

Date of issuance: November 12, 2020

**Sanctions Board Decision No. 128
(Sanctions Case No. 683)**

**IDA Credit No. 5694-IN
India**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 683 (the “Respondent”), together with certain Affiliates, with a minimum period of ineligibility of four (4) years beginning from the date of this decision.² This sanction is imposed on the Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board convened in October 2020 as a panel composed of John R. Murphy (Chair), Olufunke Adekoya, and Rabab Yasseen to review this case. A hearing was held on October 8, 2020, following a request from the Respondent in accordance with Section III.A, sub-paragraph 6.01 of the Sanctions Procedures. Due to the COVID-19 pandemic, the Sanctions Board Chair determined that the hearing would be held virtually. Accordingly, the World Bank Group’s Integrity Vice Presidency (“INT”) and the Respondent participated in the hearing through their respective representatives attending via video conference from locations in the United States and India. 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 January 21, 2020 (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 February 20, 2020;

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 apply only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraphs 40, 49.

- iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on June 9, 2020 (the “Response”);
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on July 9, 2020 (the “Reply”); and
- v. Additional submissions filed by both parties with the Secretary to the Sanctions Board in July 2020 and October 2020.

3. On January 21, 2020, 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 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 three (3) years, 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 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 Andhra Pradesh Disaster Recovery Project (the “Project”) in the Republic of India (the “Borrower”), which seeks to restore, improve, and enhance the resilience of public services, environmental facilities, and livelihoods in targeted geographic areas, and to enhance the capacity of state entities to respond promptly and effectively in crisis or emergency situations. On July 16, 2015, IDA entered into a credit agreement with the Borrower to provide approximately US\$250 million for the Project (the “Financing Agreement”). The Project became effective on August 28, 2015, and is scheduled to close on March 31, 2021.

5. Between November 15, 2016, and February 7, 2017, the agency responsible for implementing the Project (the “PIU”) issued bidding documents (the “Bidding Documents”) relating to three contracts for electric power distribution and cable works under the Project (respectively, “Contracts 1-3” or, together, the “Contracts”). On February 14, 2017,

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 governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. See Sanctions Procedures at Section II(e).

March 20, 2017, and March 31, 2017, a joint venture of the Respondent and one other firm (the “JV”) submitted a bid on each of the three Contracts (respectively, “Bids 1-3” or, together, the “Bids”). Each of the Bids included statements relating to the Respondent’s work history and any pending litigation. Between August 7, 2017, and, September 22, 2017, the PIU issued bid evaluation reports for each of the Contracts; the JV was not selected for any of them.

6. INT alleges that the Bids improperly omitted the Respondent’s history of contract non-performance and/or pending litigation, and that the Respondent engaged in a fraudulent practice by knowingly including such misinformation in the Bids.

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 of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers (January 2011, revised July 2014) (the “July 2014 Procurement Guidelines”). The excerpts of the Bidding Documents in the record do not similarly identify a document that governs the procurement process but describe the Bank’s authority to sanction and include definitions of sanctionable practices that are consistent with the July 2014 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.⁵

⁵ July 2014 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 made fraudulent omissions or false statements in each of the three Bids. Specifically, INT asserts that the Bidding Documents required bidders to disclose a history of certain recent contract non-performance ("Requirement 1"), that the Respondent's contractual history had two instances of such non-performance via past contracts (the "Past Contracts") with public utility clients ("Client 1" and "Client 2"), and that the Respondent nevertheless failed to disclose that information in any of the Bids and affirmed the absence of such contract non-performance. INT adds that the Respondent's misleading omissions were knowing and served to render the Bids more competitive by avoiding the disclosure of disqualifying information.

