THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: May 30, 2012

Sanctions Board Decision No. 49
(Sanctions Case No. 130)
IBRD Loan No. 7177-PE
Peru

Decision of the World Bank Group Sanctions Board declaring the respondent entity in Sanctions Case No. 130 ("Respondent") (together with any entity that is an Affiliate[1] Respondent directly or indirectly controls) and the entity named in Sanctions Case No. 130 as Respondent's Affiliate under common control (the "Named Affiliate") each 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 two (2) years, Respondent and/or the Named Affiliate may be released from ineligibility only if such entity 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 these declarations of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of

[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").

Debarment Decisions (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.[5] This sanction is imposed on Respondent and the Named Affiliate 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, September 1997 and January 1999) (the "January 1999 Procurement Guidelines"). The periods of ineligibility shall begin on the date this decision issues.

I. INTRODUCTION

1. The Sanctions Board met in plenary session on October 4, 2011, at the World Bank's headquarters in Washington, D.C., to review this case. 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 Respondent and the Named Affiliate, in accordance with Article VI of the Sanctions Procedures. The World Bank's Integrity Vice Presidency ("INT") participated in the hearing through its representatives. Respondent and the Named Affiliate were jointly represented by counsel. The Named Affiliate was also represented by its President. 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 the Named Affiliate on April 11, 2011 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT;

ii. Response to Notice of Sanctions Proceedings jointly submitted by Respondent and the Named Affiliate to the Secretary to the Sanctions Board, dated June 15, 2011 (the "Response"); and

iii. Reply in Support of Notice of Sanctions Proceedings, submitted by INT to the Secretary to the Sanctions Board, dated July 18, 2011 (the "Reply").

[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).

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 Affiliates Respondent directly or indirectly controls) and the Named Affiliate (together with any Affiliates the Named Affiliate 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 and/or the Named Affiliate may be released from ineligibility only if such entity 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) it has taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned; and (b) it 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 April 11, 2011, both Respondent and the Named Affiliate (together with any Affiliates Respondent or the Named Affiliate directly or indirectly controls) were temporarily suspended from eligibility to be awarded additional contracts for Bank-Financed Projects or participate in new activities in connection with Bank-Financed Projects, pursuant to Section 4.02 of the Sanctions Procedures, pending the outcome of this sanctions proceeding.

II. GENERAL BACKGROUND

6. This case arises in the context of the Peru Trade Facilitation and Productivity Improvement Technical Assistance Project (the "Project"). On September 11, 2003, IBRD and the Republic of Peru (the "Borrower") entered into a Loan Agreement (the "Loan Agreement") to provide US$20 million for the Project. The Project, which closed November 30, 2008, sought to assist the Borrower in: (i) establishing a streamlined, integrated and effective institutional and policy framework to increase non-traditional exports; and (ii) developing and implementing initiatives designed to foster the entrance of new export market participants, especially small and medium producers of non-traditional goods. The Loan Agreement stipulated goods and works were to be procured in accordance with, inter alia, the provisions of Section I of the January 1999 Procurement Guidelines regarding fraud and corruption.

7. In support of a Project component to develop technology innovation centers, the Borrower in May 2007 published an invitation for bids for the procurement of industrial equipment (the "Tender"). Bidding documents for the Tender expressly required bidders that did not manufacture the goods they offered to supply to submit manufacturer's authorizations showing their ability to supply the goods in question.

8. On August 14, 2007, Respondent submitted a bid for the Tender (the "Bid"). Respondent's Bid did not include any manufacturer's authorizations, even though Respondent did not manufacture all the goods it offered to supply for the Tender. The Project's Bid Evaluation Committee ("BEC") asked Respondent to provide the missing authorizations. INT

alleges Respondent, with the participation of the Named Affiliate, then created and submitted two forged manufacturer's authorizations in support of its Bid.

