

Date of issuance: May 6, 2020

**Sanctions Board Decision No. 127
(Sanctions Case No. 594)**

**IBRD Loan No. 8351-BY
Belarus**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 594 (the “Respondent”), together with certain Affiliates, with a minimum period of ineligibility of six (6) years beginning from the date of this decision.² This sanction is imposed on the Respondent for fraudulent practices.

I. INTRODUCTION

1. The Sanctions Board convened in April 2020 as a panel composed of John R. Murphy (Chair), Alejandro Escobar, and Maria Vicien Milburn to review this case. Neither the Respondent nor the World Bank Group’s Integrity Vice Presidency (“INT”) requested a hearing in this matter. Nor did the Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.³

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 October 16, 2019 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) submitted by INT to the SDO (undated);
- ii. Response submitted by the Respondent to the Secretary to the Sanctions Board on November 19, 2019 (the “Response”); and

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 sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraphs 33 and 42.

³ See Sanctions Procedures at Section III.A, sub-paragraph 6.01.

- iii. Reply submitted by INT to the Secretary to the Sanctions Board on December 19, 2019 (the “Reply”).

3. On October 16, 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 eligibility⁴ with respect to any Bank-Financed Projects,⁵ 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 a sanction of debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. Specifically, the SDO recommended that the Respondent be debarred for a minimum period of four (4) years and nine (9) 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 practices for which it 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 Biomass District Heating Project (the “Project”) in the Republic of Belarus (the “Borrower”), which seeks to scale up the efficient use of renewable biomass in generation of heat and electricity within select urban areas of Belarus. On April 8, 2014, IBRD entered into a loan agreement with the Borrower to provide approximately US\$90 million for the Project (the “Financing Agreement”). The Project became effective on July 31, 2014, and is scheduled to close on October 31, 2021.

5. The Financing Agreement delegated implementation of the Project to a national agency (the “PIU”), which issued bidding documents for various tenders under the Project, including the three tenders at issue in the present case. The tenders each related to construction of boilers or establishment/improvement of heat generation systems in three separate regions of Belarus (“Contracts 1, 2, and 3,” respectively). Each of the tenders received a number of bids from individual bidders and consortia. INT’s allegations relate to three separate bids submitted by three different consortia (“Bids 1, 2, and 3,” and “Consortia 1, 2, and 3,” respectively). The three Consortia involved four companies (“Firms A, B, C, and D,” respectively) in different

⁴ 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.

⁵ 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).

configurations.⁶ Ultimately, Consortium 1 was awarded Contract 1, Consortium 2 was not selected for Contract 2, and Consortium 3 was awarded Contract 3.

6. INT submits that the Respondent acted as an agent for at least one member of each of the bidding Consortia and led preparation and submission of each of the Bids. INT alleges that, in this role, the Respondent made a number of misrepresentations in a manner constituting fraudulent practices.

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 shall follow the World Bank’s Guidelines: Procurement of Goods, Works, and Non-consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the “January 2011 Procurement Guidelines”). The bidding documents for Contracts 1, 2, and 3 each include language setting out the Bank’s authority to sanction and definitions of sanctionable practices that are consistent with the January 2011 Procurement Guidelines. Paragraph 1.16(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.⁷

⁶ Consortium 1 involved Firm A and Firm B; Consortium 2 involved Firm B and Firm C; Consortium 3 involved Firm A and Firm D.

⁷ January 2011 Procurement Guidelines at para. 1.16(a)(ii), n.21.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

11. INT alleges that the Respondent engaged in fraudulent practices by knowingly making various misrepresentations in each of the three Bids, including via false signatures, false financial background information, false guarantee documents, and inaccurate experience descriptions. INT argues that the Respondent acted as an agent of Firm A and Firm C with respect to each of the Bids. INT asserts that each misrepresentation corresponded to requirements set out in the relevant bidding documents and therefore was made to “potentially obtain” a benefit. INT submits that aggravation is warranted for the repetitive nature of the Respondent’s conduct and that the Respondent’s cooperation warrants “only very limited” mitigation.

B. The Respondent's Principal Contentions in the Response

12. The Respondent acknowledges that it was involved in compiling documentation for each of the Bids. Additionally, the Respondent does not dispute that the Bids included the specific misrepresentations described by INT. However, the Respondent denies acting as an agent or representative of Firm A and submits that its relationship with that company was only as a sub-contractor on the eventual Contract 1. The Respondent does not specifically comment on the alleged agency relationship with Firm C, but asserts that its work with respect to Bid 2 involving Firm C was at the request of Firm A. The Respondent also denies responsibility for misrepresentations in each of the Bids, attributes “all information” in those bids to the relevant “foreign partners,” and asserts that national authorities have determined that there was “no evidence of illegal actions” on part of the Respondent or its staff in relation to one of the false bank guarantees. With respect to potential sanctioning factors, the Respondent states that it acted cooperatively during the investigation and continues to fulfill its business obligations in a competent manner.