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

12. The Respondent does not deny that the Bids did not disclose any past instances of contract non-performance and agrees that the Bids affirmatively stated that "contract non-performance did not occur." However, the Respondent contests having engaged in sanctionable practices and argues that the nuanced disclosure requirements in the Bidding Documents did not apply to its particular situation. Specifically, the Respondent submits that the Bidding Documents set out a five-part standard for "contract non-performance" subject to disclosure and argues that none of the Past Contracts rose to that standard. Instead, as the Respondent argues, the Past Contracts involved allegations and "erroneous," "arbitrary," and "illegal" debarments by Client 1 and Client 2, which all resulted in litigation and disputes that had not been resolved at the time of the Bids. The Respondent's Explanation requested consideration of a number of factors, including remedial actions, cooperation with INT, potential impact of any sanction, duration of temporary suspension, and absence of aggravating circumstances. In the Response, the Respondent asserted that it had cooperated with INT but declined to opine on any other sanctioning factors, noting that INT expressed no position on the same.

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 a fraudulent practice, and that the Respondent has failed to credibly dispute INT's arguments and evidence. INT reasserts that the Respondent omitted disclosure of its contractual non-performance, in contradiction with requirements articulated in the Bidding Documents. Additionally, INT submits that – if the Respondent was indeed in litigation proceedings in relation to the relevant debarments under the Past Contracts – the Respondent then necessarily violated a separate requirement, also under the Bidding Documents, ("Requirement 2") to disclose pending litigation. Finally, INT notes briefly that the Respondent improperly omitted disclosure of its debarment status, required under a separate provision ("Requirement 3").

D. Parties' Principal Contentions in Additional Submissions

14. As INT's Reply included an allegation not previously set out in the SAE – that the Respondent violated the requirement to disclose pending litigation – the Respondent requested

authorization to make a brief additional submission, which the Sanctions Board Chair granted. INT was permitted to respond.⁶ The Respondent argued in its submission that pending disputes were distinct from “pending litigation” that would be subject to disclosure Requirement 2 under the Bidding Documents. The Respondent also directed INT’s and the Sanctions Board’s attention to asserted traditions in India’s jurisprudence and dispute resolution, which favored amicable settlement rather than adversarial proceedings and allowed for lengthy, multi-year processes. INT responded that such a distinction does not comport with the purpose of the Bidding Documents and that the Respondent’s references to national law and practice cannot govern the Sanctions Board’s analysis. The Respondent requested leave to make a further submission. The Sanctions Board Chair denied the request and noted that the parties may address the matter further at the scheduled hearing.

15. Following the hearing, the Respondent requested admission of brief additional arguments and evidence (media coverage assertedly relating to the Project). In these materials, the Respondent submitted that delays in Project execution were connected to belated issuance of payments by the PIU. The Respondent additionally clarified that these materials were not presented in defense of the allegations at issue, but merely for the Sanctions Board’s attention. Noting the absence of objection from INT, the Sanctions Board Chair admitted the Respondent’s submission into the record.⁷

E. Parties’ Principal Contentions at the Hearing

16. In its presentation, INT reiterated the allegation that the Respondent’s failure to make certain disclosures in the Bids violated bidding requirements and amounted to fraudulent misconduct. INT acknowledged that the Respondent’s submissions during these sanctions proceedings provided new assertions and evidence to show that non-performance issues in connection with Clients 1 and 2 resulted in some litigation. However, INT maintained that the record still supported a finding that the Respondent failed to appropriately disclose non-performance in at least Bids 1-2, if not Bid 3. INT alleged further that the Respondent’s failure to disclose pending litigation in relation to both Clients 1 and 2 violated Requirement 2, regardless of the financial extent of claims at issue in such litigation.

17. The Respondent argued that its contract and performance histories with Client 1 and Client 2 were not subject to disclosure under Requirement 1, because – at the time of the Bids – both were being litigated in Indian courts of law or otherwise in dispute. The Respondent argued that these disputes were also not subject to disclosure under Requirement 2, because they either did not amount to litigation at all or they did not involve sufficient financial resources. The Respondent clarified that references to national law in its submissions sought merely to explain the overall context of dispute resolution between the Respondent and past clients, and not to govern the interpretation of disclosure standards for the relevant bidding process.

