

Date of issuance: July 9, 2014

**Sanctions Board Decision No. 71
(Sanctions Case No. 216)**

**IBRD Loan No. 4807-UA
Ukraine**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 216 (the “Respondent”), together with any entity that is an Affiliate² directly or indirectly controlled by the Respondent, with a minimum period of ineligibility of three (3) years beginning on the date of this decision. This sanction is imposed on the Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board considered this case via several plenary sessions held in person and through virtual means between December 2012 and February 2014. The Sanctions Board was composed of L. Yves Fortier (Chair), Ellen Gracie Northfleet, Catherine O’Regan, Denis Robitaille, Randi Ryterman, and J. James Spinner.³

2. A hearing was held on December 5, 2013, following requests from the Respondent and the World Bank Group’s Integrity Vice Presidency (“INT”), and in accordance with Article VI of the Sanctions Procedures. INT participated in the hearing through its representatives attending in person. The Respondent was represented by the Director of its Legal Department and outside counsel. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

¹ In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (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”). For avoidance of doubt, the term “World Bank Group” includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the 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 1.01(a), n.1.

² In accordance with Section 1.02(a) of the Sanctions Procedures, the term “Affiliate” means “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.”

³ Ellen Gracie Northfleet and J. James Spinner took part in the review of this case following their appointments to the Sanctions Board in April and May 2013, respectively.

3. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following submissions, as well as a number of other submissions on procedural and evidentiary matters:

- i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")⁴ to the Respondent on September 26, 2012 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated September 19, 2012;
- ii. Response submitted by the Respondent to the Secretary to the Sanctions Board on June 19, 2013 (the "Response");
- iii. Reply submitted by INT to the Secretary to the Sanctions Board on July 22, 2013 (the "Reply");
- iv. Additional materials submitted by INT to the Secretary to the Sanctions Board on November 15, 2013 ("INT's Additional Materials");
- v. Supplemental Response submitted by the Respondent to the Secretary to the Sanctions Board on November 20, 2013 (the "Supplemental Response"); and
- vi. Supplemental Reply submitted by INT to the Secretary to the Sanctions Board on November 25, 2013 (the "Supplemental Reply").

4. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarment with conditional release for the Respondent, together with any entity that is an Affiliate under its direct or indirect control. The EO recommended a minimum period of ineligibility of four (4) years, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section 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.

5. Effective September 26, 2012, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent, together with any entity that is an Affiliate under its direct or indirect control, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;⁵ (ii) be a nominated

⁴ Effective March 31, 2013, the EO's title changed to "IBRD/IDA Suspension and Debarment Officer" ("SDO"). For consistency with the Sanctions Procedures and the pleadings in this case, this decision refers to the former title.

⁵ For the avoidance of doubt, the scope of ineligibility to be awarded a contract will include, 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. See Sanctions Procedures at Section 9.01(c)(i), n.16.

sub-contractor, consultant, manufacturer or supplier, or service provider⁶ 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 project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as "Bank-Financed Projects")⁷ pending the final outcome of the sanctions proceedings.

6. In addition, the Respondent was temporarily suspended between May 10, 2012, and August 9, 2012, pursuant to Article II of the Sanctions Procedures, which provides for early temporary suspension prior to sanctions proceedings in certain circumstances. INT's request for early temporary suspension was based on allegations of obstruction that were not reiterated in the SAE in the present case.

II. GENERAL BACKGROUND

7. This case arises in the context of the Ukrainian Social Assistance System Modernization Project (the "Project"), which sought to improve the effectiveness of Ukraine's social assistance system by better targeting cash benefits and reducing the burden on beneficiaries. On November 28, 2005, the Bank and Ukraine (the "Borrower") entered into a loan agreement to provide the equivalent of US\$99.4 million to support the Project. The loan agreement required all goods, works, and services (other than consultants' services) to be procured in accordance with the World Bank's Guidelines for Procurement under IBRD Loans and IDA Credits (May 2004) (the "May 2004 Procurement Guidelines").

8. On November 30, 2009, the Borrower's implementing agency for the Project issued bidding documents for a contract to supply hardware and standard software required for the Project's implementation (the "Contract"). The Respondent submitted a bid on June 25, 2010 (the "Bid") and was awarded the Contract, signed by the implementing agency and the Respondent on October 26, 2010, and valued at the equivalent of approximately US\$29.6 million.

9. INT alleges that the Respondent engaged in fraudulent practices by submitting two forged certificates with its Bid.

III. APPLICABLE STANDARDS OF REVIEW

10. Pursuant to Section 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

⁶ A nominated sub-contractor, consultant, manufacturer or supplier, or 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. See Sanctions Procedures at Section 9.01(c)(ii), n.17.

⁷ For the avoidance of doubt, the term "Bank-Financed Projects" includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section 1.01(c)(i), n.3.

conclusion that it is “more likely than not” that the respondent engaged in a sanctionable practice. Section 8.02(b)(i) defines “more likely than not” to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice. As set forth in Section 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.

11. Under Section 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.

12. The alleged sanctionable practices in this case have the meaning set forth in the May 2004 Procurement Guidelines, which governed the Project’s procurement under the relevant loan agreement, and whose definition of fraudulent practice was repeated in the bidding documents for the Contract. Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines defines the term “fraudulent practice” as “a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract.” This definition does not include an explicit mens rea requirement such as the “knowing or reckless” standard adopted by the Bank from October 2006 onward.⁸ However, the legislative history of the Bank’s various definitions of “fraudulent practice” reflects that the October 2006 incorporation of the “knowing or reckless” standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.⁹ Accordingly, the Sanctions Board has held that the “knowing or reckless” standard may be implied under the pre-October 2006 definitions.¹⁰

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

13. This section summarizes contentions submitted by the parties as to whether, based on the record, it is more likely than not that the Respondent engaged in the alleged sanctionable practice. The evidentiary dispute that led to the inclusion of INT’s Additional Materials into the record was argued by the parties in separate submissions and is addressed further below in Paragraphs 39 to 50.

A. INT’s Principal Contentions in the SAE

14. INT alleges that the Respondent engaged in fraudulent practices by submitting, as part of its Bid and in response to a tender requirement, two certificates (the “Certificates”) falsely

⁸ See, e.g., Guidelines: Procurement Under IBRD Loans And IDA Credits (May 2004, rev. October 2006) at para. 1.14(a)(ii) (defining a “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”) (emphasis added).

⁹ See Sanctions Board Decision No. 41 (2010) at para. 75.

¹⁰ Id.

representing that two of the Respondent's employees had been certified by a company providing network security appliances (the "Purported Issuer"). According to INT, a former employee of the Respondent (the "Former Employee") stated to INT that the Respondent had submitted "fraudulent certificates" to satisfy the relevant tender requirement. In addition, INT notes that a representative of the Purported Issuer signed an attestation stating that the Certificates were false. INT asserts that, during interviews, senior staff of the Respondent acknowledged that the Respondent had included the Certificates in the Bid, but "either claimed that the documents were genuine or denied knowledge of fraud."

15. INT contends, as an aggravating factor, that email correspondence between the Former Employee and senior staff of the Respondent demonstrates that the Respondent's management was involved in the alleged misconduct. INT does not identify any mitigating factors.

B. The Respondent's Principal Contentions in the Response

16. The Respondent concedes that the Certificates were inauthentic, but denies having engaged in any knowing or reckless misrepresentation. According to the Respondent, the Certificates were obtained from a source that purported to be a training center and that the relevant employees did not know to be unauthorized. The Respondent asserts that neither the employees listed on the Certificates nor the Respondent itself knew that the Certificates were inauthentic at the time of the Bid's submission. The Respondent further asserts that it was not reckless because the record does not show any awareness by the Respondent at the time of the Bid's submission that the Certificates could be inauthentic or that there was a substantial risk of the Respondent's employees obtaining false certificates from unauthorized training centers, and because the Respondent had in place sufficient controls. With respect to intent, the Respondent argues that the Certificates were obtained long before the Bid's submission, and therefore could not have been knowingly created and submitted with an intent to influence the procurement process for the Contract. The Respondent further asserts that, in any event, it had no practical reason to submit false certificates because the Certificates were a "minor and easy-to-obtain component of the bidding process" and their omission in the Bid "could have been easily remedied" at a later date.