C. INT's Principal Contentions in the Reply

13. INT submits that it has met its burden of proof to show that it is more likely than not that the Respondent engaged in fraudulent practices and argues that the Respondent’s conduct was knowing or at least reckless. INT reiterates that the Respondent’s agency relationship with respect to Firm A is supported by documentary evidence, argues that the Respondent was deeply involved in tender preparation, and submits that potential findings of national authorities should not govern the outcome of the present proceedings. INT supports only limited mitigation for the Respondent’s cooperation and argues that the Respondent’s conduct was not forthcoming and impeded INT’s investigation of the misconduct. INT also opposes any credit for the Respondent’s claimed good business conduct, based on Sanctions Board precedent.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

14. The Sanctions Board will first consider whether the World Bank Group’s sanctions system has in personam jurisdiction with respect to the Respondent, i.e., whether the Respondent’s role relating to the Bids exposes it to sanction by the Bank. If so, the Sanctions Board will next consider

whether it is more likely than not that the Respondent engaged in the alleged fraudulent practices and what sanction, if any, should be imposed on the Respondent.

A. Jurisdiction

15. INT alleges that the Respondent should be held liable for misrepresentations in the Bids because of the company's role as an agent for Firm A (a consortium partner in Bids 1 and 3) and Firm C (a consortium partner in Bid 2). In support of this contention, INT refers to an agreement (the "Cooperation Agreement") between the Respondent and Firm A and statements from representatives of Firm A and Firm C. The Respondent contests this point and submits that its role was limited to that of a sub-contractor for Firm A, as articulated in a later separate agreement between Firm A and the Respondent. The Respondent argues that the Cooperation Agreement was merely a draft, was not validly executed (it was signed but did not include an additional stamp from the Respondent), and therefore cannot be used to characterize the relationship between Firm A and the Respondent.

16. The Sanctions Board does not accept the Respondent's assertion that the Cooperation Agreement is necessarily invalid. As INT points out in the Reply, the document was signed by both parties. On its face, the document appears to be a final and fully executed agreement. Moreover, following execution of the document, the parties acted in accordance with the Cooperation Agreement, providing further support of its validity. The absence of an additional stamp from the Respondent's side is not sufficient in this case for a finding that the Cooperation Agreement was invalid. Furthermore, the Cooperation Agreement allows the Respondent to act on behalf of Firm A in the context of the Respondent's specific planned services for Firm A. Therefore, the Sanctions Board considers the Cooperation Agreement as prima facie evidence of agency in that particular relationship between Firm A and the Respondent. However, INT's allegations in these proceedings are not limited to that relationship; they relate to misrepresentations in three bids that involve three different consortia and four different consortium members. In these circumstances, the Sanctions Board finds that jurisdiction with respect to the Respondent has better support elsewhere, as detailed below.

17. The preface to the applicable definition of "fraudulent practice" reflects that jurisdiction in sanctions cases extends to "service providers" acting in the context of procurement under a Bank-financed contract.⁸ The evidence in these proceedings consistently reflects the Respondent's role as a service provider with respect to each of the three Bids. The Cooperation Agreement describes the Respondent as responsible for "execution of assignments of [Firm A]" and requires the Respondent to otherwise "assist" Firm A through various "[s]ervices," which include work to "compile and translate bid (tender) documents." The Respondent's statements to INT describe its work as "assistance" or "help" in connecting Firm A to partners and compiling bid documents. Additionally, representatives of Firms A, B, and C describe the Respondent as a company on which

⁸ January 2011 Procurement Guidelines at p. 6 ("Fraud and Corruption. 1.16. It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, **service providers** or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.^[FN] In pursuance of this policy, the Bank: (a) defines, for the purposes of this provision, the terms set forth below as follows: [definitions of sanctionable practices follow]." *Emphasis added.*)

they relied to put together bidding documents from the materials that the consortium members provided directly to the Respondent. A former representative of Firm D described relying on Firm A and the Respondent to compile Bid 3 and obtain a performance guarantee. Taken together, this documentary and testimonial evidence reveals that the Respondent provided services to compile, prepare, organize, and translate documents to be included in each of the Bids.