18. During the discussion with Sanctions Board members, the parties provided clarifications regarding the bidding process and the Respondent’s conduct during the relevant time period.

⁶ Both submissions were filed in July 2020.

⁷ Both the Respondent’s submission and INT’s expression of no objection were filed in mid-late October 2020.

Inter alia, the Sanctions Board learned that the Respondent did not submit any disclosure form in relation to Requirement 3, on the basis of its stated understanding that debarments without international scope need not have been disclosed. The Respondent further shared that the Respondent’s documents for the JV’s Bids were each completed by an internal tender-preparation unit, which received guidance from the Respondent’s legal department. The Respondent submitted that, in interpreting the bidding requirements, its staff relied on the plain language of the text and did not have significant prior experience with Bank-financed tenders. INT argued that, in case of any perceived ambiguity or complexity in the Bidding Documents, the Respondent bore the responsibility to seek clarification from the PIU – which it did not.

V. THE SANCTIONS BOARD’S ANALYSIS AND CONCLUSIONS

19. The Sanctions Board will first consider whether it is more likely than not that the Respondent engaged in the alleged fraudulent practice. The Sanctions Board will then determine what sanction, if any, should be imposed on the Respondent.

A. Evidence of Fraudulent Practice

20. In accordance with the definition of “fraudulent practice” under the July 2014 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. Misrepresentation

21. INT alleges that the Respondent made statements and omissions in each of the Bids, which misrepresented the Respondent’s background and violated at least one of the bidding requirements related to disclosure of a bidder’s past performance or litigation. The Respondent argues that the issues that were the focus of INT’s investigation – past contracts, debarments, and disputes – were not subject to the specific and nuanced disclosure requirements in the Bidding Documents. The Sanctions Board will first assess the scope of the relevant disclosure requirements and then determine whether the Bids contained misrepresentations in violation of those requirements, as alleged by INT.

22. *Scope of disclosure requirements in Bidding Documents:* The Bidding Documents for each of the three Contracts included the following requirements relating to disclosure of contract non-performance and litigation.

- i. **Requirement 1:** Bidders must confirm the absence of contract non-performance within the last five years prior to the deadline for Bid submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder have been exhausted. Bidders must provide documentation of the same via a template form (the “Disclosure Form”).

- ii. **Requirement 2:** Bidders must confirm, via the same Disclosure Form, that pending litigation does not in total represent more than 50% of that bidder's net worth. In this section, the Disclosure Form provided for disclosure of year of litigation, identification and value of the contract at issue, outcome as percentage of the Respondent's assets, and information regarding the dispute itself: parties to the litigation, their addresses, and the subject matter in dispute.

23. Excerpts of the Bidding Documents in the record include a copy of the Disclosure Form identified in relation to Requirements 1 and 2. The form is titled "Historical Contract Non-Performance" and provides for disclosure of any "Non-Performing Contracts in accordance with [Requirement 1]" as well as "Pending Litigation in accordance with [Requirement 2]." The Respondent argues that, for a matter to be disclosed under Requirement 1, the issue of non-performance must be fully litigated and all disputes resolved – with no remaining opportunity to appeal – prior to the deadline for bid submission. INT contests that Requirement 1 does include litigated matters that may retain an opportunity for appeal, as long as a given dispute was not itself pending before a judge. INT also argues that Requirement 1 presumes a direct connection between the non-performance and the legal dispute. With respect to Requirement 2, the Respondent argues that it only encompasses pending litigation in courts of law and excludes pending disputes or conflict resolution efforts, such as settlement negotiations, or litigation that involves less than 50% of the Respondent's net worth. INT asserts that a dispute's impact on net worth was a disqualifying factor for bidders but not an exemption from disclosure.

24. *Respondent's relevant history:* At the time of Bid submission, in February-March 2017, the Respondent's actual experience history, as evidenced by contractual and court documents in the record – included a 2012 contract with one power utility that had not been completed, resulting in a debarment of the Respondent by the client (Client 1) and litigation to quash that debarment (the Respondent did not prevail). The Respondent's experience history also included two contracts with a separate client (Client 2) which encountered performance issues by 2013, were terminated in 2014, and were followed by Client 2 debarring the Respondent in 2016. The Respondent contested that debarment in a regional court, also without success.