17. The Respondent asserts that, should the Sanctions Board find sufficient evidence of fraudulent practices, a lenient sanction "far below" the EO's recommended debarment for a minimum period of four years would be appropriate. The Respondent argues that, contrary to INT's assertion, the alleged misconduct was not "severe" as defined in the World Bank's Sanctioning Guidelines but rather "extraordinarily minor." The Respondent also asserts as mitigating factors that: the submission of inauthentic documents caused no actual or potential harm to the Borrower as the Respondent had two other employees who were properly certified as of the time of the Contract's award and the Respondent's performance of the Contract is unquestioned; the Respondent's management was not involved in the alleged misconduct; in response to INT's investigation, the Respondent has taken extensive voluntary corrective actions; and the Respondent cooperated with INT's investigation. The Respondent also requests that the Sanctions Board take into account the Respondent's period of temporary suspension, as well as sanctions previously applied by the Sanctions Board in similar cases.

Moreover, the Respondent asserts that additional mitigation is warranted because INT committed “gross misconduct in pursuing [its] investigation.”

18. As an evidentiary contention, the Respondent challenges the credibility of the Former Employee and the evidence that he provided to INT. The Respondent states that INT granted benefits to the Former Employee, including international relocation and employment by the World Bank, and claims that the Former Employee fabricated the fraud allegations “as part of a scheme to extort money from [the Respondent] and obtain a visa.” In addition, the Respondent argues that “a review of information provided by [the Former Employee] in this matter reveals internal inconsistencies, evidencing that [the Former Employee] lied to INT about threats to him by [the Respondent].” The Respondent also disputes the authenticity of the asserted copy of the Respondent’s internal email correspondence that INT refers to in the SAE to demonstrate the Respondent’s knowledge of the fraud, and which INT obtained from the Former Employee (the “Email Chain”). The Respondent argues that INT has breached its disclosure obligations under Section 3.02 of the Sanctions Procedures by failing to provide exculpatory evidence that may inform the Sanctions Board’s assessment of the weight to be given to the Former Employee’s evidence.

C. INT’s Principal Contentions in the Reply

19. INT asserts that the Respondent’s version of events as presented in the Response, i.e., that the Respondent’s employees were the victims of fraud by an unauthorized training center, is “implausible and unbelievable.” INT states that the Respondent fails to explain why it did not avail itself of earlier opportunities to provide INT or the Sanctions Board with this explanation, and that the Response contains no documentary evidence supporting this version of events aside from “made-for-litigation witness statements.” INT further argues that the Email Chain shows that, contrary to the Respondent’s claims, the alleged fraud was premeditated, and was committed with the knowing participation of the Respondent’s management. Referring to the fact that two other employees of the Respondent obtained genuine certificates from the Purported Issuer after the Bid’s submission, INT asserts that the Respondent provided no support for its claim that the certification of these employees was based on an internal policy requiring the Respondent to keep “resources in reserve in case of unforeseen circumstances.” INT asserts that, even if the Respondent’s version of events were accepted, “this version would prove that, at the very least, [the Respondent] was reckless in its actions.” According to INT, the record confirms a lack of controls or due diligence that was reckless because the employees “were aware of a substantial risk that the bid could contain false information.”

20. INT contests the Respondent’s claims for mitigation, asserting that: the absence of aggravating factors does not constitute grounds for mitigation; the alleged misconduct was not minor; the Respondent did not play a minor role in the misconduct, as it was the sole actor and a regional manager was involved; the Respondent’s claim of extensive corrective actions is baseless as the measures in question do not seem to reflect genuine remorse, but were taken in the hopes of mitigating a sanction; the Respondent did not cooperate with INT’s investigation; and INT has not acted inappropriately with respect to the Former Employee. INT also asserts that aggravation is warranted because the Respondent’s management was involved in the

misconduct; the Borrower suffered harm; and the Respondent impeded INT's investigation by threatening the Former Employee and his family.

21. With respect to the evidentiary matter raised by the Respondent, INT argues that the Respondent's focus on the Former Employee and the Email Chain is "principally a distraction," as the Email Chain is not central to the case. According to INT, the Respondent's "allegations of deceit and conspiracy" by the Former Employee are baseless, and the Former Employee's hiring by the Bank was necessary to "save him and his family from the Respondent's threats." In addition, INT contends that the Former Employee's credibility is confirmed by the fact that his statements are consistent with an explanation of events that is more coherent than the version proposed by the Respondent. INT argues that the Respondent's version of events belies belief as it implies that the Former Employee was able to accurately inform INT of the alleged fraud "four months before anyone at the Respondent knew [that the Certificates] were fake." With respect to the Email Chain, INT asserts that its authenticity was confirmed by a third party in an expert report (the "Expert Opinion").

D. INT's Additional Materials

22. INT's Additional Materials consist of INT's notes summarizing discussions between INT and the Former Employee regarding the Former Employee's relocation; basic information about the Former Employee's employment with the Bank, benefits granted to the Former Employee, and benefits generally provided to staff in his employment category; and a memorandum describing the delivery of the Former Employee's personal laptop computer to INT.

23. INT's Additional Materials were made available in camera to counsel for the Respondent in response to a determination issued by the Sanctions Board on November 12, 2013, as discussed below in Paragraphs 39 to 50. Pursuant to Section 5.01(c) of the Sanctions Procedures, the Sanctions Board Chair authorized the Respondent to file a Supplemental Response to address the evidence reviewed in camera. The Sanctions Board Chair also authorized INT to file a Supplemental Reply in response to the Supplemental Response.

E. The Respondent's Principal Contentions in the Supplemental Response

24. In the Supplemental Response, the Respondent asserts that INT's Additional Materials corroborate the Respondent's earlier challenges to the credibility of the Former Employee and evidence that he had provided to INT. According to the Respondent, INT's Additional Materials also further undermine the credibility of the Email Chain as they indicate that the Former Employee withheld his laptop for nearly fifteen months after his first meeting with INT, and therefore had "ample opportunity to tamper with or fabricate the electronic evidence."

25. In addition, the Respondent requests that the Sanctions Board order INT to make further disclosures, noting, among other grounds, that INT's Additional Materials indicate the existence of additional exculpatory material still withheld from the Respondent in violation of INT's disclosure obligations under Section 3.02 of the Sanctions Procedures.

F. INT's Principal Contentions in the Supplemental Reply

26. In its Supplemental Reply, INT counters the Respondent's challenges to the credibility of the Former Employee and the Email Chain, and opposes the Respondent's request for additional disclosures. First, INT reiterates its earlier contention that the Former Employee's credibility is not central to the merits of the case. In response to the Respondent's specific arguments regarding INT's Additional Materials, INT acknowledges that the Former Employee has been employed by the World Bank and relocated, but INT asserts that: discussions about the Former Employee's safety began only after he "had already provided the substantial part of his evidence to INT"; any measures designed to ensure the Former Employee's safety were taken at INT's initiative, rather than at the Former Employee's request; and the compensation granted to the Former Employee by the Bank does not demonstrate bias in his favor. INT additionally contests the Respondent's claim of a fifteen-month delay in the Former Employee's transfer of electronic evidence to INT, asserting that the Former Employee had previously given INT a copy of the Respondent's email database during INT's investigation of the alleged misconduct, and that the Expert Opinion concluded that the emails in question had not been altered since the Former Employee had copied them from the Respondent's computers.

27. INT opposes the Respondent's request that the Sanctions Board order INT to make further disclosures, asserting that it does not provide internal deliberative documents, and that the Bank's Staff Rules prohibit the disclosure of some of the information requested by the Respondent.

G. Presentations at the Hearing

28. As communicated to the parties in advance of the hearing, the hearing began with oral presentations regarding the Respondent's evidentiary requests (discussed below in Paragraphs 35 to 52) and the exculpatory or mitigating nature, if any, of INT's Additional Materials. The parties each initially reiterated their respective positions regarding the importance of the evidence provided by the Former Employee, and, accordingly, regarding the exculpatory or mitigating nature of materials relating to his interactions with INT. In response to the Sanctions Board's questions, INT clarified that it was relying on the Email Chain, which it had obtained from the Former Employee, but not on the Former Employee's testimony. Counsel for the Respondent reasserted that INT had an obligation under Section 3.02 of the Sanctions Procedures to disclose further details regarding the nature and timing of benefits that the Bank had granted to the Former Employee. INT argued that the Respondent's requests constitute discovery requests, which are not allowed under the Sanctions Procedures. The Sanctions Board Chair authorized the parties to each file, after the hearing, an additional submission regarding the Respondent's request for additional materials, addressing in particular whether and how any of the evidence requested by the Respondent may fall within the scope of Section 3.02 of the Sanctions Procedures.

