THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: February 3, 2020

Sanctions Board Decision No. 122
(Sanctions Case No. 609)

IDA Credit No. 5105-NG
Nigeria

Decision of the World Bank Group[1] Sanctions Board imposing (i) a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 609 (the "Respondent Firm"), together with certain Affiliates, with a minimum period of ineligibility of four (4) years beginning from the date of this decision; and (ii) a sanction of debarment with conditional release on the individual respondent in Sanctions Case No. 609 (the managing director of the Respondent Firm, hereinafter referred to as the "Individual Respondent"), together with certain Affiliates, with a minimum period of ineligibility of four (4) years beginning from the date of this decision.[2] These sanctions are imposed on the Respondent Firm and the Individual Respondent (together, the "Respondents") for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board convened in December 2019 as a panel composed of John R. Murphy (Chair), Maria Vicien Milburn, and Rabab Yasseen to review this case. Neither the Respondents nor the World Bank Group's Integrity Vice Presidency ("INT") requested a hearing in this matter. Nor did the Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.[3]

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

i. Notice of Sanctions Proceedings issued by the World Bank's Suspension and Debarment Officer (the "SDO") to the Respondents on May 30, 2019 (the

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

[2] Section II(a) of the Sanctions Procedures defines "Affiliate" as "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." The sanctions imposed by this decision apply only to those Affiliates that are directly or indirectly controlled by either of the Respondents. See infra Paragraph 28.

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

"Notice"), appending the Statement of Accusations and Evidence (the "SAE") submitted by INT to the SDO (undated);

ii. Response submitted by the Respondents to the Secretary to the Sanctions Board on August 29, 2019 (the "Response"); and

iii. Reply submitted by INT to the Secretary to the Sanctions Board on September 27, 2019 (the "Reply").

3. On May 30, 2019, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice and temporarily suspended each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents, from eligibility[4] with respect to any Bank-Financed Projects,[5] pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspensions would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notice sanctions of debarment with conditional release for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents. For the Respondent Firm, the SDO recommended a minimum period of ineligibility of four (4) years, after which period the Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer (the "ICO") that it has (i) taken appropriate remedial measures to address the sanctionable practice for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank. For the Individual Respondent, the SDO recommended a minimum period of ineligibility of four (4) years, after which period the Individual Respondent may be released from ineligibility only if he has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the ICO that (i) he has taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned, (ii) he has completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and (iii) any entity that is an Affiliate directly or indirectly controlled by the Individual Respondent has adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

II. GENERAL BACKGROUND

4. This case arises in the context of the Erosion and Watershed Management Project (the "Project") in Nigeria (the "Borrower"), which seeks to reduce vulnerability to soil erosion in targeted sub-watersheds. On April 16, 2013, IDA entered into a credit agreement with the Borrower

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

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

to provide approximately US$444 million for the Project (the "Financing Agreement"). The Project became effective on September 16, 2013, and is scheduled to close on June 30, 2021.

5. On March 7, 2017, the agency responsible for implementing the Project (the "PIU") issued bidding documents (the "Bidding Documents") relating to specific reclamation, channelization, and remediation works under the Project in Anambra State of Nigeria (the "Contract"). On May 2, 2017, the Respondent Firm submitted a bid for the Contract (the "Bid"), signed by the Individual Respondent. Among other required items, the Bid included a bid guarantee (the "Bid Security") from a bank in Nigeria (the "Purported Issuer"). On October 20, 2017, the PIU issued its bid evaluation report; the Respondent Firm was not selected.

6. INT alleges that the Bid Security was inauthentic and that the Respondents engaged in a fraudulent practice by knowingly including it in the Bid.

