

Date of issuance: October 10, 2014

**Sanctions Board Decision No. 73
(Sanctions Case No. 91)**

**IDA Credit No. 3408-MD
Dutch Grant No. TF024413
Moldova**

Decision of the World Bank Group¹ Sanctions Board:

- i. finding insufficient evidence to conclude that it is more likely than not that the respondent entity in Sanctions Case No. 91 (the “Respondent Firm”) engaged in the alleged fraudulent practices; and**
- ii. imposing a sanction of debarment on the individual respondent in Sanctions Case No. 91 (the director of the Respondent Firm, hereinafter referred to as the “Respondent Director”), together with any entity that is an Affiliate² directly or indirectly controlled by the Respondent Director, for a period of six (6) months beginning on the date of this decision. This sanction is imposed on the Respondent Director for a fraudulent practice.**

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on December 3, 2013, at the World Bank’s headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of L. Yves Fortier (Chair), Hassane Cissé, Ellen Gracie Northfleet, Catherine O’Regan, Denis Robitaille, and J. James Spinner. In the absence of a hearing request from any of the parties, the Sanctions Board Chair exercised his discretion to call a hearing under Section 6.01 of the Sanctions Procedures. The World Bank Group’s Integrity Vice Presidency (“INT”) participated in the hearing through its representatives attending in person. The Respondent Firm and the Respondent Director (together, the “Respondents”) were represented by the Respondent Director, who participated by teleconference. 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 the 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 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.” Sanctions Procedures at Section 1.02(a).

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

- i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")³ to the Respondents on June 29, 2012 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated June 22, 2009;
- ii. Response submitted by the Respondents to the Secretary to the Sanctions Board on October 1, 2012 (the "Response"); and
- iii. Reply submitted by INT to the Secretary to the Sanctions Board on November 9, 2012 (the "Reply").

3. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarment with conditional release for each Respondent, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents. The EO recommended a minimum period of ineligibility of three (3) years for each of the Respondents, after which period each may be released from ineligibility only if such Respondent has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that such Respondent has (i) taken appropriate remedial measures to address the sanctionable practices for which the Respondent has been sanctioned; (ii) in the case of the Respondent Firm, adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank; and (iii) in the case of the Respondent Director, completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and complied with the condition that any Affiliate entity that he directly or indirectly controls has adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

4. Effective June 29, 2012, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;⁴ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service

³ 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.

⁴ 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. Sanctions Procedures at Section 9.01(c)(i), n.16.

provider⁵ 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 to 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 (hereinafter collectively referred to as "Bank-Financed Projects")⁶ pending the final outcome of the sanctions proceedings.

II. GENERAL BACKGROUND

5. This case arises in the context of the Health Investment Fund Project (the "Project") in Moldova. The Project aimed to improve the health status of the Moldovan population, and to increase the quality and efficiency of the public health sector, by improving access to essential services for the poor. To finance the Project, IDA and the Republic of Moldova entered into a development credit agreement for US\$10 million on October 6, 2000, and a separate grant agreement for US\$10 million, provided by the Netherlands, on April 11, 2001 (together, the "Financing Agreements"). IDA was the administrator of the grant provided by the Netherlands.

6. In October 2004, Moldova's implementing agency for the Project issued bidding documents for a contract to procure emergency and surgery equipment for hospitals (the "Contract"). On December 13, 2004, the implementing agency received a bid under the Contract (the "Bid"), valued at the equivalent of approximately US\$790,000, from a company ostensibly registered and located in the UK (the "Named Bidder"). The Bid was signed on behalf of the Named Bidder by an individual (the "Signatory") and enclosed, among other items, documents that purported to be: (i) a power of attorney by which the Respondent Director authorized the Signatory to sign the Bid on behalf of the Named Bidder, (ii) a UK company registration certificate for the Named Bidder, and (iii) a bid security in the form of a bank guarantee (the "Bid Security"). The bid evaluation committee was unable to confirm the Bid Security's authenticity, and recommended in March 2005 that the Bid be rejected from further consideration.

