THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: February 6, 2020

Sanctions Board Decision No. 123
(Sanctions Case No. 640)

IBRD Loan No. 8380-GE
IBRD Loan No. 8494-GE
Georgia

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 640 (the "Respondent"), together with certain Affiliates,[2] with a minimum period of ineligibility of three (3) years beginning from the date of this decision. This sanction is imposed on the Respondent for fraudulent practices.

I. INTRODUCTION

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

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

i. Notice of Sanctions Proceedings issued by the World Bank's Suspension and Debarment Officer (the "SDO") to the Respondent on April 23, 2019 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") submitted by INT to the SDO (undated);

---

[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 the Respondent. See infra Paragraph 41.

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

ii. Explanation submitted by the Respondent to the SDO on May 30, 2019 (the "Explanation");

iii. Response submitted by the Respondent and received by the Secretary to the Sanctions Board on July 29, 2019 (the "Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on August 29, 2019 (the "Reply").

3. On April 23, 2019, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice and temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility[4] with respect to any Bank-Financed Projects,[5] pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notice the sanction of debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The SDO 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 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 the Respondent has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

II. GENERAL BACKGROUND

4. This case arises in the context of two projects in Georgia (the "Borrower"): (i) the Second Regional and Municipal Infrastructure Development Project, which seeks to improve the efficiency and reliability of targeted municipal services and infrastructure ("Project 1"); and (ii) the Third Regional Development Project, which seeks to improve infrastructure services and institutional capacity to support increased contribution of tourism in the local economy of certain regions ("Project 2") (together, the "Projects"). IBRD and the Borrower entered into two loan agreements to finance the Projects: (i) a loan agreement to provide US$30 million for Project 1, dated August 18, 2014 ("Loan Agreement 1"); and (ii) a loan agreement to provide US$60 million for Project 2, dated August 7, 2015 ("Loan Agreement 2") (together, the "Loan Agreements"). Both Projects are being implemented by the same project implementation unit (the "PIU").

[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).

Project 1 became effective on December 16, 2014, and is scheduled to close on April 30, 2021. Project 2 became effective on October 15, 2015, and is scheduled to close on December 31, 2022.

5. On October 6, 2017, the PIU issued bidding documents for a contract for the rehabilitation of a botanical garden under Project 1 ("Contract 1"). On November 3, 2017, the PIU issued bidding documents for a contract for the conversion of a cinema building under Project 2 ("Contract 2"). The Respondent submitted a bid for Contract 1 on November 7, 2017 ("Bid 1"), and a bid for Contract 2 on December 4, 2017 ("Bid 2") (together, the "Bids"). The PIU recommended the award of Contract 1 and Contract 2 (together, the "Contracts") to other bidders.

6. INT alleges that the Respondent engaged in fraudulent practices by knowingly failing to disclose required information in the Bids.

III. APPLICABLE STANDARDS OF REVIEW

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

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

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

10. *Applicable definitions of fraudulent practice*: Loan Agreement 1 provided that 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") would apply to the procurement of works under Project 1. Loan Agreement 2 provided that 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, revised July 2014) (the "July 2014 Procurement Guidelines") would apply to the procurement of works under Project 2. The bidding documents for each of the Contracts referred to the July 2014 Procurement Guidelines, and set out a definition of "fraudulent practice" consistent with the common definition in the January 2011 and July 2014 Procurement Guidelines. Paragraph l.16(a)(ii) of each version of these Guidelines defines 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." 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 Respondent failed to disclose five outstanding contractual obligations (the "Omitted Contracts") in each of the Bids, thereby breaching express tender requirements and misrepresenting its financial capacity. According to INT, the Omitted Contracts consisted of: (i) a contract for construction works at a residential complex, between the Respondent and a Georgian national agency ("Omitted Contract 1"); (ii) a contract for road works, between the Respondent and a Georgian local agency ("Omitted Contract 2"); (iii) a contract for construction works at an airport, between the Respondent and a Georgian state-owned enterprise ("Omitted Contract 3"); (iv) a contract for construction works at an office building, between the Respondent and a Georgian state-owned enterprise ("Omitted Contract 4"); and (v) a contract for construction works at a landfill site, between the Respondent and a Georgian state-owned enterprise ("Omitted Contract 5"). INT asserts that the Respondent knowingly attempted to mislead the PIU in order to meet the qualification conditions and ultimately secure the Contracts. INT does not identify any relevant aggravating or mitigating factors.