29. In the second part of the hearing, which focused on the merits of INT's allegations against the Respondent, INT reiterated its challenges to the Respondent's version of events as presented in the Response, and reasserted that the Respondent had been at least reckless in

submitting forged certificates with its Bid. The Respondent countered that it had had no earlier opportunity to respond to INT's fraud allegations because, before being able to present its explanation to INT, it was informed by INT that the investigation had been suspended and that there was no need for the Respondent to respond to INT's inquiries. The Respondent further argued that INT had presented no evidence showing that, at the time of the Bid's submission, the Respondent was aware of a risk that the Certificates may be inauthentic.

30. In response to the Sanctions Board's questions, INT clarified that the Email Chain had been provided to INT by the Former Employee in May 2011, and stated that the Email Chain was among the emails that had been forensically examined by a third party. INT indicated that it had not specifically asked the Former Employee about the meaning of the Email Chain and whether the Email Chain contained any attachments that would have facilitated the understanding of the correspondence. When asked why it had not formally requested to interview the employees named on the Certificates, INT stated that it had had to suspend its investigation to ensure the Former Employee's safety, and that, when the investigation resumed, the Respondent opposed INT's audit.

31. When asked by the Sanctions Board to comment on the timing of the Former Employee's statement to INT that the Certificates were false, the Respondent stated that it could not explain how the Former Employee would have known that the Certificates were inauthentic before the Respondent assertedly became aware of the forgery as a result of INT's investigation. Rather, the Director of the Respondent's Legal Department questioned whether it could be inferred from the Former Employee's statements to INT in May 2011 that he knew that the Certificates were forged. With regard to documentary evidence supporting its defense, the Respondent asserted that the training center that had presumably issued the Certificates could no longer be found and that the training had taken place through self-study.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

32. The Sanctions Board will first address procedural and evidentiary matters raised in the course of the sanctions proceedings. The Sanctions Board will then consider whether it is more likely than not that the Respondent engaged in the alleged fraudulent practice. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on the Respondent.

33. As a preliminary matter, the Sanctions Board acknowledges correspondence between the Respondent and the World Bank's management that was attached to the Respondent's Response, and in which the Respondent claims that World Bank staff engaged in misconduct in connection with the present case. The Sanctions Board wishes to make it abundantly clear that its mandate under the World Bank's sanctions framework does not include the review of allegations of misconduct against World Bank staff. While the way in which an investigation is conducted by INT may in certain circumstances inform the Sanctions Board's consideration of the credibility, weight, and sufficiency of the evidence in a sanctions case,¹¹ the World

¹¹ See Sanctions Board Decision No. 60 (2013) at para. 60.

Bank Group has established separate administrative processes to address allegations of staff misconduct.

A. Procedural and Evidentiary Matters

34. As will be seen, both parties, in the course of these proceedings, have filed a myriad of procedural motions, submissions and other requests with the Sanctions Board. The Sanctions Board has dealt with all of them. In order to ensure the efficiency of sanctions proceedings, the Sanctions Board reminds both parties of the need to abide by the explicit provisions of the sanctions framework and avoid unnecessary procedural disputes.

1. The Respondent's requests for evidence under Section 3.02
 - a. The Respondent's request of October 22, 2012

35. On October 22, 2012, the Respondent submitted its first evidentiary request to the Sanctions Board. Referring to Section 3.02 of the Sanctions Procedures ("Disclosures of Exculpatory or Mitigating Evidence"), the Respondent requested the Sanctions Board to compel INT to produce to the Respondent all exculpatory evidence in INT's possession. The Respondent identified two categories of evidence that, according to the Respondent, would corroborate the Respondent's assertion that the Former Employee received benefits from INT and falsified evidence provided to INT in an effort to extort the Respondent.

36. After having been invited to submit comments on the Respondent's request for evidence, INT filed three successive submissions during November 2012. INT's first submission contested the merits of the Respondent's request of October 22, 2012. INT's second submission, filed ex parte, attached evidence that INT requested be withheld from the Respondent under Section 5.04(c) of the Sanctions Procedures. The parties were reminded that ex parte communications are not allowed, and INT was asked to clarify whether it agrees that the text of its second submission (without the attachment) be provided to the Respondent. In its third submission, dated November 28, 2012, INT stated that it was withdrawing its two preceding submissions in this matter and contested the Sanctions Board's jurisdiction to rule on the Respondent's request, referring to consultations with the World Bank Group's General Counsel and asserting that a case remains pending before the EO until a Response is filed. INT further argued that the Sanctions Procedures do not allow respondents to file discovery requests.

37. In an additional submission dated December 3, 2012, and authorized by the Sanctions Board Chair, the Respondent countered that the Sanctions Board should exercise jurisdiction, asserting that INT had waived any jurisdictional argument through its previous submissions, and that no provision in the sanctions framework states that the Sanctions Board does not have jurisdiction in these circumstances. The Respondent also challenged INT's portrayal of the Respondent's request as seeking discovery.

38. Having considered the parties' submissions, and noting INT's assertion that the Respondent has an appropriate forum for its demands with the EO, the Sanctions Board declined on December 19, 2012, to consider the Respondent's requests at that time, without

prejudice to the Respondent's ability to resubmit its requests to the Sanctions Board at a later date, as may be warranted.

b. The Respondent's requests of January 22, 2013

39. *The parties' contentions:* Following the deadline for submitting an Explanation to the EO, the Respondent renewed its earlier request that the Sanctions Board compel INT to produce potentially exculpatory evidence falling within the scope of INT's disclosure obligations under Section 3.02 of the Sanctions Procedures. Among examples of such evidence, the Respondent identified documentation and details about relocation and employment benefits that the Bank had provided to the Respondent's Former Employee; as well as evidence relating to the authenticity of all materials provided to INT by the Former Employee, including chain-of-custody documentation for electronic evidence. In addition, the Respondent requested that the Sanctions Board strike from the record the evidence obtained from the Former Employee, as well as other specified evidence that the Respondent asserted was not relevant to the allegations in the SAE. INT objected to the Respondent's requests, challenging the Sanctions Board's jurisdiction to consider these requests, and asserting that it had already produced all exculpatory evidence. INT also argued that, in any event, the scope of its disclosure obligations is limited and defined not only by the Sanctions Procedures, but also by "other principles that are part of the Bank's regulatory framework and that may take preceden[ce] over the Sanctions Procedures on a case by case basis," including the confidentiality of personnel information under the World Bank's Staff Rules.

40. On February 11, 2013, the Sanctions Board Chair granted the Respondent leave to file a brief reply to INT's objection. In its reply, the Respondent argued in particular that the Sanctions Board had jurisdiction to decide the Respondent's request for disclosures, that the Former Employee's credibility was a central issue in the case, and that the confidentiality exception asserted by INT to justify withholding the requested evidence had no basis in Section 3.02 of the Sanctions Procedures. In response to the Sanctions Board Chair's request that INT clarify which evidence had been obtained from or through the Former Employee, INT stated that the Former Employee was the source of all contemporaneous email evidence regarding the Bid's preparation that INT presented in the SAE and that it referenced during its interviews with the Former Employee and representatives of the Respondent.

41. *The Sanctions Board's finding of jurisdiction:* In its determination of April 22, 2013, regarding the Respondent's requests of January 22, 2013, the Sanctions Board considered first the dispute between the parties as to whether the Sanctions Board has jurisdiction over these requests. The Sanctions Board reaffirmed, as a general principle, the paramount importance of INT's full and timely compliance with its obligation set out in Section 3.02 of the Sanctions Procedures to present all relevant evidence in INT's possession that would reasonably tend to exculpate a respondent or mitigate a respondent's culpability. In the absence of directly controlling provisions in the sanctions framework regarding any process by which to review the implementation of Section 3.02 in a given case, Article IV of the Sanctions Board Statute as revised September 15, 2010 (the "Sanctions Board Statute") provides that the Sanctions Board shall decide whether it has authority to handle the Respondent's requests. In considering this matter, the Sanctions Board noted that the time frame for the Respondent to

submit an Explanation to the EO had expired, and that Section 5.04 of the Sanctions Procedures does not condition the Sanctions Board's jurisdiction over various disclosure matters upon the prior submission of a Response. Nor do the Sanctions Procedures suggest that such a condition would apply to the Sanctions Board's review of implementation of Section 3.02, which requires certain disclosures from the initiation of sanctions proceedings and on a rolling basis thereafter. The conduct of such review is without prejudice to the general rule set out in Section 7.03 of the Sanctions Procedures ("No Discovery"), or to INT's opportunity to propose that access to certain information be restricted under Sections 5.04(c), 5.04(d), or 5.04(e). As a result, the Sanctions Board found that it had jurisdiction to consider the Respondent's requests of January 22, 2013.