18. In conclusion, the Sanctions Board finds the record to support in personam jurisdiction with respect to the Respondent based on the company's demonstrated role as a service provider under the Project as contemplated within the relevant Guidelines.

B. Evidence of Fraudulent Practices

19. In accordance with the definition of "fraudulent practice" under the January 2011 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 a 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

20. INT asserts that the Respondent made various misrepresentations in the Bids, as follows: (i) false bank guarantees relating to all three Bids and (ii) false signatures, false experience claims, false financial information and documents, and false training certificates in Bid 2. The Respondent does not contest that the Bids included the misrepresentations as described, but attributes the contents of the Bids entirely to the consortium members and not the Respondent's staff. In these circumstances, the Sanctions Board will first examine whether the Bids included misrepresentations as alleged and next address the Respondent's involvement in bid preparation.

21. *Whether the Bids included misrepresentations:* In past decisions finding that respondents submitted false information or made a false statement, the Sanctions Board has considered various factors as indicative of a misrepresentation, including statements by third parties that were named in or supposedly issuing the alleged fraudulent documents,⁹ indicia of falsity in the documents themselves,¹⁰ and the respondents' own acknowledgments or absence of denial.¹¹ In the present case, the record includes several types of evidence that support findings of misrepresentations, including correspondence from financial institutions named in the false guarantees; statements from the purported signatory in Bid 2 (an executive of Firm B) and examples of valid signatures for comparison; correspondence from third parties (asserted partners and clients) named in the claims of experience; and significant indicia of falsity in financial statements attributed to Firm B, showing that these statements included documents and financial totals of another corporate entity. In light of the robust testimonial and documentary evidence of false statements and documents,

⁹ See, e.g., Sanctions Board Decision No. 100 (2017) at para. 32 (statement from the purported issuer of supply invoices presented by the respondent in its payment/reimbursement requests); Sanctions Board Decision No. 112 (2018) at para. 31 (statements from educational institutions named in the respondents' bids).

¹⁰ See, e.g., Sanctions Board Decision No. 98 (2017) at para. 33.

¹¹ See, e.g., Sanctions Board Decision No. 77 (2015) at para. 25; Sanctions Board Decision No. 97 (2017) at para. 42.

and in the absence of a rebuttal by the Respondent on this point, the Sanctions Board finds it more likely than not that the Bids contained the alleged misrepresentations.

22. *Whether the Respondent's staff was involved in bid preparation:* INT alleges that the Respondent was involved in preparing each of the Bids. The Respondent agrees that it compiled documents comprising the Bids and submitted it to the PIU, but denies having manipulated bid documentation and states that the relevant portions of the Bids were prepared by Firm A or "foreign partners." Testimonial and documentary evidence in the record reflects the following:

- i. *Bid 1 (Firms A & B):* The Respondent's manager of international relations (the "Respondent's Manager") separately contacted Firm A and Firm B and informed them of the tender. The Respondent's Manager and its chief legal officer (the "Respondent's CLO") prepared the consortium agreement to be signed between Firm A and Firm B. The Respondent's staff were responsible for compiling the documents for Bid 1, using technical and pricing information obtained from Firm A and Firm B. The Cooperation Agreement between Firm A and the Respondent tasked the Respondent with obtaining bank guarantees as needed. Firm B expected the Respondent to obtain any and all guarantees related to Bid 1 and sent information to the Respondent that was relevant to obtaining such documents. In addition, the Respondent's director (the "Respondent's Director") stated that he worked with a third party to obtain the performance guarantee for Bid 1, ultimately found to be false.
- ii. *Bid 2 (Firms B & C):* The Respondent prepared Bid 2 on behalf of Firm B without Firm B's knowledge, forging signatures and documents and using information obtained from Firm B for the purposes of preparing Bid 1. Specifically, in the context of working on Bid 1, the Respondent's Manager and other staff requested and received various financial information and records from Firm B. During those exchanges, staff of Firm B clarified a distinction between its own financial information and that of a related, larger company. The Respondent's Manager nevertheless requested the records of the larger company and promised to include a clarification for the PIU. In addition, the Respondent had already had other information relating to Firm B, also received during correspondence relating to Bid 1. When approached by INT, staff of Firm B denied knowledge of Bid 2, which bore inauthentic signatures on the Letter of Bid and other similar files relating to bid submission and included financial statements of the second, larger, corporate entity, attributed to Firm B without clarification. According to employees of Firm C, all documents attributed to Firm B in that bid were provided by the Respondent.
- iii. *Bid 3 (Firms A & D):* The Cooperation Agreement between Firm A and the Respondent assigned acquisition of bank guarantees to the Respondent. Former staff of Firm D stated that Firm A was responsible for obtaining the performance guarantee. The record does not indicate that staff of Firm A or Firm D participated in obtaining the fraudulent guarantee.