7. The parties and the evidence that they present refer variously, and sometimes confusingly, to several entities whose identities and connections are not entirely clear. The record indicates, and the parties do not dispute, that the Respondent Director owns and operates the Respondent Firm in the UK. The parties disagree as to the nature of the Named Bidder, however. The Respondent Director describes the Named Bidder, and the firm that he

⁵ 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. Sanctions Procedures at Section 9.01(c)(ii), n.17.

⁶ 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.

asserts to be its parent company, as entities separate from the Respondent Firm. The Respondent Director reportedly stated that the Named Bidder and its parent company have offices in India and Nigeria. According to the Respondent Director, the Named Bidder and its parent company are owned by an individual who employed the Respondent Director as a consultant. The Respondent Director asserts that he has acted at various times on behalf of all three firms, but denies any overlap in the respective operations of the Respondent Firm and the Named Bidder. As will be discussed in further detail in Section V below, the record does not clearly reveal the nature of the firms' possible relationships, staffing, and operations due to the nature of INT's questions in the course of its investigation and inconsistencies in the Respondent Director's statements.

8. INT asserts that the Named Bidder is not a legal entity separate from the Respondent Firm. INT alleges that the Respondent Firm submitted, and the Respondent Director knowingly or recklessly caused the submission of, the Bid under a false business name (i.e., as the Named Bidder) and with a false bid security.

III. APPLICABLE STANDARDS OF REVIEW

9. 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 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.

10. 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 the respondent's conduct did not amount to a sanctionable practice.

11. The alleged sanctionable practice has the meaning set forth in the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (January 1995, revised in January and August 1996, September 1997, and January 1999) (the "January 1999 Procurement Guidelines"), which governed the procurement for the Project under the Financing Agreements, and whose definition of the alleged sanctionable practice was reproduced in the bidding documents for the Contract. Paragraph 1.15(a)(ii) of these guidelines defines the term "fraudulent practice" as "a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower." 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.⁷ 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.⁸ Accordingly, the Sanctions Board has held that the “knowing or reckless” standard may be implied under the pre-October 2006 definitions.⁹

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

12. INT submits that it is more likely than not that the Respondents engaged in fraudulent practices by submitting, or causing the submission of, the Bid under a false business name and with a false bid security. First, INT asserts that the Bid purportedly submitted by the Named Bidder was actually submitted by the Respondent Firm, as indicated by the Bid’s use of the Respondent Firm’s registration number and address and of the Respondent Director’s name. According to INT, the Named Bidder is an alias used by the Respondent Firm rather than a separate legal entity. INT submits that the Respondent Director caused a misrepresentation of the true bidder’s identity through his instruction and authority, given that his power of attorney authorized the Signatory to sign the Bid under an alias (i.e., as the Named Bidder), rather than in the Respondent Firm’s own name. Second, INT claims that the Bid Security appended to the Bid was false, noting that its purported issuer could not be located and asserting that the Respondent Director, knowing that the Bid was submitted under an alias, necessarily knew that any accompanying bid security would have to be false.

13. INT contends that all elements of fraudulent practices are met because the alleged misrepresentations were made in order to influence the procurement process and were to the detriment of the borrower. Furthermore, INT submits that the alleged misconduct of the Respondent Director is imputable to the Respondent Firm because the Respondent Director was acting as the Respondent Firm’s “duly authorized officer[] and employee[]” when the Bid was submitted on the Respondent Firm’s behalf and for its benefit. INT asserts that aggravation is warranted for the role of the Respondent Firm’s management in the misconduct and for the Respondents’ sophisticated means and/or repeated pattern of misconduct. As potential mitigating factors, INT asserts that the Respondents provided some cooperation and that the alleged misconduct caused only limited damage.

⁷ See, e.g., Guidelines: Procurement Under IBRD Loans And IDA Credits (May 2004, rev. October 2006) at para. 1.14(a)(ii) (defining “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).

⁸ See Sanctions Board Decision No. 41 (2010) at para. 75.

⁹ Id.