42. *Instruction to submit requested materials for the Sanctions Board's in camera review:* With respect to the merits of the Respondent's requests of January 22, 2013, the Sanctions Board found that materials identified by the Respondent may, if in INT's possession, reasonably appear to fall within the scope of Section 3.02. Accordingly, the Sanctions Board instructed INT to submit to the Sanctions Board all information in INT's possession that falls within the categories of materials identified in the Respondent's requests of January 22, 2013; and invited INT to clarify which materials it would consider to fall under the scope of Sections 5.04(c), 5.04(d), or 5.04(e) of the Sanctions Procedures. In accordance with the Sanctions Board Chair's instructions under Article XI of the Sanctions Board Statute, the Sanctions Board's determination of April 22, 2013, specified that the Sanctions Board would first review the materials *in camera*, and then issue its final determination as to whether any part of the information should be made available to the Respondent in accordance with Section 3.02 of the Sanctions Procedures, and subject to the provisions of Section 5.04 of the Sanctions Procedures. Consistent with past practice, the Sanctions Board's determination of April 22, 2013, was issued to the parties in the form of a letter signed by the Secretary to the Sanctions Board following the Sanctions Board Chair's instructions.

43. *INT's request for a formal determination:* On May 3, 2013, INT submitted a letter to the Secretary to the Sanctions Board in which, referring to consultations with the World Bank Group's General Counsel, INT asserted that the Sanctions Board's determination of April 22, 2013, contained "a novel interpretation of Section 3.02" and should therefore be re-issued in the required format as "provided for by Articles III [*sic*] of the Sanctions Board Statute." In response to the Sanctions Board Chair's request that INT clarify its reference to a required format, INT expressed the view that "the written decision in this case should include the signature of the Sanctions Board Chair as representing the collective views of the Sanctions Board."

44. In its review of INT's submission and subsequent clarification, the Sanctions Board took into account, among other considerations, that neither Article III of the Sanctions Board Statute nor any other provision of the World Bank's sanctions framework addresses the format of the Sanctions Board's interim determinations. The Sanctions Board also took into consideration that the Sanctions Board's issuance of interim determinations by means of a letter signed by the Secretary, following the Sanctions Board Chair's instructions, promotes the system's efficiency without compromising its transparency and accountability, especially given that the content and reasoning of such determinations are reflected, as appropriate, in

the Sanctions Board's final published decision on the merits of any contested case. Accordingly, the Sanctions Board confirmed on June 10, 2013, that its interim determinations, including its determination of April 22, 2013, in the present case, may be issued to the parties in the form of a letter signed by the Secretary to the Sanctions Board following the Sanctions Board Chair's instructions.

45. *INT's submissions in response to the Sanctions Board's determination:* In accordance with the Sanctions Board's determination of April 22, 2013, INT submitted additional materials for the Sanctions Board's in camera review on June 17, 2013. INT reiterated its objections to the Respondent's requests of January 22, 2013, and requested that none of the additional materials be disclosed to the Respondent until after INT had been advised of the Sanctions Board's determination regarding the scope of appropriate disclosures. Having reviewed in camera the materials submitted by INT, and taking into account relevant provisions of the Sanctions Procedures, including Sections 3.02 and 7.01, as well as provisions of the World Bank's Staff Rules regarding, inter alia, the confidentiality of personnel information, the Sanctions Board instructed INT on August 30, 2013, to submit to the Sanctions Board further information about the Former Employee's employment at the World Bank, including salary and benefits, consistent with the Sanctions Board's determination of April 22, 2013. INT submitted the requested information to the Sanctions Board on September 9, 2013, together with a memorandum in which INT reiterated its earlier position that none of the materials are exculpatory; and requested that the materials be withheld from the Respondent in accordance with Section 5.04(c) of the Sanctions Procedures because their disclosure would in INT's view increase the danger to the Former Employee's life, health, safety, and well-being.

46. *The Sanctions Board's review of INT's submissions under Section 3.02 of the Sanctions Procedures:* Consistent with its determination of April 22, 2013, the Sanctions Board reviewed in camera the materials submitted by INT on June 17 and September 9, 2013, in order to determine whether, in light of all submissions in this matter, as well as relevant provisions of the Sanctions Procedures, any of these materials fall within the scope of Section 3.02 and should therefore be made available to the Respondent in accordance with Section 5.04 of the Sanctions Procedures. The Sanctions Board's below determinations on the Respondent's requests were communicated to the parties on November 12, 2013.

47. At the outset, the Sanctions Board excluded from its review under Section 3.02 those materials submitted by INT that had previously been made available to the Respondent. Next, taking into account that Section 7.01 of the Sanctions Procedures vests the Sanctions Board with "discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered," the Sanctions Board considered that, until it had reviewed the full record and assessed all evidence in accordance with Section 7.01, any information that may potentially affect the weight given to evidence supporting INT's allegations should be presumed to fall within the scope of Section 3.02. The Sanctions Board identified six documents or categories of documents that might potentially affect the weight of evidence supporting INT's allegations insofar as they relate to the nature and timing of employment and other benefits that the Bank granted to the source of this evidence, i.e., the Former Employee. By contrast, the Sanctions Board found that the two remaining documents

submitted by INT did not appear to fall within the scope of Section 3.02 of the Sanctions Procedures, and therefore should not be considered as part of the record.

48. Section 5.04(a) of the Sanctions Procedures explicitly requires that all materials submitted in sanctions proceedings be distributed in a timely fashion to all parties to the proceedings, except as otherwise provided in Section 5.04, which recognizes only three exceptions: the withholding of sensitive materials under Section 5.04(c) upon a determination that there is a reasonable basis to conclude that revealing the particular evidence might endanger the life, health, safety, or well-being of a person or constitute a violation of any undertaking by the Bank in favor of a Voluntary Disclosure Program participant; the redaction of information by INT under Section 5.04(d); and the restriction of a respondent's access to evidence to in camera review under Section 5.04(e). The Sanctions Board considers it important to observe that other rules and considerations asserted by INT are not recognized in the Sanctions Procedures as grounds to depart from the default disclosure requirement of Section 5.04(a) and withhold evidence from respondents in sanctions proceedings. Taking into account INT's ability to redact certain information in its discretion under Section 5.04(d), the Sanctions Board did not consider the submitted materials to meet the express standard for withholding evidence set out in Section 5.04(c). Accordingly, the Sanctions Board instructed INT to grant counsel for the Respondent in camera access to the six documents or categories of documents mentioned above, provided, however, that INT may redact certain information, e.g., the Former Employee's contact information.

49. Considering the Respondent's opportunity to review and address additional evidence submitted by INT, the Sanctions Board denied the Respondent's motion to strike related evidence from the record. For the avoidance of doubt, the Sanctions Board clarified that its determination on the Respondent's requests of January 22, 2013, was without prejudice to INT's obligation to disclose any materials that would fall within the scope of Section 3.02, regardless of whether they have been requested by the Sanctions Board and/or a respondent.