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

12. The Respondent acknowledges the failure to identify the Omitted Contracts in the Bids but denies that its personnel acted with the intent to mislead a party. According to the Respondent, its staff considered that the Omitted Contracts were not subject to mandatory disclosure because, at the time of submission of the Bids, the works were inactive or had been subcontracted to other companies and therefore did not affect the Respondent's financial capacity. The Respondent requests mitigation, referencing: (i) minor role in the misconduct; (ii) internal action against responsible individual; (iii) implementation of enhanced controls; (iv) absence of aggravating factors; (v) absence of harm to public safety and welfare; and (vi) voluntary restraint.

C. INT's Principal Contentions in the Reply

13. INT submits, as an alternative argument, that the Respondent acted at least recklessly in making the alleged misrepresentations. INT also contends that the Respondent's asserted interpretation of the applicable disclosure requirements is self-serving, unreasonable, and unsupported by evidence. In addition, INT opposes mitigation as requested by the Respondent.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

14. The Sanctions Board will first consider whether it is more likely than not that the alleged fraudulent practices occurred and, if so, whether the Respondent may be held liable for the

[6] January 2011 Procurement Guidelines at para. 1.16(a)(ii), n.21; July 2014 Procurement Guidelines at para. 1.16(a)(ii), n.21.

misconduct. The Sanctions Board will then determine what sanctions, if any, should be imposed on the Respondent.

A. Evidence of Fraudulent Practices

15. In accordance with the definition of "fraudulent practice" under the January 2011 and July 2014 Procurement Guidelines, INT bears the initial burden to prove that it is more likely than not that the Respondent (i) engaged in an act or omission, including a misrepresentation, (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.

1. Act or omission, including a misrepresentation

16. INT alleges that the Respondent failed to disclose the Omitted Contracts in each of the Bids, thereby breaching express tender requirements and misrepresenting its financial capacity. The Respondent concedes the omissions but denies any wrongdoing. The Respondent implies that the Omitted Contracts were not subject to disclosure because these contractual obligations did not affect the Respondent's financial capacity at the time of submission of the Bids.

17. The Sanctions Board has consistently determined that a failure to meet disclosure obligations may constitute an omission or misrepresentation under the first element of fraudulent practice.[7] In the present case, the bidding documents for both Contracts instructed bidders to list their ongoing works or contracts in a standard bidding form ("Form CCC") as proof of qualification and available annual capacity "to implement the works prescribed by the [C]ontract while already being liable to the [PIU] or other agencies." The provisions in question contained no exceptions and specified that this requirement applied to "awarded contracts as well as those contracts on which [bidders] have received an acceptance letter or a letter of intention and those contracts, which are coming to an end, but [for which] the final certificates have not yet been issued" (emphasis added). Considering the totality of the evidence, the Sanctions Board concludes that this requirement applied to the Omitted Contracts. In particular, contemporaneous extracts from the Georgian state procurement database show, and the Respondent does not dispute, that the Omitted Contracts had been awarded to the Respondent and remained ongoing when the Respondent submitted the Bids. While the Respondent argues that it was not performing any works or allocating any resources to the Omitted Contracts at that time, these assertions are immaterial to the obligation at issue. All bidders were explicitly required to disclose any awarded contracts for which a completion certificate had yet to be signed – without exception. Nothing in the bidding documents suggests that the Respondent was allowed to exclude any relevant contracts based on the Respondent's own assessment of the financial impact of such contracts.

[7] See, e.g., Sanctions Board Decision No. 56 (2013) at paras. 44-49; Sanctions Board Decision No. 60 (2013) at paras. 94-96; Sanctions Board Decision No. 83 (2015) at paras. 48-50, 57; Sanctions Board Decision No. 88 (2016) at paras. 24-29; Sanctions Board Decision No. 92 (2017) at paras. 67-70; Sanctions Board Decision No. 114 (2018) at paras. 31-35; and Sanctions Board Decision No. 120 (2019) at paras. 31-35.

18. In these circumstances, the Sanctions Board finds that it is more likely than not that representatives of the Respondent engaged in misrepresentations by failing to disclose the Omitted Contracts in the Bids.

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

19. INT submits that, in making the misrepresentations in question, the Respondent knowingly or at least recklessly attempted to mislead a party. The Respondent argues that there was no "intentional omission of relevant facts and misrepresentation of information."

20. 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.[8] In the present case, the record supports INT's allegation of knowledge.

