

Date of issuance: March 10, 2020

Sanctions Board Decision No. 126
(Sanctions Case No. 580)

IBRD Loan No. 7967-LE
Lebanon

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 580 (the “Respondent”), together with certain Affiliates,² with a minimum period of ineligibility of three (3) years and one (1) month beginning from the date of this decision. This sanction is imposed on the Respondent for fraudulent practices.

I. INTRODUCTION

1. The Sanctions Board convened in December 2019 as a panel composed of John R. Murphy (Chair), Cavinder Bull, and Mark Kantor to review this case. A hearing was held on December 10, 2019, at the World Bank Group’s headquarters in Washington, D.C. at the request of the Respondent and in accordance with Section III.A, sub-paragraph 6 of the Sanctions Procedures. The World Bank Group’s Integrity Vice Presidency (“INT”) participated in the hearing through its representatives attending in person. The Respondent was represented by its outside counsel, also attending in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

2. In accordance with Section III.A, sub-paragraph 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 Suspension and Debarment Officer (the “SDO”) to the Respondent on February 13, 2019 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) submitted by INT to the SDO (undated);
- ii. Explanation submitted by the Respondent to the SDO on March 14, 2019;

¹ In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued on June 28, 2016 (the “Sanctions Procedures”), the term “World Bank Group” means, collectively, the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), and the Multilateral Investment Guarantee Agency (“MIGA”). The term “World Bank Group” includes Bank Guarantee Projects and Bank Carbon Finance Projects, but does not include the International Centre for Settlement of Investment Disputes (“ICSID”). As in the Sanctions Procedures, the terms “World Bank” and “Bank” are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section II(x).

² Section II(a) of the Sanctions Procedures defines “Affiliate” as “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” The sanctions imposed by this decision apply only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraphs 46, 61.

- iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on July 22, 2019, and supplemented on July 25, 2019, and August 5, 2019 (the “Response”);
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on September 5, 2019 (the “Reply”);
- v. Additional submissions filed separately and prior to the hearing by INT and the Respondent with the Secretary to the Sanctions Board in October 2019, and December 2019, respectively (the “Additional Submissions”); and
- vi. Post-hearing submissions filed separately by INT and the Respondent with the Secretary to the Sanctions Board in December 2019 and January 2020, respectively (the “Post-Hearing Submissions”).

3. On February 13, 2019, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice and temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility³ with respect to any Bank-Financed Projects,⁴ pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notice the sanction of debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The SDO recommended a minimum period of ineligibility of two (2) years and four (4) months, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group’s Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practice for which the Respondent has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

II. GENERAL BACKGROUND

4. This case arises in the context of the Greater Beirut Water Supply Project (the “Project”) in Lebanon (the “Borrower”), which seeks to increase the provision of potable water to residents of the Greater Beirut area and to strengthen the capacity of local utility operations. On February 8, 2012, IBRD entered into a loan agreement with the Borrower to provide US\$200 million for the Project (the “Financing Agreement”). On the same day, IBRD entered into separate agreements (the “Project Agreements”) with each of the Borrower’s responsible implementing

³ The full scope of ineligibility effected by a temporary suspension is set out in the Sanctions Procedures at Section III.A, sub-paragraphs 4.02(a) and 9.01(c), read together.

⁴ The term “Bank-Financed Projects” encompasses an investment project or a program for results operation, for which IBRD or IDA (as the case may be), whether acting for its own account or in the capacity as administrator of trust funds funded by donors, has provided financing in the form of a loan, credit or grant and which is governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. See Sanctions Procedures at Section II(e).

agencies, which specified, *inter alia*, arrangements for the Project's implementation, monitoring, and evaluation. The Project became effective on December 4, 2012, and is scheduled to close on November 30, 2020.

5. On July 25, 2013, the agency responsible for implementing the Project (the "PIU") issued bidding documents (the "Bidding Documents") for a contract to build water reservoirs, pumping stations, and distribution networks in a specific geographic area under the Project (the "Contract"). On August 28, 2013, the Respondent's then-Executive Director (the "former Executive Director") authorized an individual agent (the "Agent") to act on behalf of the Respondent. On September 24, 2013, the Agent submitted a bid for the Contract (the "Bid") on the Respondent's behalf. On January 22, 2014, the PIU notified the Respondent that it was being awarded the Contract and on January 28, 2014, the Agent signed the Contract as the Respondent's representative. After the Contract was signed, the Agent established a branch representing the Respondent in Lebanon and worked with a subcontractor and other staff to implement works under the Contract.

6. INT alleges that the Respondent engaged in fraudulent practices by knowingly misrepresenting its work experience and financial turnover in the Bid.

III. APPLICABLE STANDARDS OF REVIEW

7. *Standard of proof:* Pursuant to Section III.A, sub-paragraph 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is "more likely than not" that the respondent engaged in a sanctionable practice. Section III.A, sub-paragraph 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 that the respondent engaged in a sanctionable practice.