III. APPLICABLE STANDARDS OF REVIEW

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

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

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

10. *Applicable definition of fraudulent practice*: The Financing Agreement provided that procurement of goods and works under the Project should follow the World Bank's Guidelines: Procurement of Goods, Works, and Non-consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the "January 2011 Procurement Guidelines"). The excerpt of the Bidding Documents in the record does not similarly identify a document that governs the procurement process but describes the Bank's authority to sanction and includes definitions of sanctionable practices in a manner consistent with the January 2011 Procurement Guidelines. Paragraph 1.16(a)(ii) of these Guidelines defines "fraudulent practice" as "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation[.]" A footnote to this definition explains that the term "party" refers to a public official; the terms

"benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.[6]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

11. INT alleges that the Respondents engaged in a fraudulent practice by knowingly including the false Bid Security in the Bid. INT asserts that this misrepresentation sought to mislead the PIU that the Respondent Firm had satisfied the bidding requirements for the Contract. INT submits that the Individual Respondent is culpable for the misconduct because he was directly involved in an unsuccessful attempt to obtain a valid bid security and in the subsequent submission of the false Bid Security to the PIU as part of the Bid. In support of this allegation, INT submits documentary and testimonial evidence from the Purported Issuer. INT does not propose any aggravating or mitigating factors in the SAE.

B. The Respondents' Principal Contentions in the Response

12. The Respondents appear to concede that the Bid Security was not an authentic document. However, the Respondents argue that the Individual Respondent took appropriate steps to obtain it and was misled to believe that it was valid. The Respondents assert that one source of inculpatory evidence – an employee of the Purported Issuer – denied his reported statements to INT. The Respondents request "leniency" and submit, inter alia, that a sanction would be harmful to the Respondent Firm and the families of its employees.

C. INT's Principal Contentions in the Reply

13. INT submits that it has met its burden of proof to show that it is more likely than not that the Respondents engaged in a fraudulent practice, and that the Respondents have failed to credibly dispute INT's arguments and evidence. INT describes the Respondents' defenses as inconsistent. INT also notes the absence of evidence to support the Respondents' claims that the Individual Respondent was misled or that the relevant witness denied making inculpatory statements to INT.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

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

A. Evidence of Fraudulent Practice

15. In accordance with the definition of "fraudulent practice" under the January 2011 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) engaged in any act or omission, including misrepresentation (ii) that knowingly

[6] January 2011 Procurement Guidelines at para. 1.16(a)(ii), n.21.

or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.

1. Misrepresentation

16. INT asserts that the Bid Security is not authentic and including it in the Bid constituted a misrepresentation. The Respondents appear to concede that the Bid Security was not authentic, but also argue that the Respondent Firm properly requested and paid for the Bid Security. In support, the Respondents provide a copy of a bank statement showing charges by the Purported Issuer against the Respondent Firm's account. Separately, the Respondents claim that they relied on assurances from a third party (described as a "vendor" and an "[i]mpostor" by the Respondents) that the Bid Security was authentic, but do not supply further information to help assess the credibility of that defense.

17. In past decisions finding that respondents submitted false information or made a false statement, the Sanctions Board has considered various factors as indicative of a misrepresentation, including statements by third parties that were named in or supposedly issuing the alleged fraudulent documents,[7] and the respondents' own acknowledgments.[8] In the present case, the Sanctions Board notes several types of evidence that the Bid Security is not authentic. First, the record includes correspondence between the PIU and the Purported Issuer during the bid review process, where the Purported Issuer denies having issued the Bid Security. Second, the record includes later correspondence and an interview between INT and a representative of the Purported Issuer, who stated that the Bid Security was not valid. Third, when INT followed up on the Respondents' claim that it had paid for the Bid Security, the bank representative asserted that the charges disclosed by the Respondents were not associated with a bid security. Finally, the Respondents' submissions include complaints of being "misled" and state that the Respondents "innocently forwarded" a "false bid document." The Sanctions Board notes that such statements appear to concede that the Bid Security was not authentic.

18. In these circumstances, the Sanctions Board finds the evidence sufficient to conclude that the Bid Security was, more likely than not, false and the Bid therefore contained a misrepresentation.