III. APPLICABLE STANDARDS OF REVIEW

9. Section 8.02(b)(i) of the Sanctions Procedures requires the Sanctions Board to determine whether the evidence presented by INT, as refuted by a respondent, supports the conclusion it is "more likely than not" such respondent engaged in a sanctionable practice. Section 8.02(b)(i) defines "more likely than not" to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding the respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, the Sanctions Board has discretion to determine the relevance, materiality, weight and sufficiency of all evidence offered; formal rules of evidence do not apply.

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

11. The alleged sanctionable practice in this case has the meaning set forth in the January 1999 Procurement Guidelines, which governed the Project's procurement under the Financing Agreement. As set forth in Paragraph 1.15(a)(ii) of these Guidelines, the term "fraudulent practice" is defined as "a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower." This definition of fraud under the January 1999 Procurement Guidelines does 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 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]

12. Section 9.04(b) of the Sanctions Procedures provides that when the EO temporarily suspends and/or recommends the imposition of a sanction on a respondent's affiliate that controls or is under common control with the respondent, such affiliate shall have procedural rights equivalent to those of the respondent, except that any formal submission of the affiliate shall in general be consolidated with that of the respondent. As the Named Affiliate in this case is under common control with Respondent, the provisions of Section 9.04(b) apply to the Named Affiliate in this proceeding.

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[6] The definition of fraudulent practices set out in Paragraph 1.14(a)(ii) of the 2006 Procurement Guidelines is "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation" (emphasis added).

[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 the record of documentary and testimonial evidence shows Respondent engaged in fraudulent practices by knowingly submitting two forged manufacturer's authorizations in support of the Bid. INT relies primarily on the following assertions.

i. Each of the purported issuers of the documents in question confirmed in writing the documents were falsified, and provided detailed supporting explanations to show the documents' lack of authenticity in multiple respects.

ii. The Named Affiliate's employee who assisted Respondent's employee in preparing the Bid stated they had agreed to fabricate the manufacturer's authorizations because the documents were urgently needed; and explained how he had created the letters using documents downloaded from the Internet.

iii. Irrespective of who actually forged the documents, it was Respondent that knowingly submitted the forgeries in support of its Bid, with the specific intent to make the BEC believe it was qualified for the Tender.

iv. Respondent's actions damaged the Borrower by leading it to believe Respondent had the requisite demonstrated capacity to perform the contract in question; causing the Borrower to spend additional time and resources to consider the invalid Bid; and depriving the Borrower of a fair and open competition.

v. In an interview with INT, Respondent's President accepted responsibility for its employee's conduct with respect to the forged documents, and further confirmed the shared ownership and control of Respondent and the Named Affiliate.

14. INT does not identify any aggravating factors for sanctioning. INT asserts Respondent's willingness to take responsibility for the forgeries as a mitigating factor.

B. Principal Contentions of Respondent and the Named Affiliate in the Response

15. In their joint Response, Respondent and the Named Affiliate admit their employees knowingly created forged manufacturer's authorizations so the Bid would appear to meet the Tender requirements. They contend no liability or sanctions should apply to either of them, however, on the following principal grounds.

i. The Borrower suffered no detriment because the alleged misconduct did not include any collusive practices that might deprive the Borrower of the benefits of free and open competition; and any additional work the BEC undertook to investigate the authenticity of the documents was simply part of the BEC's routine workload.

ii. Respondent did not act knowingly with an intention to mislead. The Named Affiliate's employee who created the forged documents did so only after extensive contact with the actual manufacturers, whom he believed to be willing and able to supply the equipment in question, and in light of pressure from the BEC. It was only because the manufacturers failed to timely provide genuine authorizations that Respondent and the Named Affiliate took it "upon themselves to solve the problem . . . by creating authorization letters that would explain the true state of affairs."

iii. The definition of "fraudulent practices" under the January 1999 Procurement Guidelines does not expressly include conduct that is merely "reckless" or "knowing acts without bad intention," so it must be understood to prohibit only a "knowing misrepresentation with intention to mislead." Respondent's conduct does not meet this standard of intentional wrongdoing.

iv. The purpose of the sanctions system is to protect Bank funds and deter those who otherwise might misuse the proceeds of Bank financing, not to punish wrongdoers. In a case such as this, where no Bank funds were put at risk and the costs of the Project were not increased in any way, the Bank "may not debar a company just to express its displeasure at a company's shoddy practices."