50. *In camera* review by counsel for the Respondent: On November 15, 2013, INT provided to the Sanctions Board copies of the six documents or categories of documents identified by the Sanctions Board, as INT stated had been made available to counsel for the Respondent in camera, as well as two additional notes to file that INT stated had also been made available to counsel for the Respondent in camera (all materials submitted by INT on November 15, 2013, as further described above in Paragraphs 22 and 23, are jointly referred to as "INT's Additional Materials"). As the parties were informed on November 19, 2013, the Sanctions Board Chair decided in his discretion to accept the additional notes to file into the record.

c. The Respondent's supplemental request of November 20, 2013

51. In its Supplemental Response, the Respondent asserted that it was apparent from INT's Additional Materials that INT was withholding "at least six other categories of documents containing exculpatory materials," and requested that the Sanctions Board order INT to disclose these documents. The Respondent also reiterated its request for a forensic analysis report, previously identified in its requests of January 22, 2013, regarding an email

dated April 29, 2010. At the hearing, the Sanctions Board Chair authorized the parties to each file an additional written submission regarding the Respondent's supplemental request, addressing in particular whether and how any of the evidence requested by the Respondent may fall within the scope of Section 3.02 of the Sanctions Procedures. In its consequent submission of December 19, 2013, the Respondent argued that the requested documents clarify either the timing and sequence of the Former Employee's discussions with INT regarding the Respondent's purported threats and the Former Employee's possible relocation and employment, or the Former Employee's motives for cooperating with INT. In its comments submitted on January 7, 2014, INT reiterated that the documents requested by the Respondent are not exculpatory or mitigating because the Former Employee's evidence is not central to the case, and, in any event, the Former Employee had already provided "the substantial bulk of his evidence" to INT by the time that INT attempted to facilitate his relocation.

52. Having reviewed the full written record and the parties' oral presentations, and having concluded, based on this review, that the evidence provided by the Former Employee was not ultimately central to its findings in this case, the Sanctions Board determined that there was no sufficient indication that the materials identified in the Respondent's supplemental request, if extant and in INT's possession, would fall within the scope of Section 3.02 of the Sanctions Procedures. The Sanctions Board therefore denied the Respondent's disclosure request of November 20, 2013. With respect to the forensic analysis report that had been previously requested by the Respondent, the Sanctions Board clarified that the forensic analysis report not only related to an email that had not been included in INT's SAE in Sanctions Case No. 216 and did not appear relevant to the allegations in this case, but that it also did not impugn the authenticity of the email in question or the integrity of its source.

2. Weight of evidence provided by the Former Employee

53. As noted above, the Respondent challenges the credibility of the Former Employee and the evidence that he provided to INT. The SAE includes records of two interviews with the Former Employee; a written statement signed by the Former Employee; and contemporaneous electronic evidence provided by the Former Employee, including the Email Chain.

54. In assessing the weight of witness statements, the Sanctions Board takes into account "all relevant factors bearing on the witness's credibility."¹² With respect to the Former Employee's credibility, the Sanctions Board takes into account that the record of INT's interview with the Former Employee in May 2011 refers to a "conflict situation" between the Former Employee and the Respondent as his former employer regarding "salary and bonus[] issues," and that the Email Chain suggests that the Former Employee was himself involved in the alleged misconduct. Consistent with past precedent, the Sanctions Board finds that these

¹² See Sanctions Board Decision No. 50 (2012) at para. 39. See also Sanctions Board Decision No. 60 (2013) at para. 48 (considering the weight to be attached to the testimony and other evidence in light of all the relevant circumstances).

factors may discount the value of the Former Employee's testimony, but do not preclude its use.¹³

55. The Respondent argues that the Sanctions Board should also take into account benefits provided to the Former Employee, asserting that these benefits bear on the Former Employee's motives and credibility. INT acknowledges that the Bank provided various benefits to the Former Employee, but states that these benefits do not affect the Former Employee's credibility because they were provided to protect him from the Respondent's threats. The Sanctions Board takes very seriously any appearance of potential inducement to a witness. Having considered the full record presented in this case, including INT's Additional Materials and in particular information about the timing of the benefits relative to the dates when the Former Employee provided evidence to INT, the Sanctions Board finds insufficient evidence to support the Respondent's assertion of a quid pro quo arrangement between INT and the Former Employee.

56. However, the Sanctions Board does take into account apparent contradictions between the Former Employee's statements and the electronic evidence that he provided to INT. As noted above, the Email Chain suggests that the Former Employee was instructed to forge the Certificates in June 2010 and was therefore directly involved in the misconduct. By contrast, the Former Employee claimed in a written statement that it was only upon his return from leave in July 2010 that he "found out that . . . [the Respondent] had to forge certificates" in the name of the Purported Issuer. In addition, the Former Employee reportedly suggested during his interview with INT in September 2011 that he had limited knowledge of the Certificates' origin. These apparent contradictions raise questions as to both the Former Employee's credibility and the reliability of the Email Chain.

57. The Sanctions Board has also considered all arguments raised by the parties with respect to the authenticity of the Email Chain, as well as the Expert Opinion. While the Expert Opinion "suggest[s] that additional source data . . . be provided to perform further validation," INT presented no evidence indicating whether it pursued further validation. Nor did INT address the Respondent's observation that INT had omitted to discuss the Email Chain with any of the individuals who had supposedly sent or received the emails at issue. Irrespective of the Email Chain's authenticity, the Sanctions Board takes note of remaining questions regarding the precise meaning of the Email Chain as translated and INT's failure to confirm whether the Email Chain included, as suggested by its text, an attachment that was not produced in the record.

58. The Sanctions Board takes into account all the above factors when considering the weight that may be given to evidence provided by the Former Employee, to the extent that the content of such evidence is ultimately relevant to an analysis of liability and/or sanctions in this case.

¹³ See Sanctions Board Decision No. 50 (2012) at para. 39 (stating that the fact that testimony comes from a competitor may discount its value, depending on the circumstances, but will not necessarily preclude its use; and that a witness's own involvement in the misconduct should be considered, but would not necessarily preclude use of that witness's testimony or even primary reliance upon it, where appropriate).

3. Other Contentions

59. The parties raised many other contentions in the course of the sanctions proceedings, which the Sanctions Board addresses below in the order in which they were first submitted.

a. The Respondent's request to lift the temporary suspension

60. In its submission of September 9, 2013, the Respondent requested that the Sanctions Board lift the Respondent's temporary suspension in light of INT's "obstruction and delay tactics," as well as the length of the Respondent's temporary suspension to date. The Sanctions Procedures provide that a temporary suspension imposed by the EO shall remain in effect pending the final outcome of sanctions proceedings, unless the EO decides to terminate the suspension upon review of a respondent's Explanation.¹⁴ Accordingly, the Sanctions Board denied the Respondent's request.

b. The Respondent's challenge to INT's redactions

61. In its submission of September 9, 2013, the Respondent also challenged INT's use of redactions in materials submitted to the Sanctions Board in June 2013,¹⁵ and requested that the Sanctions Board review these redactions in camera to determine whether the Respondent is entitled to the redacted information. Upon reviewing the unredacted documents in accordance with Section 5.04(d) of the Sanctions Procedures, the Sanctions Board found that the redacted information was not necessary to enable the Respondent to mount a meaningful response to the allegations against it, and therefore determined that the unredacted versions of the documents did not need to be made available to the Respondent.

c. The Respondent's query regarding conflict of interest

62. On October 24, 2013, the Respondent filed a written submission raising a concern that one member of the Sanctions Board might have oversight and responsibility for the Bank's department employing the Respondent's Former Employee, and requested that, if so, that member be recused from the sanctions proceedings. As the Respondent was informed on November 4, 2013, consistent with the Code of Conduct for Members of the Sanctions Board, the Sanctions Board has a protocol to identify and address actual, apparent, and potential conflicts of interest, and a Sanctions Board member's participation in the review of a case is subject to the absence of any such conflict of interest. This protocol has been followed with respect to the present case. Following the Respondent's inquiry, the Secretariat reconfirmed the absence of a conflict of interest with the Sanctions Board member in question, who has had no supervisory relationship, direct or indirect, with the Former Employee.

¹⁴ Sanctions Procedures at Sections 4.02(a), 4.02(c). See also Sanctions Board Decision No. 55 (2013) at paras. 35-36; Sanctions Board Decision No. 60 (2013) at para. 137.