B. The Respondents' Principal Contentions in the Response

14. In their brief Response, the Respondents deny liability and assert that the Named Bidder – which they describe as a Nigerian entity – and the Respondent Firm – which the record reveals to be a UK-registered company – are separate entities operating without common financial or operational interest or overlap in ownership. In support of their assertion, the Respondents provided a bank letter stating, “We . . . confirm that [the Named Bidder], registered at . . . , Nigeria had an account with us from 24 November 2003 until 6 June 2007.” In addition, the Respondents aver that the Respondent Director, located in the UK, did not significantly participate in or control the Named Bidder’s tender preparation process, which took place primarily in India or Nigeria.

15. Although the Respondents do not specifically address any sanctioning factors, they submit that the Respondent Director cooperated with INT’s investigation and pledge continued cooperation as required.

C. INT’s Principal Contentions in the Reply

16. INT submits that the Respondents do not dispute INT’s core allegations and evidence, and reaffirms its allegation that the Respondent Firm is doing business under an alias as the Named Bidder. INT asserts that the bank account confirmation attached to the Response, although authentic, is not sufficiently probative to establish the Named Bidder’s bona fides and ownership. INT disputes the Respondents’ claim that the Bid was submitted by an entity operating in Nigeria rather than in the UK, where the Respondent Firm is registered. In support of its position, INT refers to the Bid and the Respondent Director’s earlier reported statements, which suggested that the Bid had been submitted by a UK firm.

D. Presentations at the Hearing

17. At the hearing, INT asserted that because information in the Bid points to the Respondents, INT was justified in directing its allegations against the Respondent Firm and the Respondent Director notwithstanding the Bid’s submission under a different name. INT additionally asserted that the record shows that the Respondent Director empowered the Signatory to generate business in India in a way that would benefit the Respondents, without any evidence that he took appropriate steps to ensure ethical business practices.

18. The Respondents argued that it would be illogical for the Respondent Firm to have submitted the Bid under an alias, since the benefit of any contract would only flow to the Named Bidder. The Respondent Director asserted that he did not submit false documents and that he knew that forgery was a punishable offense in the UK. The Respondent Director acknowledged that the owner of the Named Bidder and its parent company had employed him as a consultant to facilitate communications and to be able to use the Respondent Director’s UK address for their benefit. However, the Respondents denied that the Respondent Director had any knowledge of or role in preparing the Bid, or any authority over the Signatory, and suggested that the Signatory had used the Respondent Firm’s registration information to forge documents for the Bid. With respect to the power of attorney attached to the Bid, the

Respondents agreed that the document bore the Respondent Director's apparent signature and they confirmed that the Respondent Director had issued other powers of attorney to the Signatory to act on behalf of the Respondent Firm in the past. However, the Respondents contended that the Respondent Director had not himself signed or issued the power of attorney attached to the Bid.

19. The Respondents reiterated that they had been cooperative and added that the passage of time between the start of INT's investigation and the EO's issuance of the Notice made it difficult for the Respondent Director to recall certain details in answer to the Sanctions Board's questions. INT confirmed that the Respondent Director had cooperated in the investigation and stated that significant mitigation was warranted in light of the passage of time.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

20. The Sanctions Board will first consider whether the record supports a finding that it is more likely than not that the Respondents engaged in fraudulent practices. The Sanctions Board will then determine what sanctions, if any, should be imposed on each Respondent.

A. Evidence of Fraudulent Practices

21. In accordance with the definition of fraudulent practice under the January 1999 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) made misrepresentations of facts (ii) that were knowing or reckless (iii) in order to influence a procurement process (iv) to the detriment of the borrower.

1. Misrepresentations of facts

22. *Business name:* INT alleges that the Respondents used a false business name in submitting the Bid as the Named Bidder, which, according to INT, is not a legal entity separate from the Respondent Firm. In support of this allegation, INT asserts that the company registration certificate attached to the Bid, although attributed to the Named Bidder, bore the Respondent Firm's registration number and address, as well as the Respondent Director's name. The Respondent Firm and, in some instances, the Respondent Director deny any involvement in or awareness of the Bid, and contend that the Respondent Firm shares no common financial or operational interest with the Named Bidder, which the Respondents present as a Nigerian entity. In its Reply, INT counters that the Bid's presentation of the Named Bidder as a UK company, contrary to the Respondents' claim that the Named Bidder is a Nigerian entity, supports INT's contention that the Named Bidder is a false business identity for the UK-registered Respondent Firm.