23. In these circumstances, the Sanctions Board finds it more likely than not that the Respondent's staff were involved in preparation of each of the Bids and made the alleged misrepresentations.

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

24. INT alleges that the Respondent acted knowingly or at least recklessly in making the alleged misrepresentations. The Respondent generally asserts that it did not intend to "conceal any information." During the course of the investigation, the Respondent's Director described having relied on a third party (a separate company) to obtain a performance guarantee for Bid 1. After INT submitted evidence to refute that assertion, the Respondent argued that its national investigative body nevertheless concluded that there was no evidence of illegal actions on the part of the Respondent or its staff.

25. 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.¹² The Sanctions Board has previously found that circumstantial evidence may support a finding of knowing misconduct;¹³ it reaches the same finding here. The record reveals that the Bids included significant misrepresentations that could not have been introduced through oversight. Evidence indicates that the misrepresentations in this case involved revision, supplementation, and misportrayal of authentic documents submitted by their original sources, particularly Firm B.

26. The Sanctions Board takes particular note of the false signatures in Bid 2; transposed company information in financial statements attributed to Firm B; and the Respondent's attempt, not supported by any evidence, to shift responsibility for a false performance guarantee to a third party. In the present case, the record supports a finding that the Respondent's staff knew, at the time that each of the Bids was submitted, that the relevant Bids contained misrepresentations. The Sanctions Board therefore finds that it is more likely than not that the misrepresentations misled, or attempted to mislead, a party in a manner that was knowing.

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

27. 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.¹⁴ INT submits that the Respondent's misrepresentations sought to satisfy the bidding requirements for Contracts under the Project. Indeed, the misrepresentations, which related to bid and performance guarantees and bidder qualifications, corresponded to specific requirements articulated in each set of the relevant bidding documents. As a service provider for each of the Bids, the Respondent was in a position to benefit from this

¹² Sanctions Procedures at Section III.A, sub-paragraph 7.01.

¹³ See, e.g., Sanctions Board Decision No. 112 (2018) at para. 35 (finding that at least some of the misrepresentations were, more likely than not, knowing, because the record did not "reveal any circumstances under which the [misrepresentations] could have happened as a result of error or oversight").

¹⁴ See, e.g., Sanctions Board Decision No. 114 (2018) at para. 41.

conduct, especially given the stated expectation to be retained as a sub-contractor if a contract was awarded by the PIU, “as a reward.”

28. In these circumstances, the Sanctions Board finds it more likely than not that the misrepresentations served to render the Bids compliant with related tender requirements in order to obtain the financial benefit of the Contracts.

C. The Respondent’s Liability for the Acts of its Employees

29. 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.¹⁵ Where a respondent entity has denied responsibility for the acts of its employees based on a “rogue employee” defense, the Sanctions Board has considered any evidence presented regarding the scope and adequacy of the respondent entity’s controls and supervision at the time of the misconduct.¹⁶ The record reflects that staff of the Respondent were directly involved in the preparation of the Bids and, more likely than not, inclusion of inauthentic information therein. The record also reflects that the staff acted within their scope of authority and in the interest of the Respondent; and the Respondent does not otherwise put forward a “rogue employee” defense. The Respondent’s argument that a deputy director of Firm A had compiled at least some of the bid documentation is contradicted by evidence in the record, including the Respondent’s own earlier statements, in which the Respondent described compilation of bids as one of its tasks. The Sanctions Board therefore finds the Respondent liable for the fraudulent conduct of its staff.

D. Sanctioning Analysis

1. General framework for determination of sanctions

30. 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.

31. 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

¹⁵ See, e.g., Sanctions Board Decision No. 98 (2017) at para. 51.

¹⁶ See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 53-54.

sanction.¹⁷ 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.¹⁸

32. 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.

33. 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

34. 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.

35. *Repeated pattern of conduct:* Section IV.A.1 of the Sanctioning Guidelines identifies a repeated pattern of conduct as one potential basis for aggravation. In past cases, the Sanctions Board has applied aggravation under this factor where misconduct related to multiple bids under the same project or misrepresentations were prompted by different requirements in the same tender.¹⁹ A key issue in the Sanctions Board’s analysis on this point has been whether the conduct could be attributed to a single course of action versus a pattern of distinguishable acts of misconduct.²⁰ In the present case, the Sanctions Board notes an array of misrepresentations perpetrated with respect to three separate bids involving different bidding consortia and different tender requirements. The misrepresentations were specific to each bid and not simply reiterated

¹⁷ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

¹⁸ See Sanctions Board Decision No. 44 (2011) at para. 56.

