

Date of issuance: May 30, 2012

**Sanctions Board Decision No. 52  
(Sanctions Case No. 134)  
IDA Credit No. 4219 – UNI  
Nigeria**

**Decision of the World Bank Group Sanctions Board declaring the respondent entity in Sanctions Case No. 134 (“Respondent”), together with any entity that is an Affiliate<sup>1</sup> 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”),<sup>2</sup> (ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider<sup>3</sup> of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, after a minimum period of ineligibility of two (2) years, Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, 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.<sup>4</sup> 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**

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<sup>1</sup> 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.”

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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”).

**declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.<sup>5</sup> This sanction is imposed on Respondent for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the World Bank's Guidelines for 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 December 6, 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, Cornelia Cova, Patricia Diaz Dennis, Hoonae Kim and Hartwig Schafer. Neither Respondent nor the World Bank's Integrity Vice Presidency ("INT") requested a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.

2. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following:

- i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO") to Respondent on June 14, 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 July 11, 2011 (the "Explanation");
- iii. Letter submitted by Respondent to the Secretary to the Sanctions Board, dated July 28, 2011 (the "Response"); and
- iv. Reply in Support of Notice of Sanctions Proceedings, submitted by INT to the Secretary to the Sanctions Board, dated August 26, 2011 (the "Reply").

3. Pursuant to Section 4.01(c), Section 9.01 and Section 9.04 of the Sanctions Procedures, the EO recommended in the Notice that Respondent, together with any Affiliate Respondent directly or indirectly controls, be declared ineligible (i) to be awarded a contract for any Bank-Financed Projects, (ii) to be a nominated sub-contractor,

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<sup>5</sup> 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>).

consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, after a minimum period of ineligibility of two (2) years, Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the Bank Group's Integrity Compliance Officer it has complied with the following conditions: (a) Respondent has taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned; and (b) Respondent has put in place an effective integrity compliance program acceptable to the Bank and has implemented this program in a manner satisfactory to the Bank.

4. Effective June 14, 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 final outcome of the sanctions proceeding.

## **II. GENERAL BACKGROUND**

5. This case arises in the context of the Lagos Metropolitan Development and Governance Project (the "Project"). On July 31, 2006, IDA and the Federal Republic of Nigeria (the "Borrower") entered into a financing agreement to provide US\$200 million equivalent in IDA credit for the Project (the "Financing Agreement"). The Project seeks to increase sustainable access to basic urban services in Lagos through investments in critical infrastructure. The Financing Agreement requires all goods and works to be procured in accordance with, inter alia, the provisions of Section I of the May 2004 Procurement Guidelines regarding fraud and corruption.

6. In January 2008, the Borrower issued bidding documents for the construction of fourteen schools in Lagos City under the Project. The bidding documents addressed multiple lots, including a contract for the construction of three schools (the "Contract"). The bidding documents required each bidder to submit a bid security "in original form" and "from a reputable source," failing which any bid would be rejected as non-responsive.

7. On or about February 19, 2008, Respondent submitted a bid for the Contract (the "Bid"), which included a bid security purportedly issued by a local bank on February 15, 2008 (the "Bid Security"). Respondent submitted the Bid through its Chief Executive Officer ("CEO"), who was its authorized signatory for the Bid. After receiving the World Bank's non-objection, the Borrower awarded the Contract to Respondent in November 2008. Respondent signed the Contract agreement in January 2009, and began executing the Contract. INT alleges the Bid Security was a forgery, and that Respondent's submission of the forged Bid Security with its Bid constitutes a fraudulent practice as defined in the May 2004 Procurement Guidelines.

### **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 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.

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 alleged sanctionable practice in this case has the meaning set forth in the May 2004 Procurement Guidelines, which governed the Project’s procurement under the Financing Agreement (and whose definition of fraudulent practice was repeated in the bidding documents for the Contract, and in the Contract itself). Paragraph 1.14(a)(ii) of these Guidelines defines the term “fraudulent practice” as “a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract.” This definition does not include an explicit mens rea requirement such as the “knowing or reckless” standard adopted by the Bank from October 2006 onward.<sup>6</sup> 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.<sup>7</sup>

### **IV. PRINCIPAL CONTENTIONS OF THE PARTIES**

#### **A. INT’s Principal Contentions in the SAE**

11. INT submits it is more likely than not Respondent engaged in fraudulent practices by submitting the forged Bid Security with its Bid in order to influence the procurement process for the Contract. INT relies primarily on the following assertions:

- i. The local bank that had purportedly issued the Bid Security informed INT it had not issued the Bid Security; identified multiple ways in which the

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<sup>6</sup> See, e.g., the definition of fraudulent practices set out in Paragraph 1.22(a)(ii) of the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, rev. October 2006) (the “October 2006 Consultant Guidelines”): “any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation” (emphasis added).