23. The Sanctions Board notes that the Bid's inclusion of some information that relates to the Respondents does not indicate, in and of itself, that the Bid was submitted by the Respondents under a false business name. The record does not disclose any evidence that the Respondent Firm participated in the Bid's preparation, or that any involvement by the Respondent Director with respect to the Bid was on behalf or for the benefit of the

Respondent Firm. INT does not address the possibility that another party – other than the Respondent Firm or the Respondent Director – may have submitted the Bid with information pertaining to the Respondents, such as the Respondent Firm’s publicly available registration number and address, but without the Respondents’ knowledge or consent. Moreover, INT’s assertion that the Named Bidder is not a separate entity, but simply an alias for the Respondent Firm, is contradicted by evidence that a firm with this name, and fitting the description provided by the Respondent Director, is an active company in Nigeria, with documentation of its own bank account that INT has confirmed as authentic, as well as indications in the record that the Named Bidder has previously executed development contracts in its own name. On the basis of this record, the Sanctions Board finds that INT has not carried its burden of proof to show that it is more likely than not that the Bid was submitted by the Respondents under a false business name.

24. *Bid Security*: INT also alleges that the Respondents submitted a false bid security with the Bid. The record reveals that the Bid Security’s purported issuer could not be contacted at the address, telephone, or facsimile numbers listed on the Bid Security. The bid evaluation report notes an initial failed attempt by the bid evaluation committee to contact the purported issuer, and the record of INT’s investigation also reveals other failed attempts to authenticate the Bid Security. In these circumstances, the Sanctions Board finds that it is more likely than not that the Bid included a misrepresentation in the form of a falsified Bid Security.¹⁰

25. Moreover, the Sanctions Board finds that it is more likely than not that the Respondent Director caused the submission of the false Bid Security, as INT alleges. According to INT’s summary records of interview, the Respondent Director stated that he had primary responsibility for obtaining bid securities for the Named Bidder; and that he had learned about the tender in this instance from an international subscription publication, that “it was his personal decision to involve his Indian office in the bid preparation,” and that he knew that the Named Bidder ultimately submitted a bid in Moldova (where the Project took place and the Contract was tendered). Although these specific statements are reported only in INT’s summary records of interview,¹¹ the Sanctions Board notes that the Respondent Director’s reported statements regarding his general responsibility to obtain bid securities are corroborated by his correspondence with INT and that the record contains no evidence contradicting his other reported statements regarding the tender. Accordingly, the Sanctions

¹⁰ See Sanctions Board Decision No. 41 (2010) at paras. 62-68 (finding misrepresentations in the form of forged bid securities from fictitious banks where the record showed, *inter alia*, that the business addresses shown in the bid securities for each of the purported issuers were the individual respondent’s private residence).

¹¹ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 40 (in assessing the weight of INT’s summary records of interview, taking into account that the documents are non-verbatim summaries that do not appear to have been reviewed or signed by the interviewee in order to attest to their basic accuracy).

Board does not accept the Respondent Director's denials at the hearing of any knowledge of or involvement in the tender.¹²

26. Given the above evidence of the Respondent Director's primary responsibility for obtaining bid securities for the Named Bidder and his specific involvement in the Bid's preparation, the Sanctions Board concludes that the first element of fraudulent practice is satisfied with respect to INT's allegation that the Respondent Director caused the submission of the Bid, which included a false Bid Security. As set out above in Paragraph 23, however, the Sanctions Board concludes that INT has failed to satisfy the first element of fraudulent practice with respect to the Respondents' alleged use of a false business name. Accordingly, the Sanctions Board will address the remaining elements of fraudulent practice only in relation to the Bid Security. In addition, the question of the Respondent Firm's responsibility for any misconduct relating to the Bid Security will be addressed below in Section V.B.

2. Made knowingly or recklessly

27. INT submits that the Respondent Director acted knowingly or recklessly in causing the Bid to be submitted with the falsified Bid Security.