2. Made knowingly or recklessly

19. INT alleges that the Respondents acted knowingly in making the alleged misrepresentation. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.[9] The Respondents claim that they believed the Bid Security to be authentic and did not deliberately present a forged bid security to

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

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

[9] Sanctions Procedures at Section III.A, sub-paragraph 7.01.

the PIU. The Respondents also submit that they were deceived by a "vendor" who promised to hasten the issuance of the Bid Security, which the Respondents "innocently forwarded."

20. The record does not reveal the specific process of Bid preparation in this case. However, the record does show that the Individual Respondent requested a bid security from the Purported Issuer and later met with a representative of the Purported Issuer. During that meeting, the Individual Respondent was apparently informed that his request for a bid security was approved but, importantly, the bid security would not be issued without an insurance payment required by the bank. Following that conversation, the Individual Respondent came to possess the (inauthentic) Bid Security document, which he included in the Bid and submitted to the PIU. Thus, the Individual Respondent appears to have been aware, at the time of Bid submission, that no authentic bid security was issued to the Respondent Firm. The Respondents' assertion that the Respondent Firm's bank statements reflect payments in relation to a bid security is not supported by a plain reading of the bank statements;[10] is contradicted by the Purported Issuer itself; and is rendered even less convincing by the timing of the various charges, which occurred between September 2017 and March 2018 – at least four months after submission of the Bid. The Respondents' claim that the Purported Issuer's representative was misunderstood by INT is not supported by any documentation and does not constitute a credible rebuttal of INT's allegation.

21. The Sanctions Board has previously found that circumstantial evidence may support a finding of knowing misconduct;[11] it reaches the same finding here. The Sanctions Board takes particular note of evidence that the Individual Respondent was personally informed that a bid security would not be issued without payment of additional fees and nevertheless proceeded to obtain (or create) and submit the Bid Security to the PIU. In the present case, the record supports a finding that that the Individual Respondent was likely aware, when he submitted the Bid, that the Bid Security was not issued by the Purported Issuer as described. The Sanctions Board therefore finds that it is more likely than not that the misrepresentation was made knowingly.

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

22. The Sanctions Board has previously found sufficient evidence of intent to obtain a financial or other benefit or to avoid an obligation where the record showed that misrepresentations were made in response to a tender requirement.[12] The Sanctions Board has reached this finding "[i]rrespective of the bid requirement's actual significance, and the subjective assessment thereof by a bidder."[13] INT submits that the Respondents' misrepresentations sought to satisfy the bidding requirements for the Contract under the Project. The Respondents do not contest this point. The

[10] The seven identified charges do not appear to be connected to the Bid Security. Some carry no guarantee reference number, some carry a reference number different from the Bid Security, and others are described as payments for a "performance bond." A performance bond or guarantee, in the context of public procurement, is functionally distinct from a bid security/guarantee.

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

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

[13] Sanctions Board Decision No. 71 (2014) at para. 76.

record shows that the Bidding Documents required each bidder to furnish a bid security at a specified value and issued by a bank. The Respondent Firm's Bid Security was included in the Bid and otherwise corresponded with the related bidding requirements (i.e., in format and amount).

23. In these circumstances, the Sanctions Board finds it more likely than not that the Bid Security served to render the Bid compliant with related requirements and to improve the Respondent Firm's likelihood of winning and benefitting from the Contract.

B. The Respondent Firm's Liability

24. 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.[14] Where a respondent entity has denied responsibility for the acts of its employees based on a "rogue employee" defense, the Sanctions Board has considered any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.[15] The record reflects the Individual Respondent's direct involvement in submission of the Bid and does not otherwise suggest that any staff or representatives of the Respondent Firm acted outside of their scope of authority and against the Respondent Firm's interests. The Individual Respondent's reference to a "vendor" in contributing to the submission of an inauthentic document in the Bid is not supported by additional evidence and, in any event, does not appear to reflect a "rogue employee" defense. The Sanctions Board therefore finds the Respondent Firm liable for the fraudulent conduct of the Individual Respondent.