16. The Response does not assert specific mitigating factors, but includes a request that the Sanctions Board limit any sanction to a letter of reprimand or conditional non-debarment under which Respondent and the Named Affiliate would be required to implement appropriate corporate compliance and ethics programs.

C. INT's Reply

17. In its Reply, INT asserts Respondent and the Named Affiliate have failed to meet the shifted burden of proof to show it is more likely than not the admitted use of forgeries did not constitute fraudulent practices. INT principally asserts the following.

i. The admitted misconduct constitutes a fraudulent practice under the January 1999 Procurement Guidelines, which – in accordance with previous Sanctions Board decisions and established Bank policy – prohibit misrepresentations made either knowingly or recklessly. In any event, the misrepresentations in this case were made knowingly in that (a) Respondent and the Named Affiliate knew they did not have genuine manufacturer's authorizations, (b) they decided to forge them, and (c) Respondent then submitted them to the BEC twice.

ii. Contrary to the contention of Respondent and the Named Affiliate they were only trying to describe the "true state of affairs" by forging the documents, the use of forgeries actually hid the true state of affairs. Respondent would have relayed the true state of affairs had it explained to the BEC it was in the process of negotiating with the manufacturers and was trying to obtain the authorizations. In contrast, the decision to get "creative" by forging the required documents is "fraud done knowingly, pure and simple."

iii. The misconduct caused detriment to the Borrower by tainting and undermining the credibility of the procurement process, thus depriving the Borrower of the benefits of a procurement process properly run; and forcing the Borrower to expend additional resources to investigate the misconduct.

iv. Sanctions are clearly appropriate in this case. Since 1999, the Bank has sanctioned firms that have engaged in similar misconduct. The sanctions process assists the Bank to uphold its fiduciary duty by excluding actors that have engaged in sanctionable practices such as misleading a borrower into believing they are qualified to perform a contract when they are not qualified. While the sanction may feel like punishment to Respondent and the Named Affiliate, the motivation is to fulfill the Bank's obligations.

D. Presentations at the Hearing

18. In its opening presentation, INT briefly asserted it had shown all elements of fraudulent practices, including the sole disputed element of detriment to the Borrower. Counsel for Respondent and the Named Affiliate reiterated its main arguments from the written pleadings, and further asserted as a mitigating factor that Respondent and the Named Affiliate had immediately admitted the facts at the beginning of INT's investigation. In its closing, INT agreed cooperation should be considered a mitigating factor, but argued the underlying misconduct still warranted sanctions as a deterrent. Both INT and counsel for Respondent and the Named Affiliate stated the same sanctions should apply to Respondent and the Named Affiliate.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

19. The Sanctions Board first considers whether the record contains sufficient evidence to show it is more likely than not Respondent engaged in fraudulent practices as defined under the January 1999 Procurement Guidelines. Next, the Sanctions Board considers what sanctions, if any, should be imposed on Respondent or the Named Affiliate.

A. Evidence of Fraudulent Practices

20. As stated above, in accordance with the allegations in the SAE and the applicable definition of fraudulent practices under the January 1999 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 a procurement process and (iv) to the detriment of the Borrower.

1. "Misrepresentation of facts"

21. 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.[8] Here, the record shows direct admissions as well as third-party confirmations that Respondent misrepresented facts by using two forged manufacturer's authorizations to support its Bid.

22. First, Respondent and the Named Affiliate do not deny their employees jointly came up with the idea to use forged manufacturer's authorizations; the Named Affiliate's employee created the actual forgeries upon pressure from Respondent's employee to "get creative"; and Respondent's employee then submitted the forgeries to the BEC.

