make the BEC believe Respondent's Nigerian subsidiary had participated in and substantially completed the Nigerian road project. INT further asserts the BEC was actually misled by Respondent's misrepresentations because it recommended Respondent be awarded the Tender based on its belief Respondent had the requisite experience in carrying out road construction works of similar scope and complexity. The record supports a finding the BEC was misled as to whether Respondent had the prior experience it claimed, and whether it had valid proof of the claimed experience. Proof of Respondent's success in misleading the BEC is not necessary, however, to satisfy this element of the definition of fraudulent practices. In itself, the deliberate attempt to mislead the BEC would suffice even without a showing the BEC was actually misled.

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

25. The Tender required bidders to have experience in works of a similar nature and size for each of the preceding five years and to submit details of works underway or contractually committed. As the forged and misleading documents Respondent submitted with its bid all related to the purported work of Respondent's Nigerian subsidiary on the Nigerian road project, their use was more likely than not intended to show Respondent's qualifications and thereby help Respondent win the Tender and benefit from such award.

26. Importantly, the record shows the Deputy General Manager himself admitted he had created and submitted the fraudulent documents precisely with the hope and desire to win the Tender. Respondent's argument it did not really need to win the Tender is unpersuasive. Even if Respondent had other business priorities, it must have stood to obtain some benefit from being awarded the Tender; otherwise, it would not have authorized the bid in the first place. Further, the fact remains the Deputy General Manager admittedly acted with the subjective intent to obtain a benefit through the misrepresentations in the bid.

B. Respondent's Liability for the Acts of Its Employee

27. As the Sanctions Board finds the record contains sufficient evidence to show the Deputy General Manager engaged in fraudulent practices, the next issue is whether Respondent should be held liable for these acts by the Deputy General Manager.

28. 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" or any other defense, it ultimately found the employer should be held responsible for the actions of its employees acting on its behalf.[10]

29. The record in this case shows Respondent delegated to the Deputy General Manager the authority to prepare, sign, and submit Respondent's bid for the Tender. In preparing and submitting the original bid documents and then corresponding with the BEC to clarify Respondent's work experience as required by the Tender, the Deputy General Manager was accordingly acting within the course and scope of his employment and with a purpose, at least in part, to serve Respondent. Respondent argues it is not responsible for the Deputy General Manager's misconduct in the Tender because Respondent did not specifically authorize or ask him to make any misrepresentations. Accepting Respondent's argument would essentially require proof an entity expressly adopted or directed the misconduct in question in order to impose liability under the doctrine of respondeat superior – a standard not adopted by the Sanctions Board. INT is not required to show a particular employee was specifically authorized or instructed to commit fraudulent or other sanctionable practices.[11] Rather, the question is whether the employee's misrepresentations were – as in the present case – "a mode, albeit an improper mode" of carrying out his duties.[12]

30. The record indicates Respondent did not have adequate supervision or controls in place at the time of the Tender that might have prevented or detected the type of fraudulent practices that occurred. Respondent has recognized the lack of supervision given to the Deputy General Manager either from Respondent's Head Office or from within the Uganda Branch Office, despite his relative inexperience and the challenges of the operating environment in which Respondent placed him. When Respondent convened an internal investigative body to review INT's allegations, the investigative body concluded the incident showed "major defects in the management system." Under Respondent's regulations at the time, the Head Office gave final authorization to bid and approved the final bid price, but left responsibility for preparation of bidding documents to the branch offices. Thus final bidding documents were not necessarily verified or approved by the Head Office. As the internal investigative body observed, however, there was a "lack of management" within the Uganda Branch Office that led to the problems in this case. The Uganda Branch Office had no arrangement even to verify bid documents before their submission, for example.

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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 Sanctions Board Decision No. 46 (2012) at para. 29 (explaining why an employer may be held responsible for its employee's wrongful acts, even if such acts were not specifically authorized, so long as the misconduct was "a mode, albeit an improper mode, of carrying out his responsibilities to fill in the missing … documentation for the bid and submit a complete bidding package by the deadline").

[12] Id.

31. The apparent lack of controls in itself is problematic. Even more concerning in this case is the combination of a lack of controls with strong financial incentives for Respondent's employees to aggressively pursue contracts. The record reflects the Deputy General Manager, like the Branch General Manager and other employees in the Uganda Branch Office, stood to receive twice his base salary in bonuses depending on the contracts he brought in. Such an incentive structure is not necessarily inappropriate, but it demands strong controls to ensure unethical conduct does not result.[13]

32. The record discussed above supports holding Respondent liable for the misconduct of the Deputy General Manager in the Tender. Accordingly, the Sanctions Board concludes 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

33. 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.

34. 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.[14] The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented.[15]

35. 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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[13] See Sanctions Board Decision No. 41 (2010) at para. 76 (in finding respondents liable for the fraudulent practices of their "inexperienced and largely unsupervised" junior staff, noting the respondents had "created clear incentives for such personnel to take shortcuts to maximize bid output over accuracy or authenticity by using bid quotas and a 'piecework' wage structure; and failed to take timely and appropriate compliance measures to mitigate the resultant risks").