<sup>7</sup> See Sanctions Board Decision No. 41 (2010) at para. 75.

document was inconsistent with its actual bid securities; and concluded the document appeared to be a forgery.

- ii. Respondent admits to “an innocent misrepresentation,” and to having used an agent to procure the Bid Security without knowing the agent’s full name, documenting the transaction or putting up collateral beyond a cash payment to the agent.
- iii. The requisite mens rea is shown because Respondent engaged an agent who knowingly created or procured the forged Bid Security and Respondent then knowingly submitted the forged document with its Bid.
- iv. The forged Bid Security misled the Borrower to believe Respondent had met all bidding requirements, therefore influencing the procurement process and allowing Respondent to be awarded the Contract.

12. INT identifies no aggravating factors. INT asserts the “fact that the Respondent communicated and cooperated with INT during the investigation is a mitigating factor.”

**B. Respondent’s Principal Contentions in its Explanation and Response**

13. Respondent does not contest its Bid contained a misrepresentation, but relies mainly on the following grounds to assert it lacked “the requisite mens rea to cheat.”

- i. Although it accepts “the bid security document submitted did not meet the requirements for the award of the project,” Respondent did not knowingly engage in a fraudulent practice or even have an incentive to do so.
- ii. Respondent’s commitment and good faith are proved by the fact Respondent complied with more onerous procurement requirements for the Contract and has been steadily executing the Contract.
- iii. Its use of a facilitating agent to obtain bid security documents was an error of judgment caused by the time constraints presented by tight submission dates. Respondent has no record of such problems either before or after this incident. Respondent has references to demonstrate its corporate integrity.

14. Respondent claims as mitigating factors that it did not act willfully, it was a victim of circumstance, and “full corrective and avoidance measures have been put in place” in order to avoid repetition of its error.

**C. INT’s Reply**

15. In its Reply, INT argues Respondent has failed to meet the shifted burden of proof to show its conduct did not amount to a fraudulent practice. INT principally asserts the following:

- i. Respondent effectively admits the misconduct, stating the forged bid security was procured by an authorized agent who had previously procured other documents for Respondent.
- ii. Respondent acted at least recklessly by submitting a key document procured by an agent it knew only by his supposed last name and his usual whereabouts, without documenting its dealings with this agent and without verifying the authenticity of the documents he provided.

16. INT contends the EO considered all relevant mitigating factors in recommending a two-year debarment with conditional release, and argues the other factors cited by Respondent do not qualify as mitigating factors under the Bank's Sanctioning Guidelines.

## **V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS**

17. The Sanctions Board considers first whether the CEO's submission of the Bid Security with Respondent's Bid constitutes a "fraudulent practice" as defined under the May 2004 Procurement Guidelines. Next, the Sanctions Board considers whether Respondent may be held liable for the CEO's acts. Finally, the Sanctions Board determines what sanctions, if any, should be imposed on Respondent.

### **A. Evidence of Fraudulent Practice**

18. In accordance with the allegations in the SAE and the applicable definition of fraudulent practices under the May 2004 Procurement Guidelines, INT bears the initial burden to show Respondent's CEO (i) made a misrepresentation of facts (ii) that was knowing or reckless (iii) in order to influence the procurement process for the Contract.

#### **1. Misrepresentation of facts**

19. In past cases finding fraudulent bid documents, the Sanctions Board relied primarily on written statements from the parties named in or supposedly issuing the documents, as well as respondents' own admissions.<sup>8</sup>

20. The record contains written evidence from the local bank named as issuer of the Bid Security. In response to INT's inquiry, the local bank stated, "the Bid Security document did not emanate from [our bank] and appears to be a forgery." In addition, INT interviewed four officials of the purported issuer. INT's record of interview shows the issuer's head compliance officer confirmed the Bid Security was a forgery. He cited several errors in the document: (i) it lacked a bid security number and specific bid code,

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<sup>8</sup> 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).



which all bid securities duly issued by that bank contain; (ii) it used a different font size than the one regularly used by the bank; and (iii) the bank officers' signatures shown on the Bid Security were not genuine, though it appears the forger had tried to imitate actual officers' signatures. The head compliance officer further noted the issuer had no "current or previous business relationship with" Respondent.

21. Respondent does not deny the Bid Security was falsified. In response to INT's show-cause letter, Respondent referred to the "false documentation for the [Contract]," describing it as an "innocent misrepresentation."

22. Considering the above statements from Respondent and the purported issuing bank, the Sanctions Board finds it more likely than not Respondent's CEO engaged in a misrepresentation of facts by submitting the forged Bid Security with the Bid.