23. Second, the record shows each of the two manufacturers that had purportedly issued the authorizations confirmed in writing the documents were false, and provided detailed supporting explanations to show the documents' lack of authenticity in multiple respects. One manufacturer explained the signature did not match that of any of its employees; it did not employ a person with the signatory name indicated in the letter; the purported authorization was not on the proper letterhead normally used for such authorizations; and its records did not show it had done any business with Respondent. The other manufacturer explained it too had never employed a person with the signatory name indicated in the letter; although the document had its logo and address, the letterhead was not authentic; and it did not have any relationship with Respondent or the Named Affiliate.

24. The Sanctions Board does not agree with Respondent and the Named Affiliate that because they believed the manufacturers in question were willing to supply the desired equipment, but they did not have time to secure genuine authorizations, the forgeries were used only to show "the true state of affairs" rather than misrepresent any facts. The Sanctions Board has rejected this variation of a truth defense before,[9] and rejects it here. As INT suggests, Respondent could have relayed the true state of affairs had it explained to the BEC it did not have the authorizations, but was in the process of negotiating with the manufacturers to obtain them. Respondent's knowing use of forged authorizations instead misrepresented that Respondent had secured the requisite genuine authorizations and had binding written commitments from the manufacturers. Accordingly, the Sanctions Board finds it more likely than not Respondent engaged in misrepresentations of fact.

2. "That was knowing or reckless"

25. As noted above, Respondent and the Named Affiliate do not deny their employees deliberately created and used the forged manufacturer's authorizations to support the Bid. The Sanctions Board thus finds the misrepresentation inherent in such use of forgery was

[8] 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).

[9] See Sanctions Board Decision No. 30 (2010) at paras. 18-20, 28-29 (finding misrepresentations constituting fraudulent practices despite the respondents' argument they had altered an auditor's statement because the original document failed to properly reflect the respondent firm's actual financial standing).

carried out knowingly. As this finding does not rely upon the application of a lesser standard of mens rea, it is not necessary to address the arguments of Respondent and the Named Affiliate challenging application of a "knowing or reckless" standard.

3. "In order to influence the procurement process"

26. The record shows Respondent and the Named Affiliate created the forgeries, and Respondent then submitted the forgeries on two occasions, in order to satisfy the Tender's requirement that each bidder submit manufacturer's authorizations for those products it did not manufacture; and to respond to the BEC's specific repeated requests for the missing documentation. As stated by the Named Affiliate's employee who admitted to generating the forgeries, he and Respondent's employee felt under pressure to provide the documents in order to have the BEC consider Respondent's Bid eligible. The record thus shows it is more likely than not the misrepresentations were made "in order to influence the procurement process" for the Tender.

4. "To the detriment of the Borrower"

27. The Sanctions Board has held that "detriment to the Borrower," as an element of fraudulent practices under the January 1999 Procurement Guidelines, may be interpreted to include not only tangible or quantifiable harms, but also intangible harms.[10] As previously noted, the plain text of the January 1999 Procurement Guidelines does not require "detriment" be a proven monetary loss or other "tangible" detriment, even though the Bank could easily have specified such a limitation if so intended.[11]

28. The record reflects harms that may constitute "detriment to the Borrower" in two respects. First, the deliberate use of forged documents to support the Bid distorted the procurement process insofar as Respondent was not promptly disqualified, even though it failed to provide the requisite manufacturer's authorizations and the Bid was thus invalid. Second, the use of forgeries caused the Borrower, through the BEC, to expend additional time and resources reviewing and corresponding on the invalid Bid in light of Respondent's initial failure to submit any manufacturer's authorizations, its submission of a first set of forgeries, and its re-submission of the forgeries a second time. The use of forgeries thus deprived the Borrower of the benefits of a fair and efficient procurement process, which is a cognizable detriment to the Borrower.[12]

29. Respondent and the Named Affiliate argue the definition of "fraudulent practices" in the January 1999 Procurement Guidelines shows that only collusive practices can deprive the Borrower of the benefits of a fair and open competition and thereby satisfy the element of

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

[11] See id.

