THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: April 1, 2021

Sanctions Board Decision No. 132

Decision of the World Bank Group[1] Sanctions Board denying the request for reconsideration (the "Request for Reconsideration") of Sanctions Board Decision No. 125 (2020) (the "Original Decision"), as filed by the individual respondent (the "Respondent") in Sanctions Case No. 477.

I. INTRODUCTION

1. The Sanctions Board convened in March 2021 as a panel to review the Request for Reconsideration filed by the Respondent with regard to the Original Decision. The Sanctions Board was composed of Cavinder Bull (Panel Chair),[2] Maria Vicien Milburn, and Rabab Yasseen.

2. The Sanctions Board deliberated and reached its decision on the Request for Reconsideration based on the entirety of the record, which included the following:

i. the Request for Reconsideration submitted by the Respondent to the Secretary to the Sanctions Board on January 4, 2021, and the submission of January 12, 2021, attaching an English translation of a foreign-language material submitted with the Request for Reconsideration (together, the "Request for Reconsideration");

ii. comments on the Request for Reconsideration submitted by the World Bank Group's Integrity Vice Presidency ("INT") to the Secretary to the Sanctions Board on January 26, 2021 (the "Comments");

iii. the additional submission submitted by the Respondent to the Secretary to the Sanctions Board on February 1, 2021 (the "Additional Submission");

iv. the additional comments submitted by INT to the Secretary to the Sanctions Board on February 16, 2021 (the "Additional Comments");

v. the Original Decision as issued on February 25, 2020; and

vi. the record previously considered in the proceedings in Sanctions Case No. 477.

---

[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] See Sanctions Procedures at Section II(s).

II. GENERAL BACKGROUND

3. In the Original Decision, the Sanctions Board imposed on the Respondent a sanction of debarment for a period of ineligibility of five (5) years and six (6) months.[3] In that decision, the Sanctions Board found the Respondent liable for a corrupt practice for soliciting a thing of value with the intent to influence his own behavior in the execution of two Bank-financed consultant agreements in the Democratic Republic of Congo.[4] On January 4, 2021, the Respondent filed the Request for Reconsideration.

III. APPLICABLE STANDARDS OF REVIEW

4. The statutory and procedural framework that governed the original proceedings in Sanctions Case No. 477 includes the World Bank Group Policy: Statute of the Sanctions Board as publicly issued on October 18, 2016 (the "Statute") and the Sanctions Procedures. Both the Statute and the Sanctions Procedures provide that Sanctions Board decisions "shall be final and without appeal."[5] However, the Sanctions Board has previously recognized that fundamental principles of fairness dictate that finality must yield in narrowly defined and exceptional circumstances.[6] Examples of such narrowly defined and exceptional circumstances may include the discovery of newly available and potentially decisive facts, fraud or other misconduct in the original proceedings, or a clerical mistake in the issuance of the original decision.[7] In contrast, mere attempts to re-argue or re-litigate a case, or respondents' failure to timely or effectively present previously available facts or related evidence to the Sanctions Board, either on the advice of legal counsel or for other reasons, do not warrant reconsideration.[8]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. The Respondent's Principal Contentions in the Request for Reconsideration

5. The Respondent requests reconsideration of the Original Decision on the grounds that "the Sanctions Board for some reason must have not correctly assessed the case and that the imposing of the sanctions was unjust." The Respondent states that he is providing the following "newly available evidence[]"and "new information:" (i) an addendum to the technical specification (the "Addendum"), which allowed multiple proposals and informed bidders that the weakest proposal would be evaluated as the guiding proposal; and (ii) information that the insulator manufacturer (the "Manufacturer") lobbied the bidders intensively to eliminate competition. First, the Respondent argues that the Addendum proves that he did not unduly favor the Manufacturer because it enabled the two insulator suppliers – the Manufacturer and a cheaper alternative –

---

[3] Sanctions Board Decision No. 125 (2020) at para. 49.
[4] Id. at Section V(A).
[5] The Statute provides that Sanctions Board decisions "shall be final and without appeal." See Statute at Section III, sub-paragraph 13(ii). The Sanctions Procedures provide that Sanctions Board decisions "shall be final and without appeal, and shall be binding on the parties to the proceedings." See Sanctions Procedures at Section III.A, sub-paragraph 8.03.
[6] See, e.g., Sanctions Board Decision No. 57 (2013) at para. 8 (citing Sanctions Board Decision No. 43 (2011) at paras. 14-15).
[7] See, e.g., Sanctions Board Decision No. 84 (2015) at para. 9.
[8] See, e.g., id.

named by another bidder (the "Competitor") to be deemed "technically equal." The Respondent asserts that the other insulator supplier would have been selected for its lower purchasing cost if not for the Competitor's later disqualification, which he allegedly protested. Second, the Respondent claims that because the Manufacturer no longer had the dominant role in the industry and less costly alternatives were available in the market at that time, the Manufacturer resorted to "intensive lobbying" of the bidders to "expel the competitors from the scene." The Respondent maintains that he did not favor the Manufacturer, but rather used the company only to extract technical know-how.