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

9. *Evidence:* As set forth in Section III.A, sub-paragraph 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

10. *Applicable definition of fraudulent practice:* The Financing Agreement provided that procurement of goods and works under the Project should follow the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 1, 2006, and May 1, 2010) (the "May 2010 Procurement Guidelines"). The Project Agreements each required that procurement of goods and works relating to the Project follow the conditions set out in the Financing Agreement. The excerpt of the Bidding Documents in the record does not similarly identify a document that governs the procurement process, but describes the Bank's authority to sanction and includes definitions of sanctionable practices that are consistent with the May 2010

Procurement Guidelines.⁵ The Sanctions Board, therefore, concludes that the definition of fraudulent practice set out in the May 2010 Procurement Guidelines applies to the allegations in this case. Paragraph 1.14(a)(ii) of these Guidelines defines “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[.]” A footnote to this definition explains that the term “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.⁶

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

11. INT alleges that the Respondent’s staff engaged in fraudulent practices by knowingly submitting, as part of the Bid, false statements and documents in relation to the Respondent’s work experience and financial turnover. Specifically, INT asserts that the Bid included false claims of execution with respect to one past contract, an overstatement of the value of a second past contract, and misstatements of both the value and date of a third past contract. With respect to financial turnover, INT alleges that the Bid included overstatements of the Respondent’s average annual turnover for several years. INT asserts that each of these misrepresentations was supported by falsified or forged documents in the Bid. INT submits that any sanction against the Respondent should take into account the Respondent’s cooperation during INT’s investigation and admission that information relating to work experience was false, as alleged.

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

12. The Respondent acknowledges that the Bid contained false information and documents as described. However, the Respondent argues that it should not be held liable for making these misrepresentations because it had been entirely unaware that the former Executive Director and the Agent took actions to submit the Bid, establish a branch in Lebanon, and implement the Contract. The Respondent submits that both the former Executive Director and the Agent acted improperly, without the Respondent’s consent, and against the Respondent’s interests. The Respondent states that the former Executive Director and the Agent should be considered “rogue employees” who misled the Respondent despite robust internal control measures.

13. In addition to arguments contesting liability, the Respondent submits that it undertook an internal investigation to remedy the misconduct and that the case reflects a number of other mitigating circumstances, such as cooperation with INT’s investigation, effective risk-mitigation

⁵ The definition is not a verbatim copy, but the single difference does not appear relevant to the present case. The Bidding Documents state that the Bank’s requirement to observe the highest standard of ethics extends to, inter alia, “service providers **and** suppliers[] under Bank-financed contracts” (emphasis added). The May 2010 Procurement Guidelines state that this requirement extends to “service providers **or** suppliers[] under Bank-financed contracts” (emphasis added). The Respondent in the present case is accused of misconduct as a bidder (i.e., not a service provider or a supplier) under a Bank-financed contract.

⁶ May 2010 Procurement Guidelines at para. 1.14(a)(ii), n.20.

and corrective measures by the Respondent's current management, passage of time since termination of the Respondent's settlement negotiations with INT, and the absence of a variety of potentially aggravating factors.

C. INT's Principal Contentions in the Reply

14. INT argues that the Respondent is culpable for the acts of its staff and agent and that the Respondent has failed to prove a "rogue employee" defense. Specifically, INT contends that the Respondent's focus on the former Executive Director and the Agent is misplaced, as the relevant staff members may have well been other individuals who prepared the Bid at the Respondent's offices in Bulgaria. Those staff members, INT argues, acted well within the course and scope of their employment and in the Respondent's interest. Furthermore, INT contests the Respondent's characterization of the Agent and the former Executive Director as "rogue employees" and argues that they were motivated by an intent to serve the Respondent during an economic downturn in the Respondent's primary market. INT also notes the absence of evidence of any embezzlement, improper self-dealing, or other illicit enrichment in relation to the Contract. Finally, INT states that the Respondent has failed to substantiate a key part of its "rogue employee" defense – the existence and implementation of a robust system of internal controls.

15. INT supports the application of mitigating credit on the basis of the Respondent's cooperation, its integrity compliance measures, the passage of time, and the period of temporary suspension served. INT argues that no mitigating credit is warranted for the Respondent's asserted internal investigation, other voluntary corrective actions, collateral consequences of debarment, or absence of potentially aggravating circumstances.

D. Additional Submissions Prior to Hearing

16. On October 10, 2019, after having filed the Reply, INT submitted additional documents relating to the Respondent's asserted integrity compliance measures, which INT had obtained in the course of recent settlement negotiations with the Respondent. The Sanctions Board Chair admitted these documents into the record at his discretion.

17. On December 6, 2019, the Respondent submitted additional materials, consisting of copies of various company records (including a list of staff), online publications relating to registered companies in Bulgaria, and correspondence between the Respondent and the Embassy of Lebanon in Bulgaria. On December 7, 2019, the Sanctions Board Chair provisionally admitted these materials into the record, noting that the hearing was scheduled to take place on December 10, 2019, and with the caveat that INT may comment on their admissibility and relevance during that hearing.

E. Presentations at the Hearing

18. During the hearing, the Sanctions Board first addressed the matter of additional documents submitted by the Respondent on December 6, 2019. INT expressed agreement with the admission of these documents into the record but criticized the belated nature of their submission by the Respondent. The Sanctions Board Chair acknowledged INT's position, admitted the documents

into the record, and authorized INT to comment on the substance of these materials in writing after the hearing.