[12] See id. at para. 72 (finding "detriment to the Borrower" where the respondents' use of forged bank guarantees in multiple bids served to distort the selection process, deprived the borrowers of the benefits of a fair procurement process, caused the borrowers to expend resources to review and evaluate the respondents' invalid bids, and in some instances misled the borrowers to contract with a bidder willing to engage in unethical behavior).

"detriment to the Borrower." This argument conflates separate issues. Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines states the term "fraudulent practice" means:

> "A misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition."

30. The inclusion of collusive practices in this definition of fraudulent practices expands, rather than narrows, the meaning of fraudulent practices. It certainly does not address, let alone limit, the definition of "detriment to the Borrower" as required to show a fraudulent practice.

31. For the reasons set out above, the Sanctions Board concludes the evidence shows it is more likely than not Respondent engaged in fraudulent practices through its employee and authorized bid signatory. Neither Respondent nor the Named Affiliate presents evidence sufficient to carry their burden to prove they are not responsible for the acts of their employees. The Sanctions Board therefore must determine an appropriate sanction or sanctions.

B. Determination of Appropriate Sanctions

1. General framework for determination of sanctions

32. 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.

33. 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.[13] The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented.[14]

34. 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,

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

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

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.

35. 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. As noted earlier, Section 1.02(a) defines the term "Affiliate" to mean "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." In the present case, Respondent and the Named Affiliate do not contest INT's assertion they are Affiliates under common control, with Respondent's owners holding a controlling interest in the Named Affiliate.

2. Factors applicable in the present case

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

a. Voluntary corrective action

37. 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." The respondent bears the burden of presenting evidence to show voluntary corrective actions.[15]

38. The written record includes some references to voluntary corrective actions, including statements from Respondent and the Named Affiliate claiming implementation of enhanced compliance mechanisms or training designed to prevent recurrence of similar misconduct. Considering the totality of the evidence presented, however, the Sanctions Board does not find mitigation warranted on this ground. At the hearing, counsel clarified Respondent had not yet put in place a compliance system. Although Respondent no longer employed the individual who had apparently encouraged and submitted the forgeries as Respondent's authorized bid representative, Respondent clarified at the hearing that the employee had left the company voluntarily, not due to termination. The Named Affiliate's employee who actually created the forged manufacturer's authorizations was still employed at the time of the hearing, though he

[15] 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).

had – according to the Named Affiliate – been assigned to other duties. None of the parties expressly requested mitigation on grounds of voluntary corrective actions already taken. Further, Respondent and the Named Affiliate agree appropriate sanctions could include a condition requiring they each implement an appropriate corporate compliance and ethics program – implicitly conceding they still lack satisfactory programs.

b. Cooperation

39. 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.

40. The Sanctions Board finds mitigation appropriate for the cooperation demonstrated by both Respondent and the Named Affiliate. The record reflects Respondent assisted with INT's investigation by making its President available for interview and providing detailed responses to INT's show-cause letter; conducting an internal investigation; and admitting the use of forged documents, for which Respondent ultimately accepted responsibility. The record reflects the Named Affiliate similarly assisted with INT's investigation by communicating with INT and making its President and the employee who created the forgeries available for interview; conducting an internal investigation; and admitting to actually forging the documents in question, for which it accepted responsibility.

c. Period of temporary suspension already served

41. 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 and the Named Affiliate have been temporarily suspended since the EO issued the Notice on April 11, 2011.

d. Other considerations

42. Under Section 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider "any other factor" it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice." In considering each sanctioned party's culpability or responsibility, the Sanctions Board considers proportionality of sanctions across multiple parties in the same or related sanctions proceedings.[16] Here, the Sanctions Board takes into account the comparable levels of culpability of Respondent and the Named Affiliate for the underlying misconduct, as the record demonstrates and the parties have acknowledged.