25. *Whether the Respondent met its disclosure obligations:* Each of the Bids included a completed Disclosure Form, which affirmed that "contract non-performance did not occur" and disclosed some pending litigation. In past decisions where the finding relied on the analysis of a disclosure requirement in bidding documents, the Sanctions Board has looked to the plain language of the requirement,⁸ and has held that a respondent's subjective assessment of a disclosure requirement⁹ and a respondent's national law framework¹⁰ are not determinative with respect to the Sanctions Board's own review of the allegations.

26. The Sanctions Board recalls that Requirement 1 appeared to demand disclosure of all contract non-performance, except where the fact of non-performance was being litigated and

⁸ Sanctions Board Decision No. 72 (2014) at paras. 37-38; Sanctions Board Decision No. 83 (2015) at para. 48.

⁹ Sanctions Board Decision No. 65 (2014) at para. 47.

¹⁰ Sanctions Board Decision No. 65 (2014) at para. 42.

Requirement 2 demanded disclosure of all pending litigation involving the bidder. The record reflects that none of the Bids disclosed contract non-performance under Requirement 1, in spite of significant alleged non-performance in the Respondent's history with Clients 1 and 2 – the debarments imposed by Clients 1 and 2 both took place before submission of any of the three Bids. When INT provided evidence of these facts, the burden shifted to the Respondent to effectively dispute the allegation, i.e., to show that a disclosure was indeed made or that certain circumstances (such as pending litigation) had exempted the Respondent from disclosure under Requirement 1.

27. The Sanctions Board finds that the Respondent has not borne this burden. First, the Respondent does not dispute the veracity of INT's inculpatory evidence on this point. Second, the Respondent's evidence of litigation relevant to Clients 1 and 2 is sparse with respect to both substance and timing of disputes. It does not show to a sufficient degree that litigation or a dispute resolution process relating to the asserted non-performance was pending at the time of Bid 1, Bid 2, and Bid 3. Instead, the Respondent's evidence reflects some litigation against Client 1 that was pending before Bid 1 but was concluded by submission of Bids 2 and 3; litigation against Client 2 that was resolved before Bid 1; and additional (but not appellate) litigation against Client 2 instituted before Bid 1 and pending during the entirety of the bidding process. The subject matter of the relevant suits varied from scope and validity of debarments to payment of outstanding bills. Finally, the Respondent did not provide evidence of arbitral or settlement proceedings to support its claim of amicable dispute resolution. In conclusion, the Sanctions Board finds it more likely than not that the Bids submitted by the JV misrepresented – in at least one instance – the Respondent's history of contract non-performance.

28. The Sanctions Board similarly finds that the Respondent has not borne its burden to show that it complied with disclosure Requirement 2, which related specifically to pending litigation. All of the Disclosure Forms filed with the Bids provided for disclosure of litigation and related information, including parties, matters in dispute, and percentage of net worth affected by the dispute. As detailed above, the Disclosure Forms submitted on the Respondent's behalf listed almost none of the litigation that the Respondent refers to in discussion of Requirement 1. Bid 1 did not refer to the Respondent's suits against Clients 1 and 2; Bid 2 listed litigation against Client 1 and another party, but omitted required details such as the subject of the dispute and its impact on the Respondent's net worth; Bid 3 again did not list any litigation against Client 1 or 2, even though the Respondent simultaneously argues that civil litigation against Client 2 was instituted before Bid 1 and that it remained pending even at the time of these proceedings.

29. In these circumstances, the Sanctions Board finds it more likely than not that Disclosure Forms in Bids 1-3 misrepresented the Respondent's history of non-performance and/or ongoing litigation. This finding is based on documents in the record relating to the Respondent's contractual and debarment histories with Clients 1 and 2, documents relating to separate court proceedings between the Respondent and Clients 1 and 2, copies of Disclosure Forms submitted to the PIU, the Sanctions Board's assessment of disclosure requirements in the Bidding Documents for Bids 1-3, and both parties' arguments on these points.