19. In its presentation on the merits of the case, INT reiterated that the alleged misrepresentations in the Bid constituted deliberate and significant fraud and served to improve the Respondent's business position and expand its market. INT argued that the Respondent was liable for the conduct of its former Executive Director and other staff involved in preparation of the Bid (at least some of whom had held short-term consultancy contracts), who had acted within the scope of their employment and authority. INT emphasized that the record did not support a finding of "self-dealing" by the culpable staff, but rather reflected that the Respondent both lacked adequate internal supervision mechanisms and financially benefitted from payments made under the Contract after the misconduct.

20. The Respondent (i) generally reiterated its "rogue employee" defense; (ii) attributed the misconduct entirely to the former Executive Director and the Agent; and (iii) with reference to the list of term staff submitted on December 6, 2019, claimed that none of the Respondent's actual listed employees were involved in the relevant bidding process. The Respondent asserted that both the engagement of staff without formal term contracts with benefits and the establishment of a branch in Lebanon violated Bulgarian national law and therefore reflected the former Executive Director's and the Agent's positions as "rogue employees." The Respondent proposed that the former Executive Director had sought to conceal his involvement in the Bid and Contract from the Respondent. However, when questioned by the Sanctions Board, the Respondent acknowledged that its contentions on this point amounted to speculation. In concluding, the Respondent stated that any sanction would cause the company's closure and emphasized that it had fully cooperated with INT's investigation and had strengthened its compliance program to the extent possible, given its modest size.

21. Some of the Sanctions Board's questions to the parties addressed the flow of funds among the Respondent firm's accounts in Bulgaria and the branch in Lebanon during performance of works under the Contract. Given that the Respondent's defense appeared to rest, at least in part, on the contention that payments under the Contract were directed in some manner to the culpable individuals rather than the Respondent firm, the Sanctions Board Chair invited INT to make a post-hearing submission of any additional available evidence relating to bank transfers between the branch in Lebanon and the Respondent's central accounts in Bulgaria. The Sanctions Board Chair requested the Respondent to make a separate post-hearing submission to substantiate its assertion that Bulgarian law prohibited short-term consultancy contracts not recorded with national authorities.

F. Post-Hearing Submissions

22. On December 19-20, 2019, the Sanctions Board Secretariat received initial post-hearing submissions from the parties, as authorized during the Sanctions Board hearing. INT's submission was two-fold: first, it commented on the Respondent's pre-hearing submission of additional evidence in December 2019; and second, it provided copies of records relating to monetary transfers between the Respondent's bank account in Bulgaria and accounts connected to the branch in Lebanon. On the first point, INT asserts that the Respondent's additional documents did not

provide sufficient support for either a “rogue employee” defense or mitigation based on asserted compliance measures. INT also argues that the Respondent’s third-party documents relating to the Agent and branch registration in Lebanon did not prove that the Agent had been duplicitous or that the branch was formed improperly.⁷ With respect to compliance-related documentation, INT takes the position that these documents do not reflect implementation of timely measures to prevent the type of misconduct at issue in this case and, therefore, merit “only modest” mitigating credit. On the second point relating to financial transfers, INT states that it does not possess additional evidence of such transfers, but shares financial records that it had received from the Lebanese branch office for comprehensiveness and as a matter of courtesy to the Respondent.⁸

23. The Respondent’s post-hearing submission relating to labor/employment law in Bulgaria includes a legal opinion from the Respondent’s counsel and a form contract between an entity and its representative agent. In its arguments, the Respondent submits that an agency or employment contract must be formalized in writing, with reference to the Bulgarian Commercial Act and the EU Directive on Commercial Agents. The Respondent argues that there was no valid contract for agency, management, or representation between the Respondent firm and the Agent, and that the Agent therefore had no valid authorization to represent the Respondent at any point.

24. The parties were authorized to file comments on their respective post-hearing submissions, which they did during the period of January 2-8, 2020. INT submits that the Respondent’s additional materials filed after the hearing deserve limited evidentiary weight and still fail to prove the Respondent’s “rogue employee” defense. INT additionally states that the Respondent’s arguments regarding a contractual relationship between the Respondent firm and the Agent conflict with the Respondent’s prior submissions and its course of conduct, which includes having accepted Contract-related obligations and having sought and received Contract-related payments. INT emphasizes that the legal authorities cited by the Respondent and the “made-for-litigation legal opinion” in the post-hearing submission are questionable, provide limited persuasive value to the Sanctions Board, and do not address the specific test for corporate liability under the World Bank Group’s sanctions framework. The Respondent reiterates its arguments against liability and for mitigation and again denies having submitted the Bid or drawn any benefit from the Bid, the Contract, the Project, or the creation of the Lebanese branch. With respect to its staff, the Respondent concedes that it has hired individuals “under more flexible and project-specific working arrangements” than a standard labor contract, but states that such staff would not be tasked with preparing or delivering a bid.