¹⁵ As discussed above in Paragraph 45, these materials were submitted pursuant to the Sanctions Board's determination of April 22, 2013.

d. The Respondent's request for an internal inquiry regarding an alleged breach of confidentiality

63. In its submission of October 24, 2013, the Respondent expressed a concern that the Former Employee or possibly other World Bank employees had communicated the allegations against the Respondent to external parties, in particular a business partner of the Respondent, in an attempt to harm the Respondent's business. The Respondent requested that the Sanctions Board direct that an internal inquiry be conducted to determine whether the confidentiality of the sanctions proceedings against the Respondent had been breached. On November 4, 2013, the parties were reminded of the need to preserve the confidentiality of sanctions proceedings in accordance with Section 13.06 of the Sanctions Procedures. While concrete indications of a breach of this provision will be considered as appropriate, the Sanctions Board Chair found that the Respondent had not presented any such indication.

e. INT's proposal that the Sanctions Board review evidence supporting another sanctions case involving the Respondent

64. In its submission of November 15, 2013, INT suggested that, based on Section 5.04(b) of the Sanctions Procedures ("Distribution of Materials to Other Respondents in Sanctions Proceedings"), the Sanctions Board may wish to review the evidence supporting a separate sanctions case involving the Respondent, and decide whether to make the same evidence available to counsel for the Respondent under Section 3.02 of the Sanctions Procedures. The Respondent expressed its opposition to INT's suggestions in a letter dated November 22, 2013.

65. The text of Section 5.04(b) refers specifically to the distribution of materials to other respondents in sanctions proceedings involving related accusations, facts, or matters. In its determination of December 4, 2013, the Sanctions Board noted that no related proceedings had been initiated at that time and therefore Section 5.04(b) was not applicable. The Sanctions Board clarified that this determination was without prejudice to INT's disclosure obligation under Section 3.02, which applies to any evidence in INT's possession, regardless whether INT may have obtained the evidence in the context of the immediate case or another matter.

f. INT's post-hearing submissions

66. On December 18, 2013, approximately two weeks after the Sanctions Board's hearing, INT submitted additional arguments and evidence with respect to Sanctions Board members' questions at the hearing regarding evidence submitted by INT. In response to the Sanctions Board Chair's invitation for comments, the Respondent argued that INT's submission should not be admitted into the record because the submitted evidence was previously available to INT; and that Section 5.01(c) of the Sanctions Procedures provides for additional submissions only until the hearing, after which the record should not be re-opened. Consistent with Section 5.01(c) of the Sanctions Procedures, and taking into account the nature and timing of INT's post-hearing submission, which was filed without prior invitation or authorization and after the Sanctions Board's hearing, the Sanctions Board Chair decided, in his discretion, that this submission should not be admitted into the record.

67. On June 11, 2014, approximately six months after the Sanctions Board's hearing, INT filed a second post-hearing submission with additional arguments and evidence pertaining to the Former Employee. In response to the Sanctions Board Chair's invitation for comments, the Respondent argued that INT's second submission was "procedurally groundless and belated," referring again to Section 5.01(c) of the Sanctions Procedures and asserting prejudice from INT's unjustified delays in obtaining and producing the evidence. Again considering the relevant provisions of the Sanctions Procedures, as well as the nature and timing of INT's unauthorized and extremely belated submission, the Sanctions Board Chair decided, in his discretion, that INT's second submission should not be admitted into the record.

B. Evidence of Fraudulent Practice

68. In accordance with the applicable definition of fraudulent practice under the May 2004 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) made a misrepresentation or omission of facts (ii) that was knowing or reckless (iii) in order to influence the procurement process or the execution of a contract.

1. Misrepresentation of facts

69. In past decisions finding that respondents had submitted forged bid documents, the Sanctions Board relied primarily on written statements from the parties named in or supposedly issuing the allegedly falsified documents, as well as the respondents' own admissions.¹⁶

70. In the present case, the record includes a written confirmation from the Purported Issuer, accompanied by a signed attestation, stating that the Certificates are false. In its email, the Purported Issuer states that it could not locate in its records any exam results for the two individuals named on the Certificates, and that the Certificates do not display identification numbers. A review of genuine certificates issued by the Purported Issuer to different employees of the Respondent, as attached to the Respondent's Response, corroborates the suggestion that, if authentic, the Certificates would have included such identification numbers. Additionally, the Respondent acknowledges that the Certificates were falsified. The Respondent states that it attempted, but was unable, to locate the unauthorized training center that had presumably issued the Certificates.

71. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Certificates were false and misrepresented the qualifications of the relevant employees.

¹⁶ See, e.g., Sanctions Board Decision No. 2 (2008) at para. 4 (stating that the Sanctions Board "relied primarily" on a written statement from the purported issuer of the documents at issue that the documents had been forged, as well as the respondent's oral and written admissions, in finding that the respondent had engaged in fraudulent practices by forging documents); see also Sanctions Board Decision No. 68 (2014) at para. 22 (considering written denials of authenticity by the purported issuer as well as the respondent's implicit acknowledgement that the documents were falsified, in finding that the documents were forged).

2. Made knowingly or recklessly

72. In considering whether the Respondent's misrepresentation was made knowingly, the Sanctions Board relies primarily on the timing of the Former Employee's disclosure to INT. INT's record of its May 2011 interview with the Former Employee includes the Former Employee's assertion that the Bid falsely claimed that the Respondent had two specialists trained by the Purported Issuer. INT's record of interview does not indicate that the Former Employee's statement was prompted by any specific question from INT. The Respondent asserts that it only discovered that the Certificates were false when INT commenced its investigation. The Sanctions Board notes that the Respondent provides no explanation as to how the Former Employee could have known that the Bid misrepresented the qualifications of the relevant employees, which it did, at the time that he made the disclosure to INT, if the Respondent was not aware of the misrepresentation. The question for the Sanctions Board is whether, given that the Certificates were subsequently confirmed to be false, consistent with the Former Employee's statement to INT, it is more likely than not that the Respondent's version is untrue, and that the Respondent did indeed know that the Certificates were false at the time the Bid was submitted. The Sanctions Board finds that, in the absence of any explanation as to how the Former Employee would have independently discovered the misrepresentation between the Bid's submission and his first interview with INT, it is more likely than not that the Former Employee and/or other staff of the Respondent involved in the Bid's preparation were aware of the misrepresentation at the time of the Bid's submission. This finding is based on the date of the Former Employee's disclosure to INT, in May 2011, as well as on the fact that the assertion by the Former Employee that the Bid misrepresented the qualifications of the relevant employees has been shown to be true, and not on an assessment of the Former Employee's credibility or motives in making this statement.

73. The Respondent asserts that the two employees named on the Certificates received the Certificates in 2009 from a testing center that one of the employees had located through the internet. In signed declarations attached to the Response, both employees state that they uploaded the Certificates to the Respondent's intranet without suspecting that they might not be authentic, as nothing about the training center or the testing process raised their suspicion at that time. One of the Respondent's managers responsible for the Bid's preparation further states that, upon receipt of the bidding documents for the Contract in June 2010, the Certificates were retrieved from the intranet and included in the Bid. Relying on these statements, the Respondent asserts that it was not aware that the Certificates were inauthentic at the time of the Bid's submission, and that it became aware of their falsity only when contacted by INT in September 2011. INT challenges the credibility of the Respondent's version of events, asserting that the Response is the first time that the Respondent presents this defense despite earlier opportunities to do so; that the employees' statements regarding the training center are not supported by any documentary evidence; and that the Respondent's claim of ignorance about the misrepresentation until September 2011 is not consistent with the Former Employee's prior report of the misrepresentation to INT in May 2011.

74. The Sanctions Board finds that the Respondent's version of events lacks credibility. The Respondent fails to provide any contemporaneous documentary evidence to corroborate the individual employees' transactions with the purported training center, for example. More

importantly, the Respondent acknowledged at the hearing that it had no explanation for the discrepancy between the Former Employee's apparent knowledge as of May 2011, and the Respondent's claimed lack of knowledge until September 2011.

75. In light of the above, the Sanctions Board concludes that it is more likely than not that the Respondent knew, at the time of the Bid's submission, that the Certificates misrepresented the qualifications of the Respondent's employees. As this conclusion rests primarily on the timing of the Former Employee's statements to INT, the Sanctions Board need not consider other evidence and arguments presented by the parties with respect to the Respondent's knowledge, nor the parties' contentions as to whether the record supports an alternative finding of recklessness.

3. In order to influence the procurement process

76. The Sanctions Board has previously found sufficient evidence of intent to influence the procurement process where the record showed that the forged documents had been submitted in response to a tender requirement.¹⁷ In the present case, INT asserts, and the record confirms, that the bidding documents for the Contract required that bidders provide, among other specialists, two staff certified for LAN-powered network equipment, and that the Respondent's Bid listed the employees named on the Certificates in response to that specific requirement. The Respondent argues that "[t]he certificates were obtained well in advance of their submission in the bid, and thus it is unreasonable to infer they were created and submitted with a fraudulent intent to influence the tender process." In addition, the Respondent contends that it would have had no reason to submit forged certificates because the bid requirement at issue was minor and the requisite certificates could have been submitted at a later date without affecting the Respondent's eligibility for the Contract. Irrespective of the bid requirement's actual significance, and the subjective assessment thereof by a bidder, the record reflects that the Respondent submitted the Certificates in response to a specific bid requirement. Accordingly, the Sanctions Board finds that the Respondent's argument that it had no incentive to submit false documents is unpersuasive.