¹⁹ See Sanctions Board Decision No. 68 (2014) at para. 37 (misrepresentations in separate bids); Sanctions Board Decision No. 98 (2017) at para. 57 (misrepresentations relating to different bid requirements).

²⁰ See, e.g., Sanctions Board Decision No. 120 (2019) at para. 50.

throughout.²¹ In these circumstances, the Sanctions Board finds the record to reflect a repeated pattern of fraudulent conduct that merits substantial aggravation.

36. *Management's role:* Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply “[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct.” The Sanctions Board has applied aggravation where the record showed that senior members of a respondent entity’s management personally participated in the misconduct.²² The Sanctions Board notes its earlier finding that the misconduct involved multiple staff members, including the Respondent’s Manager, CLO, and the Director. The Sanctions Board finds these circumstances to warrant aggravation for the Respondent.

b. Cooperation

37. 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.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,²³ or replied to INT’s show-cause letter and follow-up inquiries.²⁴ The Sanctions Board has declined mitigation where respondents’ statements to INT revealed substantial internal inconsistencies,²⁵ “failed to show the type of candor and cooperation as would warrant mitigation,”²⁶ or otherwise lacked credibility and were inconsistent with previous assertions.²⁷

38. In the present case, the Respondent asserts that it acted cooperatively with respect to the investigation and provided “all requested information” at meetings with World Bank staff. INT acknowledges that the Respondent’s staff met and corresponded with INT, but argues that any mitigation on this basis should be limited by the nature of their statements, which INT describes as “not forthcoming” and contradictory. The record reflects that the Respondent’s Director and staff met with INT, that the company replied to INT’s show-cause letter, and that INT conducted

²¹ Cf. Sanctions Board Decision No. 117 (2019) at para. 33 (declining to apply aggravation for misrepresentations repeated in separate bids under the same project).

²² See, e.g., Sanctions Board Decision No. 66 (2014) at para. 36 (director); Sanctions Board Decision No. 70 (2014) at para. 32 (sole shareholder and business manager); Sanctions Board Decision No. 87 (2016) at para. 129 (several personnel, including the chairman and majority owner of one of the respondent firms); Sanctions Board Decision No. 93 (2017) at para. 97 (senior officials with ownership interests in the respondent company).

²³ See, e.g., Sanctions Board Decision No. 92 (2017) at para. 122.

²⁴ See, e.g., Sanctions Board Decision No. 51 (2012) at para. 54.

²⁵ Sanctions Board Decision No. 61 (2013) at para. 44.

²⁶ Sanctions Board Decision No. 77 (2015) at para. 54.

²⁷ Sanctions Board Decision No. 75 (2014) at para. 34.

an audit of the Respondent's books and records. 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 misleading, particularly the Respondent's unsupported argument (made to INT during the investigation) regarding the involvement of a third party in acquiring a performance guarantee for Bid 1. The Sanctions Board finds such conduct, overall, to nullify any possible mitigation for the Respondent's cooperative actions.

c. Period of temporary suspension

39. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the Respondent has been suspended from eligibility since the issuance of the Notice on October 16, 2019.

d. Other considerations

40. 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."

41. *Business conduct*: The Respondent broadly asserts that the company's business operations are in compliance with domestic and international laws and standards. INT opposes any mitigation on this basis. The Sanctions Board has generally declined to consider, in its sanctioning analysis, the respondent's history of performance, which is not relevant to the respondent's culpability or responsibility for the misconduct.²⁸ In these circumstances, the Sanctions Board similarly declines to apply any mitigating credit for the Respondent's asserted business conduct.

E. Determination of Appropriate Sanction

42. 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;²⁹ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider³⁰ of an 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

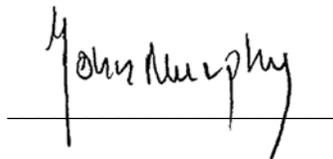
²⁸ See, e.g., Sanctions Board Decision No. 122 (2020) at para. 37.

²⁹ 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.

³⁰ 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.

of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of six (6) years 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 integrity systems to monitor and document any participation in tender-related processes, including where the respondent is a bidder, a member of a bidding group, an agent, or a service provider. This sanction is imposed on the Respondent for fraudulent practices as defined in Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines.

43. 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.³¹



John R. Murphy (Sanctions Board Chair)

On behalf of the
World Bank Group Sanctions Board

John R. Murphy
Alejandro Escobar
Maria Vicien Milburn

³¹ 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.