V. THE SANCTIONS BOARD’S ANALYSIS AND CONCLUSIONS

25. The Sanctions Board will first review the remaining evidentiary matter raised in this case. The Sanctions Board will then examine whether it is more likely than not that the Respondent

⁷ For example, the Respondent presented search-term results from a Bulgarian corporate registry seeking to verify the existence of the Agent’s asserted former employer. INT noted that (i) a single corporate registry search may not be adequate to conclude that a party misrepresented facts and (ii) the Respondent’s search included a typographical error and a search of the corrected term by INT did produce results.

⁸ The Respondent had complained during the hearing that it did not have access to the branch office’s corporate or banking records.

engaged in the alleged fraudulent practices. If a finding of liability is reached, the Sanctions Board will determine what sanction should be imposed on the Respondent.

A. Evidentiary Matter

26. On November 24, 2019, the Respondent requested access to audio recordings of all INT interviews held in Bulgaria for which transcripts were provided in these proceedings. The Respondent argued that the quality of “software” translation apparent in parts of the transcripts hindered its ability to prepare for the hearing. On November 25, 2019, at the instruction of the Sanctions Board Chair, the parties were informed that (i) the Sanctions Board does not have access to such recordings as a matter of course and generally relies on the same record as that presented to respondents; and (ii) under the Sanctions Procedures, respondents did not have a general right to review or obtain any information or documents in the Bank’s possession, but the parties may, from time to time, be authorized or invited to submit additional materials on a case-by-case basis. INT was nevertheless invited to comment on the Respondent’s request and to clarify the process of translation and transcription for the relevant interviews.

27. In its comments of December 4, 2019, INT submitted that introduction of the requested evidence into the record would be neither necessary nor appropriate, as the relevant transcripts do not in fact suffer from translation failures and the Respondent’s request is belated. In addition, INT clarified that (i) the relevant interviews were conducted in English with simultaneous translation by the Respondent’s staff selected at the Respondent’s discretion; (ii) at least one of the interviewees was himself bilingual and answered some questions directly in English; and (iii) no post-interview translation of the recording, via software or otherwise, was applied. Nevertheless, INT expressed willingness to make the recordings available if instructed by the Sanctions Board.

28. On December 5, 2019, the Sanctions Board Chair issued an interim determination to acknowledge the submissions to date and authorize the parties to make final comments on this matter during the upcoming hearing. During the hearing, the Respondent expressed some concern that some interview statements were misinterpreted by INT, but did not identify with specificity any text within the relevant transcripts that was unclear and related to the allegations in these proceedings.

29. In these circumstances, and noting in particular the Respondent’s failure to clarify the basis of its request, the Sanctions Board Chair denies the Respondent’s request for production of additional evidence.

B. Evidence of Fraudulent Practices

30. In accordance with the definition of “fraudulent practice” under the May 2010 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) engaged in any act or omission, including misrepresentation (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.

1. Act or omission, including a misrepresentation

31. INT alleges that the Bid included two types of fraudulent misrepresentation, overstating the Respondent's (i) work experience and (ii) financial turnover. With respect to work experience, INT asserts that the Respondent claimed execution of one contract on which it did not work; overstated the value of a second past contract; and misstated both the value and date of a third past contract. With respect to financial turnover, INT alleges that the Respondent overstated its average annual turnover for several years. INT asserts that each of the Respondent's misrepresentations was supported by falsified or forged documents. The Respondent does not contest the alleged misrepresentations but, as explained above, denies responsibility for those misrepresentations on the ground that they were made by rogue employees and others. In past decisions finding that respondents submitted false information or made a false statement, including with respect to past experience or financial history, the Sanctions Board considered various factors as indicative of a misrepresentation, including: contemporaneous evidence reflecting the falsity of information at issue,⁹ indicia of falsity in the documents themselves,¹⁰ statements by third parties that were named in or supposedly issuing the alleged fraudulent documents,¹¹ and the respondents' own acknowledgments.¹²

32. *Misrepresentations relating to work experience.* The Bid listed, *inter alia*, three past contracts, respectively: "Contract A," "Contract B," and "Contract C" (together, the "Municipal Contracts"). The Bid enclosed supporting documents – reference letters – relating to each of the Municipal Contracts and appended a purported copy of Contract C. INT's investigation produced evidence (correspondence with purported clients and relevant third parties) that contradicts the Bid with respect to each of the Municipal Contracts. First, the mayor of the municipality for Contract A denied that the municipality was a party to Contract A and stated that the reference letter attributed to his municipality was not authentic. Second, the mayor of the municipality for Contract B provided an authentic reference letter that showed that the Respondent's reference letter attributed to his municipality had overstated the scope and value of Contract B. Third, a representative of a regional financing mechanism for Contracts B and C provided INT with information contradicting the value that the Respondent claimed for those contracts and the dates of Contract C. Subject to its claim of non-responsibility, the Respondent concedes that the Bid contained inauthentic reference letters for the Municipal Contracts and misrepresented various details of the Municipal Contracts.

33. *Misrepresentations relating to financial turnover.* The Bid claimed that the Respondent's average financial turnover reached approximately US\$22.9M per year for 2008-2012. In addition, the Bid included purported copies of the Respondent's audited annual financial statements for the years 2008-2012, that appeared to corroborate the average turnover claimed in the Bid. INT's

⁹ Sanctions Board Decision No. 81 (2015) at para. 38.