21. With respect to the omission in Bid 1, the relevant Form CCC and the Respondent's own assertions indicate that the Respondent's staff: (i) was aware of the disclosure requirements at issue; (ii) identified, based on these requirements, which of the Respondent's awarded contracts were pending; and (iii) made a conscious decision to disclose only some of these contracts in the Bids, deliberately excluding the Omitted Contracts. As addressed in Paragraph 17 above, this selective disclosure assertedly sought to satisfy the perceived purpose of the obligation (identifying contracts that affected the bidders' financial capacity), as opposed to the actual language of the requirements (identifying contracts that had been awarded to the bidders and remained pending). However, this course of action finds no support in the bidding documents and appears unreasonable in this context. Particularly in light of the Respondent's demonstrated experience in procurement processes for Bank-financed contracts and its asserted history of cooperation with the PIU, these circumstances suggest that the Respondent's employees knew and understood that they were breaching the applicable rules.

22. With respect to the omission in Bid 2, in addition to the circumstances described above, the record also reveals that the Respondent was effectively on notice that the Omitted Contracts were subject to mandatory disclosure. Contemporaneous documentation shows that after the submission of Bid 1, and prior to the submission of Bid 2, the PIU: (i) consulted the state procurement system and determined that the Respondent had failed to identify the Omitted Contracts in Bid 1; (ii) notified the Respondent that the system had detected the Omitted Contracts; and (iii) asked the Respondent to provide further information about the status of the Omitted Contracts. The communications from the PIU clearly indicated that the Omitted Contracts were relevant to the selection criteria. Nevertheless, the Respondent subsequently repeated the same omission in Bid 2. This evidence further demonstrates that the Respondent's staff acted knowingly in making the misrepresentation at issue.

23. The Sanctions Board finds that the Respondent did not satisfactorily rebut the evidence of knowledge examined above. Specifically, the Respondent asserts that its staff: (i) would not have attempted to conceal the Omitted Contracts from the PIU because the Respondent's contractual

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

history was readily available on the state procurement database; (ii) misunderstood the applicable requirements, believing that the Omitted Contracts were not subject to disclosure because they did not affect the Respondent's financial capacity; (iii) did not interpret the aforementioned communications from the PIU as a notice of wrongdoing, as they contained "no indication of misconduct and/or improper understanding of requirements of tender;" and (iv) repeated the omission in Bid 2 in the interest of consistency and believing that it was possible to rectify any misunderstandings through an amendment to the bid. The Sanctions Board is not persuaded by these arguments. First, the fact that the omitted information was public, or easily ascertainable, has no bearing on whether the Respondent's employees were aware that the omission was improper. Second, the Respondent's misunderstanding defense is premised on assertions that the Omitted Contracts were inactive or had been subcontracted to other companies when the Bids were submitted.[9] However, the Sanctions Board observes that these assertions are, for the most part, uncorroborated or contradicted by evidence.[10] For example, while the Respondent claims that Omitted Contract 4 had been suspended before the submission of Bid 1, the record shows that the official notice of suspension was not issued until two weeks after the submission of Bid 2. Third, while it is true that the PIU did not expressly accuse the Respondent of wrongdoing, the correspondence in question clearly indicated that the Omitted Contracts should have been disclosed. Fourth, for a finding of intent, it is irrelevant whether Bid 2 could be amended after the fact, as the Respondent's employees were aware of the misrepresentation at the time that it was made.

24. For the reasons above, the Sanctions Board finds that it is more likely than not that representatives of the Respondent, in declining to disclose the Omitted Contracts in the Bids, knowingly attempted to mislead a party.

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

25. INT argues that the Respondent failed to identify the Omitted Contracts in order to misrepresent the true value of its outstanding works and available annual capacity, thereby meeting the qualification requirements for the Contracts. The Respondent contends that it was not awarded the Contracts and therefore it derived no financial or other benefit from the conduct at issue.

[9] Specifically, the Respondent asserts that at the time of submission of the Bids: (i) the Respondent was negotiating to subcontract Omitted Contract 1; (ii) Omitted Contract 2 had been subcontracted to another company; (iii) the construction permit for Omitted Contract 3 was pending; and (iv) works under Omitted Contracts 4 and 5 had been suspended.