28. The Sanctions Board first addresses INT's allegation that the Respondent Director engaged in a knowing misrepresentation. The Sanctions Procedures are very clear: the Sanctions Board has discretion to infer knowledge on the part of a respondent from circumstantial evidence and any kind of evidence may form the basis of conclusions reached by the Sanctions Board.¹³ INT's assertion of knowledge rests on its contention that, as the Bid was submitted under a false business name, the Respondent Director must have known that any accompanying bid security presented in the name of the alias would necessarily be false. As set out in Paragraph 23 above, however, INT has failed to demonstrate that the Bid was submitted on the Respondent Firm's behalf under a false business name. Accordingly, and in the absence of other circumstantial evidence indicating that it is more likely than not that the Respondent Director knew that the Bid Security was false, the Sanctions Board finds that INT has not satisfied its burden of proof to show that the Respondent Director engaged in a knowing misrepresentation.

29. In determining whether there was recklessness, the Sanctions Board may consider whether circumstantial evidence indicates that a respondent was aware of, or should have been aware of, a substantial risk – such as harm to the integrity of the Bank's procurement process due to false or misleading bid documents – but nevertheless failed to act to mitigate that risk.¹⁴ Where circumstantial evidence may be insufficient to infer subjective awareness of risk, the

¹² See Sanctions Board Decision No. 61 (2013) at para. 26 (noting that the inconsistency of the respondents' statements with respect to certain transactions, combined with the absence of contemporaneous records documenting the transactions, called into question the veracity of the respondents' later statements).

¹³ Sanctions Procedures at Section 7.01.

¹⁴ See Sanctions Board Decision No. 51 (2012) at para. 33.

Sanctions Board may measure a respondent's conduct against the common "due care" standard of the degree of care that the proverbial "reasonable person" would exercise under the circumstances.¹⁵ In the context of Bank-Financed Projects, the standard of care should be informed by the Bank's procurement policies, as articulated in the applicable Procurement or Consultant Guidelines and the standard bidding documents for the contract at issue.¹⁶ Industry standards or customary or firm-specific business policies, procedures, or practices may also be relevant in certain cases.¹⁷

30. As noted in Paragraph 25 above, the record supports a finding that the Respondent Director was involved in the tender for the Contract at issue; and that he was primarily responsible for obtaining bank guarantees for the Named Bidder. The Sanctions Board thus finds that it is more likely than not that the Respondent Director, consistent with his admitted general practice and responsibilities for the Named Bidder, obtained the Bid Security himself, and that he was or should have been aware of a substantial risk of falsity given the discrepancy in the Bid Security's identification of the Named Bidder as a UK entity, among other potential red flags. Alternatively, even if the Respondent Director delegated the responsibility to obtain a bid security to another individual, as the Respondents assert that he sometimes did, the Sanctions Board finds that he was or should have been aware of a substantial risk of falsity as the record reflects that the Respondent Director made no effort to supervise or direct the bid preparation process for the Contract.

31. The record indicates that the Respondent Director failed to take appropriate measures to mitigate this risk. Given his role with respect to the Named Bidder's tender activities, with responsibilities for identifying bidding opportunities, initiating bid preparation, obtaining bid securities, and delegating the task of obtaining necessary bid documents as appropriate, the Respondent Director had a duty to take appropriate action where red flags revealed a substantial risk of inaccurate documentation. In one of his interviews with INT, the Respondent Director reportedly stated that he does not track all bank guarantees included in bid submissions, retain copies of submitted bids in his UK office, or inquire about reasons for a bid's rejection. Nor does the record reflect that the Respondent Director took any appropriate precautions to verify the accuracy or authenticity of the Bid Security in this instance.

32. Having determined that the Respondent Director was or should have been aware of the substantial risk of a false bid security in the Bid and that the Respondent Director did not take adequate precautions notwithstanding this risk, the Sanctions Board concludes that the record supports a finding that the Respondent Director acted recklessly in causing the submission of the Bid that enclosed the false Bid Security.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

3. In order to influence the procurement process

33. The Sanctions Board has previously found sufficient evidence of intent to influence the procurement process where the record showed that falsified documents had been submitted in response to a tender requirement.¹⁸ In the present case, the bidding documents for the Contract explicitly required all bids to be accompanied by a bid security. Accordingly, the Sanctions Board finds that it is more likely than not that the misrepresentation was intended to influence the procurement process for the Contract.