¹⁰ *See, e.g.*, Sanctions Board Decision No. 74 (2014) at para. 26; Sanctions Board Decision No. 97 (2017) at para. 42; Sanctions Board Decision No. 99 (2017) at paras. 19-20.

¹¹ *See, e.g.*, Sanctions Board Decision No. 112 (2018) at para. 31.

¹² *See, e.g.*, Sanctions Board Decision No. 74 (2014) at para. 26; Sanctions Board Decision No. 97 (2017) at para. 42; Sanctions Board Decision No. 99 (2017) at paras. 19-20; Sanctions Board Decision No. 112 (2018) at para. 31.

investigation produced copies of authentic financial statements that the Respondent had filed with national authorities, reflecting annual revenues significantly below the amounts claimed in the Bid for the same time period. Again subject to its claim of non-responsibility, the Respondent does not dispute, in its pleadings, the alleged misrepresentations relating to financial turnover and, during INT's investigation, its current Executive Director agreed that revenue figures claimed in the Bid appeared excessive for at least 2012.

34. In these circumstances, the Sanctions Board finds the evidence sufficient to conclude that the Bid contained multiple misrepresentations relating to the Respondent's work experience and its financial turnover.

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

35. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.¹³ INT submits that the misrepresentations were made knowingly. The Respondent's submissions do not opine on the mens rea of staff involved in preparing the Bid, but assert the misrepresentations were made by rogue employees and others. In its analysis on this point, the Sanctions Board has generally assessed INT's allegations against evidence of how the misrepresentations were introduced into the relevant documents.¹⁴ However, INT does not explain the process by which each of the misrepresentations was introduced into the Bid, stating only that the Bid was prepared in the Respondent's offices in Bulgaria.

36. The record does not reveal the specific process of bid preparation in this case. However, the Sanctions Board notes (i) the significant degree of the alleged misrepresentations, which included the claim of a contract that did not exist and the inflation of turnover figures by as much as 2,400% and (ii) the use of various false supporting documents to substantiate the false statements at issue. The Sanctions Board has previously found that some misrepresentations relating to a respondent's own past experience were too substantial to have been made in error or through reckless oversight and, therefore, constituted knowing misconduct.¹⁵ In the present case, the record similarly reflects that the misrepresentations were too significant and too structured in order for the misconduct to have taken place without the knowledge of any staff members. The Sanctions Board, therefore, finds that it is more likely than not that the misrepresentations were made knowingly in an attempt to mislead the PIU.

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

37. INT submits that the misrepresentations served to satisfy tender requirements and thus "obtain the benefit of the Contract" for the Respondent. Again relying on its contention that it has no responsibility for the misrepresentations, the Respondent asserts that it had no intent to benefit

¹³ Sanctions Procedures at Section III.A, sub-paragraph 7.01.

¹⁴ See, e.g., Sanctions Board Decision No. 61 (2013) at para. 25.

¹⁵ Sanctions Board Decision No. 69 (2014) at para. 22.

from the misconduct or the Contract. The Sanctions Board has previously found sufficient evidence of intent to obtain a financial or other benefit or to avoid an obligation where the record showed that misrepresentations were made in response to a tender requirement.¹⁶ The Sanctions Board has reached this finding “[i]rrespective of the bid requirement’s actual significance, and the subjective assessment thereof by a bidder.”¹⁷ The Bidding Documents in the present case required disclosure of information regarding work experience and average annual financial turnover. The Respondent’s alleged misrepresentations, introduced in template forms set out in the Bidding Documents and supported by additional documents (copy of contract, reference letters), appear directly responsive to those requirements. Moreover, the alleged misrepresentations appear to have been instrumental in rendering the Bid compliant with minimal requirements and more competitive among other submissions. Although the Respondent’s actual revenues, as demonstrated by documents from national authorities, fell well below the minimum average turnover required in the Bidding Documents, misrepresentations in the Bid reflected a company with much higher turnover, as demonstrated in part by the high values of the asserted Municipal Contracts. The Respondent does not present any evidence to rebut a finding of intent, but argues that it did not seek to benefit from the misconduct because it was initially unaware of both the Bid and the Contract, and that no actual benefit ultimately accrued to the Respondent, but rather reputational harm.

38. The Sanctions Board notes that the standard for a finding of intent under the applicable definition of fraudulent conduct has been met. The misrepresentations in the Bid served to render the Bid compliant with related requirements and to improve the Respondent’s likelihood of winning and benefitting from the Contract. The Respondent’s defenses relate instead to the issue of its liability for the actions of its representatives, which the Sanctions Board reviews in the next section.