[10] The Respondent presented several documents to support these assertions, including contemporaneous agreements, invoices, and correspondence. However, this evidence appears to substantiate only the purported status of Omitted Contract 2 (a service agreement indicating that the Respondent subcontracted Omitted Contract 2 to another company approximately one month before submitting Bid 1) and Omitted Contract 3 (a contemporaneous letter from a Georgian state-owned enterprise referencing issues with the construction permit for Omitted Contract 3). With respect to the other contracts, the documentation provided shows that: (i) Omitted Contract 1 was not subcontracted to another company until seven months after the submission of Bid 2; (ii) works under Omitted Contract 4 were not officially suspended until two weeks after the submission of Bid 2; and (iii) Omitted Contract 5 was officially terminated approximately ten months after the submission of Bid 2.

26. The Sanctions Board has consistently held that, where the record indicates that a misrepresentation was made in response to a tender requirement, the intent to obtain a benefit or avoid an obligation may be inferred.[11] Here, as discussed at Paragraph 17 above, the bidding documents expressly instructed bidders to list their ongoing contractual obligations in Form CCC as proof of qualification and available annual capacity to perform the Contracts. The Sanctions Board observes that the Respondent's improper exclusion of the Omitted Contracts from the Bids and respective Forms CCC was directly related to these stipulations – which is sufficient to demonstrate the requisite intent. While the Respondent ultimately failed to secure the Contracts, the applicable definition of fraudulent practice does not require a showing that the desired benefit actually materialized.[12]

27. In these circumstances, the Sanctions Board finds that it is more likely than not that the Respondent's staff made the misrepresentations in question in order to meet the qualification requirements and obtain a financial or other benefit – i.e., the Contracts.

B. The Respondent's Liability for the Acts of Its Employees

28. The Sanctions Board has consistently found that an employer can 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.[13] In the present case, the record supports a finding that the Respondent's staff engaged in fraudulent practices in accordance with the scope of their respective duties and with the purpose of serving the interests of the company. For instance, evidence shows that the misrepresentations at issue were made in order to satisfy the tender requirements of the Contracts, for the benefit of the Respondent. In addition, the Respondent submits that the only individual responsible for this conduct was a procurement officer "whose obligation it was to prepare and submit the tender documentation" (the "Procurement Officer"). This assertion further supports a conclusion that the Respondent's staff was acting within the course and scope of its employment. There is no indication in the record that any employees, including the Procurement Officer, acted for any purpose other than serving the Respondent. Moreover, the Respondent does not present, and the record does not provide any basis for, a rogue-employee defense. Thus, the Sanctions Board finds the Respondent liable for the fraudulent practices carried out by its employees.

---

[11] See, e.g., Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 83 (2015) at para. 52; Sanctions Board Decision No. 88 (2016) at para. 37; Sanctions Board Decision No. 92 (2017) at para. 72; Sanctions Board Decision No. 99 (2017) at paras. 23-25; Sanctions Board Decision No. 106 (2017) at paras. 25-27; Sanctions Board Decision No. 114 (2018) at paras. 41-42; Sanctions Board Decision No. 120 (2019) at para. 41.

[12] Cf., e.g., Sanctions Board Decision No. 86 (2016) at para. 39; Sanctions Board Decision No. 98 (2017) at paras. 48-49.

[13] See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30.

C. Sanctioning Analysis

1. General framework for determination of sanctions

29. 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.

30. 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.[14] 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.[15]

31. 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 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.

32. 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

33. *Repeated pattern of conduct*: 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.1 of the Sanctioning Guidelines identifies a repeated pattern of conduct as an example of severity. In past cases, the Sanctions Board applied aggravation on this basis where respondents engaged in the same misrepresentation in separate bids, relating to

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

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

different contracts and projects, over a period of time.[16] By contrast, the Sanctions Board has declined to apply aggravation where a misrepresentation made in multiple bids, relating to the same project, was found to constitute a single course of action.[17] Here, the Respondent was found liable for a misrepresentation made in two separate Bids. While the Bids related to different Contracts and Projects, the record supports a conclusion that the Respondent's conduct constituted a single course of action. In particular, the Sanctions Board observes that the Respondent failed to disclose the same information, in response to identical requirements, in Bids submitted to the same PIU and in close time proximity. In these circumstances, the Sanctions Board finds that aggravation is not warranted.

b. Minor role in the misconduct

34. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent played a minor role in the misconduct. Section V.A of the Sanctioning Guidelines proposes that this factor be applied "if no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board has declined to apply mitigation on this basis where the record showed that employees with at least some level of decision-making authority participated in the sanctionable practice,[18] and where the respondent failed to affirmatively show that no employees with decision-making powers were involved.[19] In the present case, the Respondent requests mitigation for minor role, arguing that the Procurement Officer acted "alone, without any consultation with the management or other decision-making authorities." INT opposes mitigation on this basis. The Sanctions Board observes that the Respondent has not provided any evidence to corroborate its assertions. On the contrary,