4. To the detriment of the borrower

34. The Sanctions Board has previously held that detriment to a borrowing country may include intangible as well as tangible or quantifiable harms, such as where a respondent's use of forged documents served to distort the selection process or caused the borrower to expend resources to review and evaluate an invalid bid.¹⁹ Considering that the record reveals that inclusion of the forged Bid Security in the Bid caused the bid evaluation committee to expend time and resources to investigate the Bid Security's authenticity, the Sanctions Board finds that detriment has been established.

B. The Respondent Firm's Liability for the Acts of the Signatory and/or the Respondent Director

35. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.²⁰ The Sanctions Board has also previously held respondent firms directly and/or vicariously liable for the acts of their senior officers or owners participating in the misconduct on the firm's behalf.²¹

36. In the present case, the record does not support INT's allegation that the Bid was submitted by the Signatory or the Respondent Director as duly authorized officers and employees of the Respondent Firm. The record contains no evidence that the Signatory was an officer or employee of the Respondent Firm, or that he was acting on behalf of the Respondent Firm in submitting the Bid. Although the record reveals that the Respondent Director was one of only two shareholders at the Respondent Firm at the time of the misconduct, the evidence does not show that he was acting on behalf of the Respondent Firm with respect to the Bid. The records of INT's interviews and correspondence with the Respondent Director do not reveal any inquiry by INT with respect to the Respondent Firm, its employees, or its role in the tender at issue; or even any reference to the name of the

¹⁸ See, e.g., Sanctions Board Decision No. 69 (2014) at para. 23.

¹⁹ See, e.g., *id.* at para. 24.

²⁰ See, e.g., Sanctions Board Decision No. 68 (2014) at paras. 30-31.

²¹ See, e.g., Sanctions Board Decision No. 70 (2014) at para. 25.

Respondent Firm. Rather, INT appears to have presented all of its inquiries in reference to the Named Bidder, the Named Bidder's parent company, and the asserted owner of both firms. Considering the absence of any evidence in the record to connect the Respondent Firm to the submission of the Bid, the Sanctions Board concludes that the Respondent Firm is not liable for the fraudulent practice of the Respondent Director.

C. Sanctioning Analysis

37. Having found that it is more likely than not that the Respondent Director, but not the Respondent Firm, engaged in a fraudulent practice, the Sanctions Board will now determine an appropriate sanction for the Respondent Director.

1. General framework for determination of sanctions

38. 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 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.

39. 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.²² 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.²³

40. The Sanctions Board is required to consider the factors set forth in Section 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state 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.

41. 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.

²² Sanctions Board Decision No. 40 (2010) at para. 28.

²³ Sanctions Board Decision No. 44 (2011) at para. 56.

2. Factors applicable in the present case

a. Severity of the misconduct

42. Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a respondent's repeated pattern of conduct and sophisticated means as examples of severity.

43. *Repeated pattern of conduct*: Section IV.A.1 of the Sanctioning Guidelines refers to a repeated pattern of conduct as a ground for aggravation. The Sanctions Board has previously applied aggravation on this basis where multiple instances of misconduct were alleged and proven in the same case.²⁴ In the present case, INT asserts that aggravation is warranted for repetition based on the Respondents' misconduct in several past bids. However, these other alleged misrepresentations are not the subject of these sanctions proceedings, and INT has put forward no evidence to support its allegations in this regard. Accordingly, the Sanctions Board declines to apply aggravation for repetition.