77. In light of the above, the Sanctions Board finds that it is more likely than not that the Respondent knowingly made a misrepresentation of facts in order to influence the procurement process, and thereby engaged in a fraudulent practice.

C. Sanctioning Analysis

1. General framework for determination of sanctions

78. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section 8.01(b) of the Sanctions Procedures requires the Sanctions Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section 9.01. The range of sanctions set out in Section 9.01 includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with

¹⁷ See, e.g., Sanctions Board Decision No. 54 (2012) at para. 28.

conditional release, and (v) restitution or remedy. As stated in Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.

79. 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.¹⁸ 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.¹⁹

80. The Sanctions Board is required to consider the factors set out in Section 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state 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. They further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after three years.

81. Should the Sanctions Board impose a sanction on a respondent, it may also, pursuant to Section 9.04(b) of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of the respondent.

2. Factors applicable in the present case

a. Severity of the misconduct

82. Section 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 types of severity, including the involvement of high-level personnel in the misconduct.

83. *Management's role in misconduct:* 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 parties here disagree as to whether an individual who was the director and head of the Respondent's relevant regional office (the "Regional Director") at the time of the Bid's preparation and submission was involved in the misconduct and, if so, whether he may be considered as an individual within high-level personnel for the purpose of this aggravating factor. In support of its assertion that the Regional Director was involved, INT relies on the Email Chain discussed above in Paragraphs 56 to 57. Considering its earlier concerns regarding the apparent completeness and significance of the Email Chain, the Sanctions Board concludes that INT has not met its burden of proof to show that the Regional Director participated in, condoned, or was willfully ignorant of the use of falsified certificates. Accordingly, the Sanctions Board

¹⁸ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

¹⁹ Sanctions Board Decision No. 44 (2011) at para. 56.

declines to apply aggravation on this ground, and need not determine whether the Regional Director's responsibilities would warrant considering him as high-level personnel.

b. Magnitude of harm

84. Section 9.02(b) of the Sanctions Procedures requires the Sanctions Board to consider the magnitude of the harm caused by the misconduct. Section IV.B.2 of the Sanctioning Guidelines identifies the degree of harm to the project through poor contract implementation or delay as an example of such harm.

85. *Degree of harm to the project:* The Respondent asserts that the submission of inauthentic documents caused no harm to the Borrower given the Certificates' "insignificance," and because the Respondent had two employees who were properly certified as of the time of the Contract's award. The Respondent also claims that its performance of the contract warrants mitigation. INT rejects the Respondent's arguments, and refers to Sanctions Board precedent finding that the submission of forged documents deprives the Borrower of the benefits of a fair procurement process, thus harming the Borrower.

86. The Sanctions Board has recognized that the use of forged documents may compromise the integrity of procurement processes in a manner sufficient to establish the element of detriment to a borrower and thus to support a finding of liability under pre-2004 versions of the Bank's Procurement Guidelines.²⁰ However, as INT has not articulated any particular harm to the Project beyond this general detriment to the member country concerned, the Sanctions Board finds that INT has not met its burden of proof to show why aggravation is warranted under this factor.²¹ At the same time, the Sanctions Board rejects the Respondent's request for mitigation based on its asserted performance. As the Sanctions Board has previously held, a respondent's execution of its contractual obligations is a neutral fact that does not justify mitigation.²²

c. Interference in the Bank's investigation

87. Section 9.02(c) of the Sanctions Procedures requires the Sanctions Board to consider any interference by the sanctioned party in the Bank's investigation. Section IV.C of the Sanctioning Guidelines provides examples of interference with respect to the investigative process and witnesses.

88. *Interference with investigative process:* Section IV.C.1 of the Sanctioning Guidelines states that interference may include "acts intended to materially impede the exercise of the Bank's contractual rights of audit or access to information." At the Sanctions Board's hearing, INT alleged that the Respondent had impeded the Bank's exercise of its audit rights in May 2012. The Respondent asserts that INT's audit request was unreasonable and exceeded

²⁰ See Sanctions Board Decision No. 49 (2012) at paras. 27-31.

²¹ See Sanctions Board Decision No. 49 (2012) at paras. 28, 36 (finding detriment sufficient to establish liability but not applying aggravation on the basis of harm or other grounds).

²² See Sanctions Board Decision No. 52 (2012) at para. 46.

the scope of INT's rights. The record does not contain any written communications between INT and the Respondent or other evidence that would have clarified the scope of INT's request and supported INT's allegation that the Respondent impeded the Bank's audit. The Sanctions Board thus finds no basis in the record to apply aggravation under this factor.

89. *Intimidation or payment of witness:* Section IV.C.2 of the Sanctioning Guidelines states that aggravation may be warranted “[i]f a respondent caused or threatened causing injury to a witness, his or her assets, employment, reputation, . . . family . . . or significant others, or if the respondent offered the witness a payment in exchange for non-cooperation with the Bank.” In its Reply, INT asserts that the Respondent deserves aggravation for having impeded INT's investigation by threatening the Former Employee and his family. The Respondent rejects INT's allegations of threats. The record indicates that the alleged threats constituted the basis for INT's earlier allegations of obstructive practices as set out in INT's March 2012 request for the Respondent's early temporary suspension (“ETS”) under Article II of the Sanctions Procedures, which provides for temporary suspension prior to sanctions proceedings in certain circumstances. The record also demonstrates that the Respondent disputed the obstruction allegations in the ETS proceedings, and that INT subsequently withdrew its ETS request. Considering that INT did not reiterate its allegations of threats in the SAE, either as grounds for liability or as an aggravating factor, the Sanctions Board declines to make a determination in this respect in its review of the present case.

d. Minor role

90. Section 9.02(e) of the Sanctions Procedures provides for mitigation “where the sanctioned party played a minor role in the misconduct.” Section V.A of the Sanctioning Guidelines states that mitigation may be warranted where “no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct.”

91. The Respondent claims that mitigation is warranted on this ground “because of a lack of sufficiently credible proof of management involvement in any misconduct.” The Sanctions Board notes that, while aggravation may be warranted where evidence demonstrates that a respondent's management was involved in a sanctionable practice, the absence of such evidence does not in itself constitute a mitigating factor. Rather, a respondent bears the burden to show affirmatively that no one with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct. As the Respondent here fails to carry this burden of proof, the Sanctions Board declines to apply mitigation on this ground.²³

e. Voluntary corrective action

92. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a sanctioned party took voluntary corrective actions. Section V.B.3 of the Sanctioning Guidelines identifies the establishment or improvement and subsequent implementation of a corporate compliance program as examples of voluntary corrective actions, with the timing, scope, and quality of the actions to be considered as potential indicia of the respondent's

²³ See Sanctions Board Decision No. 47 (2012) at para. 49.

genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.²⁴

93. *Effective compliance program:* The Respondent claims to have taken extensive voluntary corrective actions to ensure that its “controls against corruption, collusion, and other forms of misconduct are consistent with World Bank standards.” The Respondent presents internal documentation to support its assertion that it “promptly supplemented its safeguards to prevent and detect even unintended errors in its bid submissions.” The Respondent also refers to and attaches other internal documents relating to corporate compliance more broadly, including its Business Ethics Code and related implementation measures. INT argues that the claimed measures do not warrant mitigation, because they do not seem to reflect genuine remorse, but were taken in the hopes of mitigating a sanction.

94. The Sanctions Board notes that the Respondent’s asserted compliance measures appear to address the type of misconduct at issue in this case and most of the principles set out in the World Bank Group’s Integrity Compliance Guidelines. The Sanctions Board also takes into account that the Respondent’s documentation reflecting new controls for the preparation and submission of bids appears to predate the issuance of the Notice in this case. Accordingly, the Sanctions Board finds that the asserted voluntary corrective actions, as supported by written policies and implementation measures, warrant mitigation. This finding is made based on the written record before the Sanctions Board, and therefore without prejudice to any future assessment that the World Bank Group’s Integrity Compliance Officer may conduct to more fully evaluate the adequacy and implementation of the Respondent’s integrity compliance measures.

f. Cooperation

95. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent “cooperated in the investigation or resolution of the case.” Section V.C of the Sanctioning Guidelines identifies a respondent’s assistance with INT’s investigation and a respondent’s internal investigation as some examples of cooperation.