[16] See, e.g., Sanctions Board Decision No. 60 (2013) at para. 122 (applying aggravation where respondents omitted to disclose their relationship with a procurement agent in nine separate bids relating to different Bank-financed projects and contracts over several years); Sanctions Board Decision No. 72 (2014) at para. 56 (applying aggravation where respondents misrepresented the amount of commissions paid to an agent under two separate agency agreements in two bids, submitted more than two months apart, relating to contracts under different projects).

[17] See, e.g., Sanctions Board Decision No. 79 (2015) at para. 39 (declining to apply aggravation where a respondent included the same false documents in several bid packages under the same project, which bid packages appeared to have been prepared by the respondent in a single course of action before the bids were submitted in two batches in the same week); Sanctions Board Decision No. 117 (2019) at para. 33 (declining to apply aggravation where a respondent twice submitted the same set of false documents that related to the same bidding requirement under two related contracts under the same project); Sanctions Board Decision No. 120 (2019) at para. 50 (declining to apply aggravation for repetition where the respondent submitted a set of several falsified documents in connection with two different bids under the same project).

[18] See, e.g., Sanctions Board Decision No. 106 (2017) at para. 38 (declining to apply mitigation where the record reflected the involvement of an assistant manager who prepared the bid as part of small team and was overseen by the respondent firm's deputy general manager; finding that "these employees, more likely than not, held some decision-making authority in the organization").

[19] See, e.g., Sanctions Board Decision No. 71 (2014) at para. 91 (declining to apply mitigation where the respondent failed to meet its "burden to show affirmatively that no one with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct"); Sanctions Board Decision No. 79 (2015) at para. 41 (declining to apply mitigation where "the record provides no basis to conclude that the [p]roject [m]anager, whose participation in the misconduct is undisputed, lacked decision-making authority").

the Respondent appears to undermine its own argument, by indicating in the Response that the Procurement Officer had the "authority to act alone" and was "in charge of procurement process" at the time of the misconduct. These statements suggest that this individual had at least some level of decision-making authority when engaging in the fraudulent practices at issue. Therefore, consistent with precedent, and based on the totality of the record – including the Respondent's own assertions – the Sanctions Board declines to apply mitigation on these grounds.

c. Voluntary corrective action

35. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where the respondent took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies several examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of those actions to be considered as potential indicia of the respondent's genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.[20]

36. *Internal action against responsible individuals*: Section V.B.2 of the Sanctioning Guidelines states that mitigation may be appropriate where "[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative." The Sanctioning Guidelines add that "[t]he timing of the action may indicate the degree to which it reflects genuine remorse and intention to reform, or a calculated step to reduce the severity of the sentence." The Sanctions Board has previously declined to apply mitigation where the record was insufficient to demonstrate that the respondent took timely and appropriate disciplinary action in response to the misconduct.[21] In this case, the Respondent submits that the Procurement Officer's "authority to act alone [was] terminated" after INT issued the show-cause letter, and that he is no longer "in charge of procurement process." In support of this assertion, the Respondent submits a brief document whereby its director "commands" the constitution of a procurement committee, as well as the termination of the Procurement Officer's unilateral decision-making authority "regarding procurement related issues" (the "Director's Order"). INT does not specifically address this sanctioning factor. The Sanctions Board finds that the Respondent's asserted internal action lacks sufficient documentary support and, in any event, would not constitute an adequate response to the misconduct at issue. Therefore, no mitigation is warranted on this basis.

[20] See, e.g., Sanctions Board Decision No. 106 (2017) at para. 39.

[21] See, e.g., Sanctions Board Decision No. 44 (2011) at paras. 71-72 (finding that the record did not show whether the asserted staff reassignment was a demotion in response to the misconduct at issue, and that this action supposedly took place several months after the respondent first "learned of the problem"); Sanctions Board Decision No. 56 (2013) at paras. 65-66 (finding that the record did not show that the asserted terminations were executed timely and in response to the misconduct); Sanctions Board Decision No. 106 (2017) at para. 41 (finding that the asserted disciplinary counseling lacked documentary support, that the asserted staff reassignment took place more than two years after the staff first met with INT and one year after the show cause letter, and that the record was inconclusive as to whether the reassignments constituted disciplinary action).

37. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent's "[e]stablishment or improvement, and implementation of a corporate compliance program." The Sanctions Board has previously declined to apply mitigation where the record contained no evidence that the respondent had in fact implemented compliance measures;[22] or where the evidence did not demonstrate the type of measures that would prevent or address the type of misconduct at issue.[23] Here, the Respondent appears to argue that it has enhanced its internal controls since the alleged misconduct. Specifically, the Respondent states that it has established a procurement committee composed of experienced and qualified procurement managers, and adapted its procurement processes to prevent the occurrence of similar conduct in the future. As evidence of this assertion, the Respondent submits the Director's Order. INT contends that the Respondent should be awarded "no, or else very minimal, mitigation" on this basis, arguing that the purported changes are belated and only superficially address the misconduct at issue, and that there is no evidence regarding the operation of this procurement committee. The Sanctions Board is not persuaded that the Respondent's asserted constitution of a procurement committee is a genuine effort to reform its practices and address the misconduct at issue. In addition, nothing in the record demonstrates that this committee was in fact implemented and took steps effectively to prevent future offenses. For these reasons, the Sanctions Board declines to apply any mitigation.

d. Cooperation

38. *Voluntary restraint*: Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." As an example of cooperation, Section V.C.4 of the Sanctioning Guidelines identifies a respondent's voluntary restraint from bidding on Bank-financed tenders pending the outcome of an investigation. In past cases, the Sanctions Board's decision to apply or deny mitigation on these grounds has depended on whether or not the respondents' asserted voluntary restraint was corroborated by relevant evidence.[24] Here, the Respondent submits that it has refrained from bidding on any Bank-financed contracts since receiving INT's show-cause letter. INT does not specifically address this sanctioning factor. Observing that the Respondent has failed to present any evidence to corroborate its assertions, the Sanctions Board declines to accord any mitigation.

[22] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 74 (finding no basis to apply mitigation for the respondent's asserted willingness to pursue corporate measures, absent evidence of actual implementation); Sanctions Board Decision No. 85 (2016) at para. 44 (declining to apply mitigation where the record does not contain evidence of the respondent's asserted anti-bribery policy and related internal rules).

[23] See Sanctions Board Decision No. 65 (2014) at para. 77; Sanctions Board Decision No. 69 (2014) at para. 39.

[24] See Sanctions Board Decision No. 73 (2014) at para. 50 (denying mitigation where the respondent did not provide evidence of a policy or practice of voluntary restraint); Sanctions Board Decision No. 102 (2017) at para. 80 (applying mitigation where the respondent provided contemporaneous evidence of its withdrawal from nine bids).

e. Period of temporary suspension

39. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the Respondent's period of temporary suspension. The Respondent has been suspended since the issuance of the Notice on April 23, 2019.

f. Other considerations

40. *Absence of aggravating factors*: 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 [s]anctionable [p]ractice." The Sanctions Board has consistently held that the absence of aggravating factors – such as harm to the project or to public safety and welfare – is generally a neutral fact that does not warrant mitigation.[25] In this case, the Respondent requests mitigation based on the "absence of aggravating factors" and specifically asserts that its actions caused no harm to public safety and welfare. INT opposes mitigation on these grounds. Consistent with precedent, the Sanctions Board declines to apply any mitigating credit for the absence of aggravating factors.

D. Determination of Appropriate Sanction

41. 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,[26] 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;[27] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[28] 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 from the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions

[25] See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 70-72; Sanctions Board Decision No. 71 (2014) at paras. 85-86; Sanctions Board Decision No. 73 (2014) at para. 45; Sanctions Board Decision No. 95 (2017) at para. 55; Sanctions Board Decision No. 106 (2017) at para. 48.

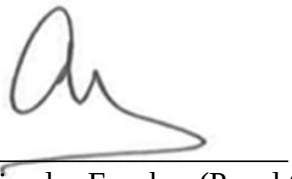
[26] The Sanctions Board did not make any findings as to which entities, if any, are controlled Affiliates.

[27] A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for pre-qualification, 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.

[28] 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 pre-qualification 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.

Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent for fraudulent practices as defined in Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines and Paragraph 1.16(a)(ii) of the July 2014 Procurement Guidelines.

42. The Respondent's ineligibility 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.[29]



Alejandro Escobar (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

Alejandro Escobar
Olufunke Adekoya
Maria Vicien Milburn

[29] 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).