44. *Sophisticated means*: Section IV.A.2 of the Sanctioning Guidelines states that aggravation may be warranted for sophisticated means based on, *inter alia*, "the complexity of the misconduct (e.g., degree of planning, diversity of techniques applied, level of concealment)" and the number and type of people or organizations involved. INT asserts that aggravation is warranted with respect to this factor for the Respondents' operation of "an irresponsible bidding apparatus" that has engaged in repeated misrepresentations, and the Respondents' use of a false company name. As discussed above in Paragraphs 22-23 and 43, however, the record does not support a finding of repeated instances of misrepresentation or use of a false business name, and does not otherwise indicate complexity in the Respondent Director's conduct with respect to the Bid's submission. The Sanctions Board therefore declines to apply aggravation on this ground.

b. Magnitude of harm caused by the misconduct

45. Section 9.02(b) of the Sanctions Procedures requires consideration of the "magnitude of the harm caused by the misconduct." Section IV.B.1 of the Sanctioning Guidelines suggests aggravation for "harm to public safety/welfare," such as when the misconduct either resulted in or involves a foreseeable risk of death or bodily injury, or if public health or safety is endangered by the misconduct. INT asks that the Sanctions Board apply some mitigation in respect of this factor, because the timely discovery of the false Bid Security and prompt rejection of the Bid limited the damage caused by the fraudulent practice in this instance. Consistent with Sanctions Board precedent considering the absence of potential aggravating

²⁴ See, e.g., Sanctions Board Decision No. 56 (2013) at para. 55 (applying aggravation under this factor in light of the respondents' repeated engagement in different types of fraud); Sanctions Board Decision No. 68 (2014) at para. 37 (applying some aggravation where the respondent submitted forged bid securities with two separate bids for two Bank-financed contracts).

factors as a neutral fact rather than as grounds for mitigation,²⁵ the Sanctions Board concludes that assertions as to the supposedly neutral consequences of the misconduct do not justify mitigation.

c. Cooperation

46. 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, admission or acceptance of guilt or responsibility, and voluntary restraint from bidding as some examples of cooperation.

47. *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 inquiries during the investigation,²⁶ participated in INT interviews,²⁷ or provided evidence to INT.²⁸ INT asserts that, although the Respondent Director’s cooperation assisted INT’s investigation to some extent, the thoroughness and credibility of this assistance were limited by the Respondent Director’s asserted inability to make the Signatory available to INT for questioning and the Respondent Director’s refusal to provide “critical information” about the Respondent Firm or the Named Bidder’s parent company.

48. The record indicates that the Respondent Director participated in two interviews with INT, responded to subsequent inquiries from INT via email, and provided a document relating to the Named Bidder and its parent company. Although INT contends that the Respondent Director’s cooperation was limited in other respects, the Sanctions Board notes that the record does not contradict the Respondent Director’s assertion that he was unable to reach the Signatory, nor does it indicate that INT had asked the Respondent Director for any information regarding the Respondent Firm, or clarify the relevance of the Named Bidder’s parent company with respect to the present sanctions proceedings. The Sanctions Board concludes that the Respondent Director’s assistance with INT’s investigation warrants mitigation.

²⁵ See, e.g., Sanctions Board Decision No. 71 (2014) at paras. 85-86 (considering the respondent’s execution of its contractual obligations as a neutral fact, not as a ground for mitigation).

²⁶ See, e.g., Sanctions Board Decision No. 72 (2014) at para. 61.

²⁷ See, e.g., *id.*

²⁸ See, e.g., Sanctions Board Decision No. 70 (2014) at para. 35.

49. *Admission/acceptance of guilt/responsibility*: Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent's admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance should be given more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. Although the record includes the Respondents' statements appearing to acknowledge that documents in the Bid may have been falsified and an apology for the inconvenience caused to INT, the Respondent Director has not accepted responsibility for any fraudulent practices. Consistent with precedent, the Sanctions Board thus declines to grant any additional mitigating credit on this ground.²⁹

50. *Voluntary restraint*: Section V.C.4 of the Sanctioning Guidelines provides for mitigation where a sanctioned party has voluntarily refrained from bidding on Bank-financed tenders pending the outcome of an investigation. The Respondent Director stated in 2006 that the Named Bidder and its parent company had suspended their "tender bidding business," but has not provided evidence of a policy or practice of voluntary restraint with respect to any entities under his control, including the Respondent Firm. Accordingly, the Sanctions Board concludes that the record does not support mitigation for voluntary restraint.³⁰

d. Period of temporary suspension

51. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent Director's temporary suspension since the EO's issuance of the Notice on June 29, 2012, noting that the hearing in this case was postponed for approximately six months following the Respondents' request to reschedule the hearing originally confirmed for mid-2013. The postponement request, which was based on the Respondent Director's health, was supported by evidence that the Sanctions Board Chair considered satisfactory.

e. Other considerations

52. 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."