43. Respondent and the Named Affiliate contend any use of debarment would be punitive and disproportionate to their conduct, and therefore inconsistent with the purpose of the sanctions system. In fact, the imposition of sanctions including debarment is a protective and

[16] 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).

deterrent measure within the explicit scope and purpose of the sanctions system, and is consistent with the Sanctions Board's past treatment of similarly situated respondents.

44. As set out in the introductory provisions of the Sanctions Procedures, it is the "[f]iduciary duty" of the Bank, "under its Articles of Agreement, to make arrangements to ensure that funds provided by the Bank are used only for their intended purposes."[17]

> "In furtherance of this duty, the World Bank has established a regime for the sanctioning of firms and individuals that are found to have engaged in specified forms of fraud and corruption in connection with Bank financed or executed projects . . . . This regime protects Bank funds and serves as a deterrent upon those who might otherwise engage in the misuse of the proceeds of Bank financing."[18]

45. Article III of the Sanctions Board Statute requires, "The Sanctions Board shall review and take decisions in sanctions cases and perform such other detailed functions and responsibilities as set forth in the Sanctions Procedures."[19] Section 8.01 of the Sanctions Procedures, in turn, requires the Sanctions Board to "determine, based on the record, whether or not it is more likely than not that the Respondent engaged in one or more Sanctionable Practices." Section 8.01(b) then requires that if the Sanctions Board finds in the affirmative, "it shall impose an appropriate sanction or sanctions on the Respondent . . . from the range of possible sanctions identified in Section 9.01." In other words, the governing sanctions framework expressly requires the Sanctions Board to impose a sanction in each case where it has found sanctionable practices, fraudulent or otherwise.

46. In past cases finding fraudulent practices in the use of forged or otherwise misleading documentation to support a bid, the Sanctions Board has, consistent with its mandate under the Sanctions Board Statute and the provisions of the applicable Sanctions Procedures and Procurement or Consultant Guidelines, sanctioned the respondents through debarments of various terms.[20] Respondent and the Named Affiliate present no persuasive arguments why the Sanctions Board should not apply similar sanctions for similar misconduct in this case.

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[17] Sanctions Procedures at Section 1.01(a).

[18] Id.

[19] Sanctions Board Statute as revised as of September 15, 2010, at Article III.

[20] See, e.g., Sanctions Board Decision No. 2 (2008) (forged advance payment guarantees and bid securities); Sanctions Board Decision No. 6 (2009) (falsified curriculum vitae); Sanctions Board Decision No. 12 (2009) (falsified certificate of previous experience); Sanctions Board Decision No. 27 (2010) (falsified certificate of previous experience); Sanctions Board Decision No. 28 (2010) (false and misleading statements regarding previous experience); Sanctions Board Decision No. 29 (2010) (forged experience certificate and false audit report); Sanctions Board Decision No. 30 (2010) (forged financial report with falsified financial statements); Sanctions Board Decision No. 31 (2010) (forged certificate of previous experience); Sanctions Board Decision No. 36 (2010) (forged performance certificates); Sanctions Board Decision No. 37 (2010) (forged performance certificates); Sanctions Board Decision No. 38 (2010) (false performance certificates); Sanctions Board Decision No. 39 (2010) (forged manufacturer's authorizations); Sanctions Board Decision No. 41 (2010) (forged bank guarantees).

3. Determination of appropriate sanctions for Respondent and the Named Affiliate

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) and the Named Affiliate each 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"), (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, after a minimum period of ineligibility of two (2) years, Respondent and/or the Named Affiliate may be released from ineligibility only if such entity 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 these declarations 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 and the Named Affiliate for fraudulent practices as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines. The periods 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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Hassane Cissé
Marielle Cohen-Branche
Patricia Diaz Dennis
Hartwig Schafer