C. The Respondent’s Liability

39. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.¹⁸

40. In the present case, the Respondent argues that it should not be held liable for the alleged misconduct, because the former Executive Director (who decided that the Respondent should bid on the Contract and authorized the Agent to represent the Respondent) and the Agent (who submitted the Bid in Lebanon and oversaw performance of works under the Contract) both acted well outside the scope of their respective authorities, sought to serve their own interests, withheld all information about the Contract, bidding therefor, payments therefrom, and performance thereof from others at the Respondent, and circumvented or violated the Respondent’s internal procedures designed to prevent such conduct. INT asserts that the engagement of the Agent was a calculated

¹⁶ See, e.g., Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 83 (2015) at para. 52; Sanctions Board Decision No. 88 (2016) at para. 37; Sanctions Board Decision No. 92 (2017) at para. 72.

¹⁷ Sanctions Board Decision No. 71 (2014) at para. 76.

¹⁸ See, e.g., Sanctions Board Decision No. 98 (2017) at paras. 50-51.

step in the interests of the Respondent and disputes the Respondent's "rogue employee" defense with respect to both the former Executive Director and the Agent.

41. The Sanctions Board observes that the burden of proof with respect to a "rogue employee" defense, as a rule, lies with the respondent. The Respondent has not satisfied this burden in the present proceedings and has presented arguments inconsistent with or poorly supported by the evidentiary record. For example, the Respondent proposes that the former Executive Director and the Agent benefited personally from the misconduct, but the Respondent also acknowledged during the hearing that this submission is mere speculation not supported by identifiable evidence. Further, the Respondent argues that no benefit accrued to the Respondent from the fraudulent misconduct, yet documents and statements in the record reflect that the Respondent has not taken steps to disavow the Contract; has maintained a relationship with the Agent; and appears to have taken no action, disciplinary or legal, against the former Executive Director. Finally, although the Respondent's submissions throughout these proceedings focus on staffing and payments made in or through the Lebanon branch during the performance of the Contract, the misconduct at issue in this case occurred at a different time – during the bidding process and prior to the establishment of that branch. In spite of an admitted personal discussion with the former Executive Director and the fact that the Bid was most likely prepared in Bulgaria, not Lebanon, the Respondent has ultimately proffered no persuasive evidence of "rogue employee" actions or meaningful internal measures relating to the conduct of its staff at that time.

42. In these circumstances, the Sanctions Board concludes that the Respondent can be held liable for the actions of its management and/or staff involved in preparing and submitting the Bid that included the misrepresentations.

D. Sanctioning Analysis

1. General framework for determination of sanctions

43. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section III.A, sub-paragraph 8.01(ii) 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 III.A, sub-paragraph 9.01. The range of sanctions set out in Section III.A, sub-paragraph 9.01 includes: (a) reprimand; (b) conditional non-debarment; (c) debarment; (d) debarment with conditional release; and (e) restitution. As stated in Section III.A, sub-paragraph 8.01(ii) of the Sanctions Procedures, the Sanctions Board is not bound by the SDO's recommendations.

44. 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.¹⁹ The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented in each case.²⁰

¹⁹ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

²⁰ See Sanctions Board Decision No. 44 (2011) at para. 56.

45. The Sanctions Board is required to consider the types of factors set forth in Section III.A, sub-paragraph 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 Group Sanctioning Guidelines (the “Sanctioning Guidelines”). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. The Sanctioning Guidelines further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after a minimum period of three years.

46. Where the Sanctions Board imposes a sanction on a respondent, it may also, pursuant to Section III.A, sub-paragraph 9.04(b) of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of the respondent.

2. Factors considered in the present case

a. Severity of the misconduct

47. Section III.A, sub-paragraph 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies various examples of severity that may merit aggravation, including with respect to the frequency and manner of conduct. The Sanctions Board finds that the number of forgeries comprising the Respondent’s misrepresentations in the present case, paired with their attribution to public authorities, warrants aggravation.²¹

b. Voluntary corrective action

48. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where the respondent took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies several examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of those actions to be considered as potential indicia of the respondent’s genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.²²

49. *Cessation of misconduct*: Section V.B.1 of the Sanctioning Guidelines suggests that mitigation may be appropriate where a respondent ceases to engage in misconduct and the record reflects “genuine remorse and intention to reform.” The Respondent asserts that its inquiry to Lebanese national authorities to verify that the Respondent’s Lebanese branch was properly established is “a kind of cessation of misconduct” and supports the Respondent’s request for exculpation or mitigation. The Sanctions Board has applied mitigation on this basis where the management of a respondent acted promptly and took meaningful corrective measures to halt the

²¹ Cf. Sanctions Board Decision No. 122 (2020) at para. 31 (forgery of a required and official document with intent to conceal its inauthentic nature).

²² See, e.g., Sanctions Board Decision No. 106 (2017) at para. 39.

sanctionable practices, such as terminating business relationships with other participants in the misconduct and formally revising relevant internal processes.²³ Conversely, the Sanctions Board declined mitigating credit where the asserted action to discontinue the misconduct was not effective or timely.²⁴ In the present case, the Sanctions Board finds that the evidence of an inquiry to a third party is unrelated to the underlying misconduct, let alone reflective of a conscious and voluntary cessation of that misconduct. Therefore, Sanctions Board declines to apply any mitigation on this ground.