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

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

36. 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

37. 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

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

39. Section IV.A.1 of the Sanctioning Guidelines cites a "Repeated Pattern of Conduct" as one example of severity. INT asserts Respondent's submission of multiple forged and misleading documents at separate points in time warrants an increased sanction. The Sanctions Board finds Respondent used five forged and/or misleading documents in one course of conduct, within a short period of time, in each instance addressing the matter of Respondent's purported involvement in the Nigeria road project. Although the Sanctions Board does not consider these misrepresentations separate counts of fraud, the repetitive nature of the misconduct merits aggravating treatment.[16]

40. Section IV.A.4 of the Sanctioning Guidelines cites as another example of severity "Management's role in misconduct" – i.e., where "an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." In this respect, INT asserts the Branch General Manager was involved in the misconduct. INT rests this assertion on the use of plural words such as "we" and "our" in statements made by the Branch General Manager and others with regard to the matter, as well as the fact Respondent took disciplinary action against the Branch General Manager. Yet the record indicates the disciplinary action was imposed based on the Branch General Manager's admitted "neglect of duty," i.e., failure to properly supervise or manage. It does not support a finding the Branch General Manager or any other high-level personnel of Respondent were personally involved in creating or submitting false documents. Accordingly, the Sanctions Board does not find further aggravating treatment appropriate on this ground.

b. Magnitude of harm caused by the misconduct

41. Section 9.02(b) of the Sanctions Procedures requires consideration of "the magnitude of the harm caused by the misconduct" in determining a sanction. Section IV.B.2 of the Sanctioning Guidelines cites "delay caused" as one type of harm under this category.

[16] See Sanctions Board Decision No. 44 (2011) at para. 53 (considering multiple misrepresentations as one count of fraud insofar as they were made on the same subject matter and in the same manner, in quick succession, to the same interlocutors) and para. 61 (considering the repetitive nature of first count of fraud as well as separate second count as an aggravating factor under Section 9.02(a)).

42. In the SAE, INT asserted Respondent's repeated submission of forged and misleading documents "prolonged and negatively impacted the procurement process." At the hearing, INT clarified it did not view the delay as substantial. The record shows the BEC first requested a no-objection letter from the Bank to award the Tender to Respondent on April 14, 2008. After discovering the documents were false, the BEC recommended the Tender be awarded to a different firm approximately three months later, on July 16, 2008. Considering the circumstances, the Sanctions Board does not find aggravating treatment warranted on this ground.

c. Voluntary corrective action

43. 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." It is the respondent who bears the burden of presenting evidence to show voluntary corrective actions.[17]

44. The Sanctions Board finds Respondent should be accorded mitigating credit on this ground. First, INT states Respondent "appears to have taken disciplinary measures against those responsible for the forgeries." These disciplinary measures, spelled out in a 2009 "Disposal Notice" reflecting decisions made by the "top management" of Respondent, include demoting the Deputy General Manager, issuing a written warning letter to the Branch General Manager and withholding both employees' annual bonuses for two years. The Disposal Notice also sets out a number of other actions Respondent mandated to guard against recurrence of similar misconduct, including requiring all overseas branches to check their work against fraud and fraudulent practices in accordance with Respondent's regulations and World Bank rules; completing a review of all of Respondent's existing contractual documents; and requiring all bidding documents for new projects be approved by the Head Office before submission. The Sanctions Board finds the written record from Respondent does not contain further concrete evidence of Respondent's implementation of corrective measures since the issuance of the Disposal Notice. The Sanctions Board acknowledges, however, Respondent's credible stated commitments, as detailed in the pleadings and at the hearing, to pursue specific integrity and anti-corruption efforts in cooperation with the Bank. In considering the weight to accord to Respondent's representations, the Sanctions Board takes into account INT's statements attesting to Respondent's proactive efforts to pursue corrective measures to date and INT's support of mitigating treatment on this ground.

[17] 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).

d. Cooperation

45. 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. The Sanctions Board finds mitigating credit for cooperation appropriate in several respects. The record reflects, and INT agrees, that Respondent cooperated with INT; promptly conducted an internal investigation; shared with INT a detailed report generated by its internal investigative body; and readily admitted to the Deputy General Manager's fraudulent conduct.

e. Period of temporary suspension already served

46. 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.

f. Other considerations

47. 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."

48. In 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.[18] Here, the Sanctions Board takes into consideration that almost three years elapsed from when the Bank learned of the falsified documents in early 2008 to the issuance of the Notice in early 2011. INT has agreed this delay should be factored into a decision.

49. The Sanctions Board also takes into account the factor of proportionality across respondents subject to sanction based on the same misconduct.[19] In this case, it considers the Deputy General Manager's uncontested sanction, as recommended by the EO, of debarment for a minimum period of three years, subject to conditional release.[20]

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[18] See, e.g., Sanctions Board Decision No. 6 (2009) at para. 7 (giving mitigating credit for several reasons including the passage of over four years since the fraudulent practices had come to the attention of the Bank); 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 date when a Notice of Sanctions Proceedings was issued).

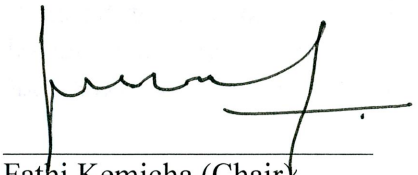
[19] See Sanctions Board Decision No. 41 (2010) at para. 87 (in determining appropriate sanctions for the contesting respondents, considering their relative culpability compared to that of the non-contesting respondent who had admitted to and was sanctioned for the same underlying misconduct).

[20] See EO Determination in Sanctions Case No. 118 (May 11, 2011).

50. Finally, Respondent asks the Sanctions Board to consider mitigation based on (i) its achievements in Southern Sudan and its contributions to the improvement of living conditions for the poor; and (ii) the Deputy General Manager's inexperience and lack of support or supervision. The Sanctions Board does not consider mitigating credit appropriate on either ground. The importance of development work in a particularly challenging environment requires the greatest commitment to ethical business practices. It does not justify or excuse reliance on inexperienced, inadequately supervised employees.

3. Determination of appropriate sanction for Respondent

51. 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, for a period of two (2) years, provided, however, after one (1) year of such ineligibility, the period of ineligibility may be reduced by up to one (1) year only if Respondent 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 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 that 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 practices as defined in Paragraph 1.14(a)(ii) of the October 2006 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

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