96. *Assistance and/or ongoing cooperation:* Section V.C.1 of the Sanctioning Guidelines suggests that cooperation may take the form of assistance with INT’s investigation or ongoing cooperation, with consideration of “INT’s representation that the respondent has provided substantial assistance” as well as “the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” The Sanctions Board has previously accorded mitigation in cases where, for example, respondents replied to INT’s show-cause letter and follow-up inquiries,²⁵ made staff available for INT interviews,²⁶ or provided documents to INT.²⁷ The Respondent asserts that it

²⁴ See, e.g., Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 67 (2014) at para. 38.

²⁵ See, e.g., Sanctions Board Decision No. 52 (2012) at para. 42.

²⁶ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 58.

²⁷ See, e.g., Sanctions Board Decision No. 63 (2014) at para. 110.

“freely permitted INT to interview whomever INT desired to interview as requested through the Bank’s country office.” INT counters that the Respondent did not cooperate with INT’s investigation, referring, among other asserted examples of non-cooperation, to the conduct of the Respondent’s employees during interviews in September 2011.

97. The record contains INT’s records of three interviews with representatives of the Respondent in September 2011. While the Sanctions Board has previously granted mitigation where a respondent had made relevant personnel available for interviews,²⁸ the Sanctions Board notes in this instance that, according to INT’s summary records, each of the interviewees refused to be audio-recorded, and one of the interviewees declined to review copies of the Respondent’s internal email correspondence presented by INT. Nor does the record otherwise demonstrate cooperation with INT’s investigation in other respects. For example, the record does not contain copies of written correspondence between INT and the Respondent that may have enabled the Sanctions Board to further assess the scope of the Respondent’s responsiveness to INT’s requests for email records, computer access, or other information. Accordingly, the Sanctions Board does not find mitigation warranted on this ground.

98. *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 relating to the misconduct for which it is to be sanctioned and shared results with INT.” In determining whether and to what extent an internal investigation warrants mitigating credit, the Sanctions Board considers whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience;²⁹ whether the respondent shared its investigative findings with INT during INT’s investigation or as part of the sanctions proceedings;³⁰ and whether the respondent has demonstrated that it followed up on any investigative findings and recommendations.³¹

99. The Respondent asserts that, in response to INT’s investigation, the Head of the Respondent’s Legal Department conducted an assessment of the Certificates and other certifications uploaded on the Respondent’s intranet, and, after having confirmed that the Certificates were inauthentic, interviewed the relevant employees and attempted to visit the site where the employees claimed to have obtained the Certificates.

100. As INT notes, however, the Respondent provided no documentary evidence supporting the claim of the Head of the Respondent’s Legal Department that he conducted an assessment of certificates. In addition, the record reflects that, while the supposed assessment confirmed that the Certificates were inauthentic, it failed to credibly establish how they were generated and whether the Respondent’s internal controls should have identified the forgeries

²⁸ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 58, Sanctions Board Decision No. 56 (2013) at para. 73.

²⁹ See Sanctions Board Decision No. 50 (2012) at para. 67.

³⁰ See Sanctions Board Decision No. 56 (2013) at para. 75.

³¹ See Sanctions Board Decision No. 50 (2012) at para. 67.

earlier. Accordingly, the Sanctions Board does not find the claimed internal investigation to warrant mitigation.

g. Period of temporary suspension

101. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by the sanctioned party. The Respondent has been temporarily suspended since the issuance of the Notice on September 26, 2012. The Sanctions Board has previously taken into account the reasons for the duration of a respondent's temporary suspension, giving less credit in cases in which a respondent's conduct had caused delays.³² Here, the Sanctions Board notes that the extension of the standard duration of pleadings was due mainly to the multitude of procedural contentions raised by the parties throughout the sanctions proceedings, including but not limited to the evidentiary dispute between the parties regarding evidence related to the Former Employee.

102. The Respondent requests that the Sanctions Board also take into account that the Respondent was previously suspended from May 10, 2012, through August 9, 2012, under Article II of the Sanctions Procedures ("Temporary Suspension Prior to Sanctions Proceedings"). However, this temporary suspension was not imposed on the basis of the same allegations as presented in the SAE. As a result, the Sanctions Board does not find that the Respondent's early temporary suspension should be taken into account in the determination of an appropriate sanction in the present case.³³

h. Other considerations

103. Under Section 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."

104. *Conduct of INT's investigation:* The Respondent argues that INT committed "gross misconduct" in the course of its investigation by providing "improper benefits" to a witness, withholding exculpatory evidence, and engaging in "vindictive prosecution." The Respondent claims that such misconduct merits mitigating treatment. INT asserts that it has not acted inappropriately. Bearing in mind the scope of the Sanctions Board's mandate as discussed above in Paragraph 33, and taking into account that Section 9.02 of the Sanctions Procedures does not provide for the consideration of INT's conduct in the determination of an appropriate sanction, the Sanctions Board declines to consider the Respondent's claims for mitigation on this ground.

³² Sanctions Board Decision No. 65 (2014) at para. 82.

³³ Cf. Sanctions Board Decision No. 60 (2013) at paras. 6, 136 (taking into account two respondents' early temporary suspension under Article II of the Sanctions Procedures where the suspension had been imposed based on the same allegations as presented in the subsequent Statement of Accusations and Evidence).

105. *Nature of misconduct:* The Respondent asserts that the alleged misconduct was “extraordinarily minor” as it was “negligent, at most” and related to “just one bid requirement out of hundreds,” and that the bid requirement at issue was “easy to fulfill.” Taking into account its earlier finding that the misrepresentation was made knowingly, and considering that the other claims presented by the Respondent do not seem relevant to the Respondent’s culpability, the Sanctions Board finds no mitigation warranted on this ground.

106. *Proportionality with past sanctions cases:* The Respondent asserts that a comparative review of Sanctions Board decisions issued in cases involving similar allegations of misconduct shows that the alleged fraudulent practice warrants a significantly reduced sanction, such as a letter of reprimand or conditional non-debarment. As noted earlier in Paragraph 79, the Sanctions Board’s choice of sanction is based on a case-by-case analysis tailored to the specific facts and circumstances presented.³⁴ The Sanctions Board’s sanction in this case takes into account the record presented here, as well as applicable past precedents and the proposed baseline sanction and sanctioning factors set out in the Sanctions Procedures and Sanctioning Guidelines.

107. *Non-cooperation in proceedings before the Sanctions Board:* The Sanctions Board has previously applied aggravation based on respondents’ non-cooperation in sanctions proceedings, due to respondents’ persistent and implausible denials of any responsibility for or knowledge of the sanctionable practice alleged, despite substantial evidence to the contrary.³⁵ In the present case, the Sanctions Board notes with concern that the Respondent presented, in its Response and at the hearing, an uncorroborated version of events that lacks credibility in order to justify the submission of inauthentic documents with its Bid. The Sanctions Board finds that such conduct, which could not have taken place without the endorsement of the Respondent’s management, demonstrates a lack of candor in these proceedings that warrants significant aggravation.

D. Determination of Liability and Appropriate Sanction for the Respondent

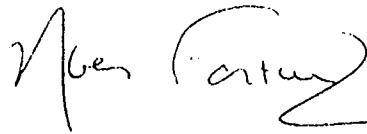
108. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider 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 three (3) years beginning on the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, improved its bid preparation policies and procedures, including through the voluntary corrective actions that it represented to the Sanctions Board as having been taken to date. The ineligibility shall extend across the operations of the World Bank

³⁴ Sanctions Board Decision No. 44 (2011) at para. 56.

³⁵ Sanctions Board Decision No. 63 (2014) at para. 121.

Group. This sanction is imposed on the Respondent for a fraudulent practice as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines.

109. 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.³⁶



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

L. Yves Fortier
Ellen Gracie Northfleet
Catherine O'Regan
Denis Robitaille
Randi Ryterman
J. James Spinner

³⁶ 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 (<http://go.worldbank.org/B699B73Q00>).