B. INT's Principal Contentions in the Comments

6. INT asserts that the Respondent's request should be dismissed, as it does not present exceptional circumstances warranting a reconsideration of the Original Decision and is a mere attempt to re-litigate the case. Specifically, INT argues that neither of the identified pieces of evidence and information are newly available or potentially decisive. With respect to the Addendum, INT contends that the Respondent fails to sufficiently explain his belated submission of this document. INT asserts that, nevertheless, the Respondent has repeated the same underlying argument throughout the main proceedings that the Manufacturer was not the only qualified supplier. With respect to the assertion that the Manufacturer lobbied bidders, INT points out that the Respondent's supporting document was in fact included as an exhibit to the Statement of Accusations and Evidence and is thus "not new or newly accessible."

C. The Respondent's Principal Contentions in the Additional Submission

7. The Respondent focuses his submission on two issues: (i) the testing performed by the Manufacturer's holding Company (the "Holding Company") to determine the extent of insulator replacement, and (ii) the purported lobbying of the Manufacturer. On the first point, the Respondent asserts that the test was performed only to confirm the existing technical opinion to replace all insulators; and that "all interested parties," including the Bank, conducted technical discussions regarding the Holding Company's test with no mention of any potential conflict of interest. On the second point, the Respondent maintains that, while consultants like himself depended on the "constant flow of the input information from the manufacturers" with respect to the latest technical solutions, he did not extend favorable treatment to the Manufacturer.

D. INT's Principal Contentions in the Additional Comments

8. INT submits that the Respondent repeats previous assertions and arguments, none of which rise to the level of exceptional circumstances that would warrant a reconsideration of the Original Decision.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

9. For the reasons set out below, the Sanctions Board does not find any exceptional circumstances that would justify reconsideration of the Original Decision.

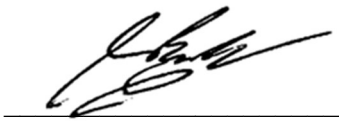
10. With respect to the Addendum, the Sanctions Board observes that this document does not appear to be in the record of Sanctions Case No. 477. However, it is not enough that the evidence

presented is new in the sense that it was not previously included in the record of the original proceedings. What matters is that the evidence is newly available and potentially decisive to warrant a reconsideration of the Original Decision.[9] Here, the Respondent provides insufficient justification for his failure to timely present the Addendum in the original proceedings. The Respondent merely makes a broad assertion that he had no access to evidence and to the computer that he had used during the Project's implementation without explaining the relevant circumstances in detail. Moreover, in the original proceedings, neither the Respondent nor his counsel raised any issues regarding access to evidence or any other general concerns that may have affected his ability to mount a meaningful defense. Further, the Respondent presents the Addendum to support his argument that he enabled the consideration of another insulator supplier, which would have been selected as a cheaper alternative to the Manufacturer had the Competitor not been disqualified. The Sanctions Board notes that this argument was considered in the original proceedings and reflected in the Original Decision. Finally, even assuming that the Addendum is deemed newly available, the Sanctions Board does not find it potentially decisive. The Sanctions Board considers that this evidence is not material to the findings in the Original Decision that the Respondent solicited a payment from the Manufacturer and that he did so with the intent to influence his own actions as a public official.

11. With respect to the Respondent's assertion that the Manufacturer lobbied bidders, the Sanctions Board observes that the evidence presented by the Respondent to support this argument already appears in the record of the original proceedings. Even if this argument and the related evidence are considered newly available, the Sanctions Board finds neither to be potentially decisive. Indeed, any purported lobbying by the Manufacturer does not controvert the finding in the Original Decision that the Respondent solicited a payment with corrupt intent.

12. With respect to the Respondent's arguments in the Additional Submission, the Sanctions Board notes that these contentions were considered and rejected in the original proceedings, as reflected in the Original Decision. As noted above, mere attempts to re-argue or re-litigate a case do not warrant reconsideration.

13. Considering the applicable standards of review and the record presented, and for all of the reasons discussed above, the Sanctions Board hereby denies the Respondent's Request for Reconsideration.



Cavinder Bull (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

Cavinder Bull
Maria Vicien Milburn
Rabab Yasseen

[9] See Sanctions Board Decision No. 84 (2015) at para. 33; Sanctions Board Decision No. 89 (2016) at para. 11.