2. Made knowingly or recklessly

30. INT argues that the Respondent's actions were likely knowing but, at a minimum, reckless. INT does not identify any evidence as particularly determinative of the alleged knowing nature of the Respondent's conduct. The Respondent states that it relied on its understanding of the Bidding Documents and has described its conduct as a possible "error of interpretation." INT submits that, even if the Respondent was genuinely confused as to its obligation requirements under the Bidding Documents at the time of Bid submission, it was reckless for its staff to proceed with the Bids without seeking clarification from the PIU – as instructed in the same Bidding Documents.

31. 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.¹¹ In assessing recklessness, the Sanctions Board considers whether circumstantial evidence indicates that a respondent was, or should have been, aware of a substantial risk but nevertheless failed to act to mitigate that risk.¹² In assessing *mens rea* with respect to an omitted disclosure, the Sanctions Board has held that a respondent's experience as a bidder and the apparent importance of the relevant disclosure requirement may support a finding that the omission of the disclosure was – at a minimum – reckless.¹³

32. The record does not reveal contemporaneous evidence of the Respondent's conduct at the time of Bid submission or the specific process of Bid preparation. Each of the Respondent's Disclosure Forms in Bids 1-3 was signed and stamped by the Respondent's General Manager (Bids 1-2) or President of Corporate Affairs (Bid 3). The Respondent does not contest that it was involved in preparing its Disclosure Forms or that it was otherwise responsible for ensuring that the Respondent's history was accurately represented in the JV's Bids. Indeed, during the hearing, the Respondent asserted that the Disclosure Forms were prepared by the Respondent's internal unit handling tender documents, in consultation with the Respondent's legal department.¹⁴ In addition, the Sanctions Board finds the Respondent's general experience as a bidder, the Bidding Documents' repeated reference to the need for disclosures at issue in this case, and the Respondent's ability to clarify any ambiguities in bidding requirements as relevant to its analysis.¹⁵

33. In these circumstances, the Sanctions Board finds the Respondent's decision to affirm the absence of contract non-performance in each of the three Bids and to omit ongoing litigation from

¹¹ Sanctions Procedures at Section III.A, sub-paragraph 7.01.

¹² See, e.g., Sanctions Board Decision No. 51 (2012) at paras. 33-39; Sanctions Board Decision No. 117 (2019) at paras. 22-23.

¹³ Sanctions Board Decision No. 56 (2013) at para. 46 ("Respondents' failure to disclose what they described themselves as a "marketing fee" - without any prior inquiry as to the scope of the disclosure requirement - appears to be at least reckless in light of Respondents' previous experience with bidding processes, and given that the importance and the broad scope of the disclosure requirement were apparent from its repetition at various stages of the selection process and the language used."); Sanctions Board Decision No. 60 (2013) at para. 98.

¹⁴ See supra Paragraph 18.

¹⁵ The Bidding Documents repeatedly invited the bidders' clarifications on any perceived ambiguities, including a scheduled pre-bid meeting to discuss such matters.

the same to be at least reckless. The Respondent's argument that it made a good faith error of interpretation is unavailing. The Bidding Documents required disclosure of information relating to the bidders' past non-performance and the PIU has a rational interest in knowing what bidders may have unfulfilled obligations to past clients. In addition, the Respondent's history with Clients 1 and 2 undisputedly included alleged non-performance, related debarments, and subsequent litigation. Nevertheless, the Bids disclosed none of those details, nor did the Respondent seek clarification or further guidance from the PIU. Although the Respondent argues in its pleadings that Requirements 1 and 2 were highly particularized and complex, the Respondent provides no evidence of internal due diligence, discussion, or correspondence to suggest that the matter at issue in these proceedings had caused any confusion or had been considered closely. The Respondent's conduct therefore reflects – at a minimum – reckless misrepresentation of facts in one or more of the Bids, in conflict with express requirements and obligations placed on the bidders.