2. Made knowingly or recklessly

23. As stated in the SAE and noted above, INT's burden is to prove it is more likely than not the misrepresentation was made "either knowingly or recklessly." INT primarily asserts the Bid's inclusion of a forged Bid Security was knowing, but argues in the alternative it was at least reckless. Respondent argues it lacked the "requisite mens rea to cheat" because the submission of the forged Bid Security "was not an act that was knowingly engaged" in, but rather an innocent misrepresentation.

24. The record supports a finding INT has met its burden of proof in this respect. Evidence in the SAE shows it is more likely than not Respondent's CEO knew or should have known the Bid Security could be a forgery, yet submitted it anyway.

25. In assessing recklessness, the Sanctions Board may consider whether circumstantial evidence indicates a respondent was aware of, but disregarded, a substantial risk – such as harm to the integrity of the Bank's procurement process due to false or misleading bid documents. Alternatively, where circumstantial evidence may be insufficient to infer subjective awareness of risk, the Sanctions Board may measure a respondent's conduct against the common "due care" standard of the degree of care the proverbial "reasonable person" would exercise under the circumstances. In other words, the question is whether the respondent knew or should have known of the substantial risk presented. In the context of Bank-Financed Projects, the standard of care should be informed by the Bank's procurement policies, as articulated in the applicable Procurement or Consultant Guidelines and the standard bidding documents for the contract at issue. Industry standards or customary or firm-specific business policies, procedures or practices may also be relevant in certain cases.<sup>9</sup>

26. Here, the applicable standard of care is informed by the explicit requirements of the Contract bidding documents that each bidder must submit an original bid security "from a reputable source," or be disqualified. Such requirements communicate a heightened standard of care for those procuring bid securities under the Contract.

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<sup>9</sup> See Sanctions Board Decision No. 51 (2012) at para. 33.

27. Against this backdrop, the record shows Respondent procured the Bid Security through an agent it knew by only a last name and his usual location near the premises of government registration and licensing offices. Respondent did not have the agent's full name, his contact details or any documentation of its transaction with the agent. Despite its lack of information concerning the agent's identity or credentials, Respondent entrusted him to procure the Bid Security essential to its qualification for the Contract. When the agent provided the Bid Security, Respondent chose to use it without any attempt to verify the document's authenticity. The choice to submit the Bid Security so obtained is particularly concerning given that the document lacked a bid security number, as would be standard; was issued in the name of a commercial bank with which Respondent had no previous or existing business relationship or account; and was not tied to any formal collateral, as Respondent had only paid cash to the agent.

28. Respondent asserts the informal use of such agents, on a cash basis and without a contract or invoice, is a common means to avoid bureaucratic delays; and that a previous or current business relationship is not mandatory for the issuance of bid securities. Assertions of common practice are not necessarily evidence of good practice, however. The informality Respondent describes contrasts with the description of more rigorous procedures for the issuance of bid securities provided by the local bank that purportedly issued the Bid Security for Respondent. INT's record of interview with that bank's officials contains their description of a "meticulous risk assessment" and detailed documentation for each case.

29. Considering the factors above, the Sanctions Board finds the CEO acted at least recklessly in using the Bid Security obtained under such circumstances without any effort to verify its authenticity.

3. In order to influence the procurement process

30. The record shows it is more likely than not the CEO submitted the Bid Security in order to influence the procurement process for the Contract. By the CEO's own admission in responding to INT's show-cause letter, "our primary motivation" in using the agent to quickly secure the Bid Security was the timely submission of the Bid.

31. For the reasons set out above, the Sanctions Board concludes it is more likely than not Respondent's CEO engaged in a fraudulent practice by submitting the Bid Security.

**B. Respondent's Liability for the Acts of the CEO**

32. The record shows the CEO acted as Respondent's authorized representative and in the course and scope of his duties in submitting the Bid containing the Bid Security. Respondent does not contest its liability for the CEO's actions in carrying out these duties



on its behalf. The Sanctions Board thus finds Respondent directly and/or vicariously liable for the CEO's fraudulent practice in the submission of the Bid.<sup>10</sup>

33. Because Respondent is liable for fraudulent practices based on the CEO's submission of the forged Bid Security as part of the Bid, it is not necessary to determine whether Respondent may also be held liable, as INT appears to suggest, for the acts of the outside agent who created or obtained the forgery in the first place.<sup>11</sup>

### C. Determination of Appropriate Sanctions

#### 1. General framework for determination of sanctions

34. 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.

35. 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.<sup>12</sup> The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented.<sup>13</sup>

36. 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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<sup>10</sup> See Sanctions Board Decision No. 41 (2010) at para. 85 (finding direct and/or vicarious liability for the respondent firm, which bore responsibility for the conduct of the individual respondent who was the firm's president, owner and sole shareholder).