53. *Passage of time*: The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time since the commission of the misconduct, or since the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions

²⁹ See, e.g., Sanctions Board Decision No. 69 (2014) at para. 42.

³⁰ See Sanctions Board Decision No. 60 (2013) at para. 135 (declining to apply mitigation for asserted voluntary restraint where the respondents failed to provide any evidence of a policy or practice of voluntary restraint from bidding).

proceedings.³¹ This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented as well as the fairness of the process for respondents.³² At the time of the EO's issuance of the Notice in June 2012, more than seven and a half years had elapsed since the Bid's submission in December 2004; and more than seven years had elapsed since the Bank first became aware of the potential fraudulent practice in April 2005. These delays included a period of four years in which the matter was with INT for investigation, and an additional three years between INT's original submission of its SAE to the EO and the EO's issuance of a Notice to the Respondents. The Sanctions Board therefore applies mitigation on this ground.

54. *Shifting factual assertions:* The record indicates a significant change of position by the Respondent Director between his reported 2006 statements to INT, which detail the manner of his participation in tender activities of the Named Bidder and its asserted parent company, including the tender for the Contract, and his statements to the Sanctions Board at the hearing, when the Respondent Director denied any awareness of or participation in the tender for the Contract. Although the Sanctions Board assesses the weight of INT's record of the 2006 interview in the light of its non-verbatim and summary nature, the Sanctions Board also notes that the Respondent Director's reported comments were highly detailed and not contradicted in the Response, which was submitted after the Respondent Director had had an opportunity to review the record of interview. In these circumstances, the Sanctions Board finds the Respondent Director's subsequent denial of any knowledge of the tender substantially less credible and finds aggravation warranted on the basis of his shifting assertions.³³

D. Determinations of Liability and Appropriate Sanction

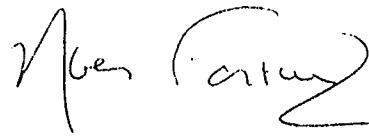
55. Considering the full record and all of the factors discussed above, the Sanctions Board:
- i. declares, in accordance with Section 8.01(a) of the Sanctions Procedures, that the present sanctions proceedings against the Respondent Firm, including the temporary suspension imposed by the EO for the pendency of such proceedings, are hereby terminated; and
 - ii. determines that the Respondent Director, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Director, shall be,

³¹ See, e.g., Sanctions Board Decision No. 48 (2012) at para. 48 (applying mitigation where almost three years had elapsed between the Bank's awareness of the potential sanctionable practices and the initiation of sanctions proceedings); Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where approximately five years had elapsed between the Bank's awareness of the potential sanctionable practices and the initiation of sanctions proceedings); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where more than five (and up to nine) years had elapsed since the misconduct, and more than five (and up to eight) years had elapsed between the Bank's awareness of the potential sanctionable practices and the initiation of sanctions proceedings).

³² See Sanctions Board Decision No. 50 (2012) at para. 71.

³³ See Sanctions Board Decision No. 61 (2013) at para. 51.

and hereby declares that he 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 for a period of six (6) months, beginning on the date of this decision. The Sanctions Board has elected not to attach any conditions to the Respondent Director's release, either with respect to him individually or to any Affiliate entities under his control, given the brevity of the remaining ineligibility period, which at six months substantially limits the possibility to demonstrate, evaluate, or monitor the Respondent Director's compliance with any meaningful measures, and the lack of evidence of any sanctionable practices by the Respondent Firm under the Respondent Director's apparent control. The ineligibility of the Respondent Director and his Affiliate(s) shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent Director for a fraudulent practice as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines.



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

L. Yves Fortier
Hassane Cissé
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Denis Robitaille
J. James Spinner