C. Sanctioning Analysis

1. General framework for determination of sanctions

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

26. 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

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

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

sanction.[16] 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.[17]

27. The Sanctions Board is required to consider the types of factors set forth in Section III.A, sub-paragraph 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Group Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. The Sanctioning Guidelines further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after a minimum period of three years.

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

2. Factors considered in the present case

a. Severity of the misconduct

29. Section III.A, sub-paragraph 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies various examples of severity that may merit aggravation.

30. *Management's role*: Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board has applied aggravation where the record showed that senior members of a respondent entity's management personally participated in the misconduct.[18] The Sanctions Board notes its earlier finding that the Individual Respondent – who is a majority owner and managing director of the Respondent Firm – engaged in a knowing misrepresentation and therefore directly participated in the misconduct. In these circumstances, the Sanctions Board finds sufficient basis to apply aggravation to the sanction of the Respondent Firm.

31. *Mode of the misconduct*: Section IV.A of the Sanctioning Guidelines suggests that the specific manner of misconduct (pattern, sophistication) can render that misconduct more "severe"

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

[17] See Sanctions Board Decision No. 44 (2011) at para. 56.

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

for purposes of sanctioning analysis. The Sanctions Board has previously applied aggravation for fraudulent conduct it found to be egregious[19] or sophisticated.[20] In the present case, the record reflects likely forgery of a required and official document with aforethought and intent to conceal its inauthentic nature. The Sanctions Board finds that this type of fraudulent misrepresentation is especially severe in the relevant procurement context and merits aggravation with respect to each of the Respondents.

b. Period of temporary suspension

32. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the Respondents' period of temporary suspension. The Respondents have been suspended since the issuance of the Notice on May 30, 2019.

c. Other considerations

33. Under Section III.A, sub-paragraph 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider "any other factor" that it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice."

34. *Lack of candor*: The Sanctions Board has previously applied aggravation where the record reflected a respondent's persistent and implausible denials of responsibility for the misconduct or knowledge of the misconduct, including arguments predicated on an uncorroborated version of events.[21] In the present case, the Respondents submitted various arguments and assertions that lacked credibility. When INT presented the Respondents with evidence that the Bid Security was inauthentic, the Respondents insisted that is was properly requested and approved, in spite of having been informed during the bidding process that a valid security would not be issued. At the same time, the Respondents claimed having relied on an "[i]mpostor" or "vendor," without any corroborating information or other details regarding the asserted vendor's role in the misconduct. The Respondents additionally suggested, again without evidence, that unspecified limitations in Nigeria's infrastructure and/or problems in communication between the Purported Issuer's branch and head offices may explain the evidence of misconduct. When the Notice was issued, the Respondents contested, without evidence, the Purported Issuer's statements made to INT. Finally, the Respondents presented bank account statements showing transactions that do not appear

[19] Sanctions Board Decision No. 41 (2010) at para. 88.

[20] Sanctions Board Decision No. 77 (2015) at para. 49 (noting "apparent forethought and planning required to prepare [the] the deceptive documents" at issue).

[21] See Sanctions Board Decision No. 61 (2013) at para. 51 (multiple changes of position by the respondents, including inconsistent explanations in response to the allegations); Sanctions Board Decision No. 63 (2014) at para. 121 (the respondents' persistent and implausible denials of responsibility for or knowledge of the misconduct, despite substantial evidence to the contrary); Sanctions Board Decision No. 71 (2014) at para. 107 (respondent's presentation of an uncorroborated and non-credible version of events in order to justify submission of inauthentic documents in a bid); Sanctions Board Decision No. 77 (2015) at para. 59 (the respondent's implausible suggestion that the misrepresentation took place without the respondent's knowledge or authorization).

related to the bid security request at issue.[22] The Respondents' misleading and uncorroborated statements continued through the investigation and the sanctions proceedings in this case. The Sanctions Board finds such conduct to reflect a consistent lack of candor that merits aggravation of the Respondents' final sanctions.