50. *Effective compliance program:* Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent’s “[e]stablishment or improvement, and implementation of a corporate compliance program” and reflects “genuine remorse and intention to reform.” The Sanctions Board has previously declined to apply mitigation where the record contained no evidence that the respondent had in fact implemented compliance measures,²⁵ or where the evidence did not demonstrate the type of measures that would prevent or address the type of misconduct at issue.²⁶ The Respondent requests mitigation for the internal integrity mechanisms assertedly in place at the time of the misconduct, as well as additional measures implemented since INT’s allegations were articulated. INT supports limited mitigation on this basis and submits that, in contrast to recently implemented measures, the Respondent’s claim of internal controls prior to the misconduct is not supported by evidence. The record includes a 2019 Code of Conduct with broad requirements regarding professional behavior and integrity measures, documentary evidence of a two-day training in April 2019 conducted by the Respondent’s counsel, and affidavits from the Respondent’s management and staff affirming commitment to the Code of Conduct. All of these documents appear to have been prepared during several weeks in April 2019, approximately two months after issuance of the Notice. The Sanctions Board observes that this evidence of internal measures omits any presentation of specific controls related to the misconduct at issue (fraud in the bidding process). The Sanctions Board declines to apply any mitigation on this basis.

c. Cooperation

51. Section III.A, sub-paragraph 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 identifies a respondent’s assistance with INT’s investigation, an internal investigation, admission or acceptance of guilt or responsibility, and voluntary restraint from bidding on Bank-financed tenders as examples of cooperation.

²³ See, e.g., Sanctions Board Decision No. 56 (2013) at para. 64; Sanctions Board Decision No. 63 (2014) at para. 105.

²⁴ See, e.g., Sanctions Board Decision No. 67 (2014) at para. 39.

²⁵ See, e.g., Sanctions Board Decision No. 45 (2011) at para. 74 (declining to apply mitigation for the respondent’s asserted willingness to pursue corporate measures, absent evidence of actual implementation); Sanctions Board Decision No. 85 (2016) at para. 44 (declining to apply mitigation where the record did not contain evidence of the respondent’s asserted internal policies).

²⁶ See Sanctions Board Decision No. 65 (2014) at para. 77; Sanctions Board Decision No. 69 (2014) at para. 39.

52. *Assistance and/or ongoing cooperation:* Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance with INT’s investigation or ongoing cooperation, “[b]ased on INT’s representation that the respondent has provided substantial assistance” as well as “the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” The Sanctions Board has previously granted mitigation under this factor where a respondent met with INT on several occasions and provided relevant information and documentation,²⁷ or replied to INT’s show-cause letter and follow-up inquiries.²⁸ The Sanctions Board has declined mitigation where respondents’ statements to INT revealed substantial internal inconsistencies,²⁹ “failed to show the type of candor and cooperation as would warrant mitigation,”³⁰ or otherwise lacked credibility and were inconsistent with previous assertions.³¹ In the present case, the Respondent requests, and INT supports, mitigation based on the Respondent’s cooperation with INT’s investigation. The record reflects that the Respondent’s executive directors, staff, and the Agent all appeared to be responsive during the investigation, including via the reply to INT’s show-cause letter, disclosure of documents, arrangements for an external auditor to cooperate with INT, and participation in at least eight recorded interviews with INT’s investigators in August 2017. The Sanctions Board also notes, however, that some of the statements and arguments made by the Respondent during the investigation and these sanctions proceedings have been contradictory and speculative. The Sanctions Board finds such conduct, on the whole, to warrant only limited mitigation.

53. *Internal investigation:* Section V.C.2 of the Sanctioning Guidelines refers to cooperation where a respondent has “conducted its own, effective internal investigation of the misconduct and relevant facts . . . and shared results with INT.” In examining this sanctioning factor, the Sanctions Board has considered whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience; whether the respondent shared its findings with INT during INT’s investigation or as part of the sanctions proceedings; and whether the respondent has demonstrated that it followed up on any investigative findings and recommendations.³² The Respondent asserts that it “convened an internal investigative body” in response to INT’s allegations. INT opposes mitigation on this basis, claiming lack of corroborating details or evidence. The record does not include any evidence or details of the Respondent’s asserted investigative actions. The Sanctions Board declines to apply any mitigation on this basis.

54. *Admission/acceptance of guilt/responsibility:* Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent’s admission or acceptance of guilt or responsibility, with attention to the scope of any such admission. The Sanctions Board has granted

²⁷ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 58; Sanctions Board Decision No. 92 (2017) at para. 122.

²⁸ See, e.g., Sanctions Board Decision No. 51 (2012) at para. 54; Sanctions Board Decision No. 92 (2017) at para. 122.

²⁹ Sanctions Board Decision No. 61 (2013) at para. 44.

³⁰ Sanctions Board Decision No. 77 (2015) at para. 54.

³¹ Sanctions Board Decision No. 75 (2014) at para. 34.