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

34. 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 INT submits that omissions to disclose the Respondent’s contract history with Clients 1 and 2 were made in order to obtain the relevant contracts. The Respondent’s affirmative statements in the Disclosure Forms were directly responsive to requirements in the Bidding Documents, which provided the blank templates for this information. Moreover, the Respondent’s non-disclosure of information regarding contract non-performance and related ineligibility to bid in certain contexts would appear – on its face – to be relevant for consideration in a competitive bidding process. As the PIU noted in its bid review documents, it considered the Respondent’s non-disclosures a “misleading” effort to suppress information and declined to select the Respondent’s JV on this basis. In these circumstances, the Sanctions Board finds it more likely than not that the misrepresentation of facts in one or more of the Bids served to render the JV’s documents compliant with related requirements and to improve the Respondent’s likelihood of benefitting from the Contracts as a member of the bidding JV.

B. The Respondent’s Liability

35. 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 Where a respondent entity has denied responsibility for the acts of its employees based on a “rogue employee” defense, the

¹⁶ See, e.g., Sanctions Board Decision No. 114 (2018) at para. 41.

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

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

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.¹⁹

36. In the present case, the record reflects that the alleged misconduct involved the Respondent's General Manager and President of Corporate Affairs, each of whom signed at least one Disclosure Form affirming that the Respondent did not have a history of contract non-performance. The Respondent asserts that the Disclosure Forms were completed by the Respondent's employees tasked specifically with bid preparation and in consultation with legal staff of the Respondent. The Respondent has not presented a "rogue employee" defense or suggested that any of its staff acted outside their scope of responsibilities or against the Respondent's interest. As a whole, the record reflects that those employees of the Respondent who were involved in preparation and approval of documents comprising the Bids all acted within the course and scope of their employment. The record also reflects that these employees were more likely than not motivated by the intent of serving the Respondent in conduct relating to bid preparation. The Sanctions Board therefore finds the Respondent liable for the fraudulent conduct of its representatives.

C. Sanctioning Analysis

1. General framework for determination of sanctions

37. 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.

38. 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.²⁰ 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.²¹

39. 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

¹⁹ See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 53-54.

²⁰ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

²¹ See Sanctions Board Decision No. 44 (2011) at para. 56.

a proposed base sanction of debarment with the possibility of conditional release after a minimum period of three years.

40. 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

41. *Mode of the misconduct*: 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 and suggests that the specific manner of misconduct (pattern, sophistication) can render that misconduct more “severe” for purposes of sanctioning analysis. The Sanctions Board has previously applied aggravation where the mode of fraudulent conduct at issue had rendered it egregious²² or especially severe.²³ The record reflects that the Respondent’s misconduct generally served to conceal the Respondent’s history with Clients 1 and 2 from the PIU. In addition to representations relating to contract performance and litigation, the record reveals the Respondent’s failure to confirm absence of non-debarment, as required in the Bidding Documents. Although this issue was not a focus of the PIU’s review or of INT’s allegations, the Sanctions Board finds it consistent with the Respondent’s other misconduct in evading key bidding requirements. In summary, the consistent withholding of significant non-performance and litigation-related information in three separate Bids, the failure to confirm absence of debarments in the same Bids, and the failure to clarify relevant requirements with the PIU all reflect the Respondent’s misleading conduct as a member of the bidding JV. This warrants aggravation.

b. Voluntary corrective action

42. *Effective compliance program*: 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.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 declined mitigation where the record contained no evidence that the respondent had in fact implemented compliance measures.²⁴ The Respondent expresses willingness to implement appropriate remedial actions, including a multi-part corporate integrity compliance program. The record does not include evidence of actual implementation of any such measures. In these

²² Sanctions Board Decision No. 41 (2010) at para. 88.

²³ Sanctions Board Decision No. 122 (2020) at para. 31.