35. *Adverse consequences of debarment*: The Respondents request leniency and submit that any sanction would harm the company and its employees' families in a high-poverty area. The Sanctions Board has repeatedly held that the expected future business impact of a sanction is not a factor that is relevant to a respondent's culpability for the alleged misconduct and the Sanctions Board's analysis in a specific case.[23] The Sanctions Board similarly declines to apply any mitigation based on the expected consequences of debarment asserted in these proceedings.

36. *Absence of a history of misconduct*: The Respondents' request for leniency also submits that this is a first instance of such "embarrassing" events. The Sanctions Board has previously found the absence of aggravating circumstances (such as a history of adjudicated misconduct) to be a neutral factor and not deserving of mitigation.[24] In the present case, the Sanctions Board again declines to apply any mitigation on this basis.

37. *History of performance*: Finally, the Respondents' request for leniency asserts that the Respondent Firm has a good track record of service. The Sanctions Board has generally declined to consider, in its sanctioning analysis, the respondent's history of performance or development contributions, often noting that this did not appear related to the respondent's culpability or responsibility for the misconduct.[25] In these circumstances, the Sanctions Board declines to apply any mitigating credit for the Respondents' asserted history of good conduct.

D. Determination of Appropriate Sanctions

38. Considering the full record and all the factors discussed above, the Sanctions Board determines that:

i. the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract,

[22] Supra, Paragraph 20.

[23] See, e.g., Sanctions Board Decision No. 79 (2015) at para. 56 (declining to apply mitigation for the potential business impact of a debarment or the collateral consequences of that debarment for the respondent's employees).

[24] See, e.g., Sanctions Board Decision No. 85 (2016) at para. 50 ("while a record of past sanctionable misconduct may merit treatment as an aggravating factor, the Sanctions Board considers its absence a neutral fact").

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

financially or in any other manner;[26] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[27] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of four (4) years beginning from the date of this decision, the Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented effective integrity compliance measures in a manner satisfactory to the World Bank Group, including an anti-fraud training program for its employees, measures relating to use of agents in the procurement process, and disciplinary action against the Individual Respondent and any other staff involved in the misconduct at issue in this case. This sanction is imposed on the Respondent Firm for a fraudulent practice as defined in Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines; and

ii. the Individual Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Individual Respondent, shall be, 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;[28] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[29] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of four (4) years beginning from the date of this decision, the Individual Respondent may be released from ineligibility only if he has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, participated in a training program responsive to the misconduct at issue in this case and all entities that he directly or indirectly controls have, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented effective integrity compliance measures in a manner satisfactory to the World Bank Group, including an anti-fraud training program

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

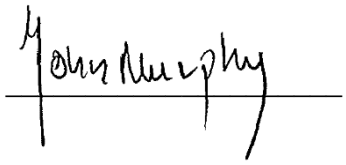
[27] A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(ii), n.15.

[28] See supra, n.83.

[29] See supra, n.84.

for its employees and measures relating to use of agents in the procurement process. This sanction is imposed on the Individual Respondent for fraudulent practice as defined in Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines.

39. The ineligibility of each of the Respondents shall extend across the operations of the World Bank Group. The Bank will also provide notice of these declarations of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may determine whether to enforce the declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[30]



John R. Murphy (Sanctions Board Chair)

On behalf of the
World Bank Group Sanctions Board

John R. Murphy
Maria Vicien Milburn
Rabab Yasseen

[30] At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The Cross-Debarment Agreement provides that, subject to the prerequisite conditions set forth in the Cross-Debarment Agreement, unless a participating MDB (i) believes that any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the "opt out" clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank's website (http://go.worldbank.org/B699B73Q00).