<sup>11</sup> In different circumstances, the Sanctions Board has held a respondent cannot avoid liability by carrying out through an agent or affiliate any conduct that would be sanctionable if carried out directly by the respondent. See Sanctions Board Decision No. 45 (2011) at para. 41.

<sup>12</sup> See Sanctions Board Decision No. 40 (2010) at para. 28.

<sup>13</sup> See Sanctions Board Decision No. 44 (2011) at para. 56.

37. 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

38. 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

39. 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.<sup>14</sup>

40. Respondent states “full corrective and avoidance measures have been put in place” in order to avoid repetition of its error. In its response to INT’s show-cause letter soon after the start of Contract execution, Respondent more specifically asserted it had taken measures to ensure adequate security for the issuance of further guarantees for the Contract through direct negotiation with the issuing banks, rather than agency or third-party procurement. Respondent does not describe or show implementation of broader compliance measures beyond the context of the immediate Contract, however. The Sanctions Board does not find mitigation warranted on this ground.

b. Cooperation

41. 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.

42. INT acknowledges Respondent “communicated and cooperated with INT during the investigation,” and the record shows Respondent replied to INT’s show-cause letter

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<sup>14</sup> 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).

and follow-up inquiries in a timely manner. The Sanctions Board thus applies mitigation for Respondent's cooperation with INT's investigation.<sup>15</sup>

43. In its correspondence with INT, Respondent acknowledged the Bid Security was false, and expressed apologies and regrets for the inconvenience its misrepresentation may have caused the Bank. Yet Respondent has not accepted responsibility for any fraudulent practices, instead asserting it was an innocent victim of circumstance. Accordingly, the Sanctions Board does not apply additional mitigation for acceptance of responsibility.<sup>16</sup>

c. Period of temporary suspension already served

44. 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 June 14, 2011.

d. Other considerations

45. 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."

46. Respondent seeks mitigation for other factors including its record of integrity and lack of prior misconduct; compliance with more onerous Contract requirements for a performance bond and advance payment guarantees; and steady progress in executing the Contract. The Sanctions Board does not consider these factors to warrant mitigating credit. The Sanctions Board has not recognized a respondent's purported reputation for integrity and absence of past misconduct as mitigating factors before. While a record of past sanctionable misconduct may merit treatment as an aggravating factor, the Sanctions Board considers its absence a neutral fact.<sup>17</sup> Respondent's assertion it properly satisfied other guarantee requirements under the Contract does not justify mitigating credit either. As the Sanctions Board has previously stated, even a single instance of forgery may constitute sanctionable misconduct, even where a respondent may have submitted hundreds of documents for Bank-financed contracts over the years.<sup>18</sup> Finally, the Sanctions Board does not find Respondent's continued performance under the Contract warrants mitigation. While delays or incomplete performance in a project as a result of a respondent's

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<sup>15</sup> See Sanctions Board Decision No. 37 (2010) at para. 45 (accorded mitigation for respondents' cooperation in replying to INT's show-cause letter).

<sup>16</sup> See, e.g., Sanctions Board Decision No. 39 (2010) at para. 60 (in taking into account the respondent's cooperation during the investigation, noting the respondent had corresponded extensively with INT, but had not admitted culpability); Sanctions Board Decision No. 45 (2011) at para. 66 (granting limited mitigation for cooperation where the parties agreed the respondent had cooperated in the investigation, but the respondent had never admitted culpability or responsibility for misconduct).

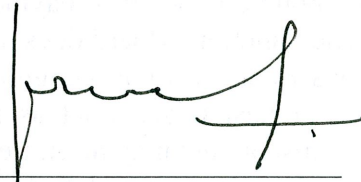
<sup>17</sup> See Sanctions Board Decision No. 45 (2011) at para. 64. See also Sanctions Board Decision No. 30 (2010) at paras. 21, 30.

<sup>18</sup> See Sanctions Board Decision No. 41 (2010) at para. 78.

misconduct may be considered as an aggravating factor, the Sanctions Board has not generally considered completion of contract obligations as a mitigating factor in itself.<sup>19</sup>

3. Determination of appropriate sanction for Respondent

47. 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, 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, 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 practices as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines. The period of ineligibility shall begin on the date this decision issues.



Fathi Kemicha (Chair)

On behalf of the  
World Bank Group Sanctions Board

Fathi Kemicha  
Hassane Cissé  
Marielle Cohen-Branche  
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<sup>19</sup> See Sanctions Board Decision No. 44 (2011) at para. 63 (applying aggravation for substantial delays, risks to the contract works and waste of the borrower's time and resources, even though the respondent completed the work, thereby capping, but not negating, the total damages); Sanctions Board Decision No. 29 (2010) at paras. 23, 34 (not taking into account as a mitigating factor the fact respondent had left no assignment "incomplete or undone" under the contract).