²⁴ See, e.g., Sanctions Board Decision No. 45 (2011) at para. 74 (finding no basis 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 does not contain evidence of the respondent’s asserted anti-bribery policy and related internal rules).

circumstances, the Sanctions Board declines to apply any mitigating credit. This finding is based on the record before the Sanctions Board at this time, and therefore is presented without prejudice to any future assessment of the World Bank Group's Integrity Compliance Office to more fully evaluate the adequacy and implementation of integrity compliance measures taken by the Respondent.

c. Cooperation

43. *Assistance and/or ongoing cooperation:* 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.” INT does not propose or otherwise support mitigation on this basis. The Respondent states broadly that “there is complete cooperation” but appears to be referring to its engagement in these sanctions proceedings following the investigation and its willingness to comply with remedial measures in the future. The record reveals that the Respondent did reply to INT’s show-cause letter but does not clarify how the firm or its representatives may have otherwise assisted the investigation. Furthermore, the Respondent’s assertions regarding pending litigation, while relevant to INT’s investigation, were not made clear until much later in the proceedings. In these circumstances, the Sanctions Board does not find the Respondent’s conduct to warrant mitigation.

d. Period of temporary suspension

44. 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 suspended since the issuance of the Notice on January 21, 2020. Although the proceedings were subject to various extensions and additional filings, the Sanctions Board does not find these items to have delayed the resolution of the present case.

e. Other considerations

45. 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.”

46. *Adverse consequences of debarment:* The Respondent submits that any sanction would harm the company and its employees. The Sanctions Board has repeatedly held that 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.²⁵ The

²⁵ See, e.g., Sanctions Board Decision No. 126 (2020) at para. 58.

Sanctions Board similarly declines to apply any mitigation based on the expected consequences of debarment asserted in these proceedings.

47. *Absence of aggravating circumstances:* The Respondent requests mitigation for the absence of various aggravating circumstances: severity of misconduct, magnitude of harm, past history of misconduct, and breach of confidentiality. The Sanctions Board has consistently found that the absence of aggravating factors is a neutral fact that does not warrant mitigation.²⁶ In the present case, the Sanctions Board again declines to apply any mitigation on this basis.

48. *History of performance:* The Respondent asserts that it is an award winning and public service oriented company that has been involved in many infrastructure projects that have improved developing and struggling communities. The Sanctions Board has generally declined to consider, in its sanctioning analysis, the respondent's history of performance or development contributions, often noting that this did not appear related to the respondent's culpability or responsibility for the misconduct.²⁷ In these circumstances, the Sanctions Board declines to apply any mitigating credit for the Respondent's asserted history of work.

D. Determination of Appropriate Sanction

49. 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;²⁸ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider²⁹ 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 of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of four (4) 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 measures to review and document the disclosure of any required information or materials during the bidding process. This sanction is imposed on

²⁶ See, e.g., Sanctions Board Decision No. 85 (2016) at para. 50; Sanctions Board Decision No. 106 (2017) at para. 48.

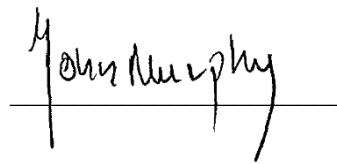
²⁷ See, e.g., Sanctions Board Decision No. 93 (2017) at para. 104; Sanctions Board Decision No. 117 (2019) at para. 45.

²⁸ 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.

²⁹ 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.

the Respondent for a fraudulent practice as defined in Paragraph 1.16(a)(ii) of the July 2014 Procurement Guidelines.

50. The Respondent's ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of this declaration of ineligibility to the other 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 declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.³⁰



John R. Murphy (Sanctions Board Chair)

On behalf of the
World Bank Group Sanctions Board

John R. Murphy
Olufunke Adekoya
Rabab Yasseen

³⁰ 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. More information about the Cross-Debarment Agreement is available on the Bank's website <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board#3> (see "Background and Reference Documents" section, item titled "Agreement for Mutual Enforcement of Debarment Decisions (April 9, 2010)").