³² See, e.g., Sanctions Board Decision No. 74 (2014) at para. 43; Sanctions Board Decision No. 77 (2015) at para. 56; Sanctions Board Decision No. 83 (2015) at para. 97.

limited mitigation on this basis where the respondent admitted to certain facts without accepting responsibility for misconduct during the investigation, but fully conceded to the allegations in the written response.³³ INT appears to support mitigation for the Respondent's admission that the Bid contained misrepresentations of the Respondent's work experience. The Respondent has, indeed, consistently agreed that the Bid contained forged reference letters for the Municipal Contracts and misrepresented various details of the Municipal Contracts. The Respondent also does not dispute the alleged misrepresentations regarding its financial turnover and, during INT's investigation, its current Executive Director agreed that the claimed turnover was excessive for at least 2012. However, the Respondent has insisted throughout these proceedings that it is not culpable for the misconduct. In these circumstances, and noting the absence of any acceptance of responsibility, the Sanctions Board declines to apply mitigation.

d. Period of temporary suspension

55. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the Respondent's period of temporary suspension. The Respondent has been temporarily suspended since the SDO's issuance of the Notice on February 13, 2019, and both parties have made additional submissions in these proceedings.

e. Other considerations

56. Under Section III.A, sub-paragraph 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."

57. *Lack of candor*: The record reflects that, notwithstanding the Respondent's forceful and consistent position that the Agent acted without authorization and even in violation of national law, the Respondent's management made an affirmative decision to maintain professional relations with the Agent in relation to the Contract. The Sanctions Board additionally notes the unsubstantiated and admittedly speculative claims made by the Respondent throughout the proceedings (including during the hearing) regarding the former Executive Director's benefit from the misconduct and the former Executive Director's actions to conceal the Bid and Contract from the Respondent, as well as specific assertions regarding Bulgarian law that were ultimately not supported by evidence. As the Sanctions Procedures make clear, untruthful or non-credible statements during a hearing may be construed against the party making such statements.³⁴ The Sanctions Board finds this conduct reflective of a lack of candor on the Respondent's part, relevant to the Respondent's culpability and responsibility for the fraud, and deserving of aggravation.

58. *Adverse consequences of debarment*: The Respondent requests mitigation on this basis, noting possible "severe reputational damage" and loss of business opportunities. INT opposes,

³³ See Sanctions Board Decision No. 105 (2017) at para. 30 (observing that the respondent (i) during the investigation, admitted to the solicitations in question but did not accept responsibility for any corrupt conduct and (ii) in the Response, conceded that he engaged in the actions alleged by INT).

³⁴ Sanctions Procedures at Section III.A, sub-paragraph 6.03(c).

citing Sanctions Board precedent. As the Sanctions Board has repeatedly held, the expected future business impact of a sanction on a respondent firm is not relevant to a respondent's culpability for the alleged misconduct and the Sanctions Board's analysis in a specific case.³⁵ Similarly, no mitigation is warranted in the present case.

59. *Absence of aggravating circumstances:* The Respondent requests mitigation for lack of: harm to public safety or welfare, involvement of a public official in the misconduct, history of misconduct, or a breach of confidentiality. These are potential aggravating factors under the sanctions framework.³⁶ As INT notes in its Reply, the Sanctions Board has previously held that the absence of aggravating circumstances does not warrant mitigation but is a neutral fact.³⁷ Similarly, the Sanctions Board declines to apply any mitigation on this basis in the present case.

60. *Passage of time:* The Sanctions Board has previously granted mitigation based on the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.³⁸ The Respondent requests mitigation based on the "considerable amount of time" between the cessation of settlement negotiations between the Respondent and INT and the present sanctions proceedings. INT supports some mitigation on this basis. The record does not clarify the timing of confidential settlement negotiations between INT and the Respondent. However, the record reflects that, by the time that the Notice was issued, approximately three years had passed since the beginning of INT's investigation and approximately six years had passed since commission of the misconduct. The Sanctions Board takes these delays into account in determining the Respondent's final sanction.

E. Determination of Appropriate Sanction

61. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;³⁹ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁴⁰ of an

³⁵ See, e.g., Sanctions Board Decision No. 120 (2019) at para. 66.

³⁶ See Sanctions Procedures at Section III.A, sub-paragraph 9.02; WBG Sanctioning Guidelines at Sections IV.A, IV.B.

³⁷ See, e.g., Sanctions Board Decision No. 90 (2016) at para. 49.

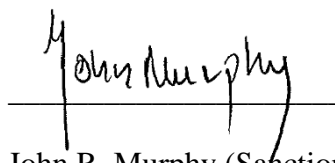
³⁸ See, e.g., Sanctions Board Decision No. 79 (2015) at para. 54.

³⁹ A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(i), n.14.

⁴⁰ A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) 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. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(ii), n.15.

otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of three (3) years and one (1) month beginning from the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented effective integrity compliance measures in a manner satisfactory to the World Bank Group, including an anti-fraud training program for its employees, measures relating to the process of bid preparation, and disciplinary action against any staff or representatives involved in the misconduct at issue in this case and who remain with the Respondent. This sanction is imposed on the Respondent for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the May 2010 Procurement Guidelines.

62. The ineligibility of the Respondent shall extend across the operations of the World Bank Group. 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 that they may determine 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.⁴¹



John R. Murphy (Sanctions Board Chair)

On behalf of the
World Bank Group Sanctions Board

John R. Murphy
Cavinder Bull
Mark Kantor

⁴¹ 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 that 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.