

Date of issuance: June 16, 2014

**Sanctions Board Decision No. 67
(Sanctions Case No. 193)**

**IBRD Loan No. 4834-IND
Indonesia**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of reprimand on the respondent entity in Sanctions Case No. 193 (the “Respondent”) by means of a formal letter of reprimand to be posted on the World Bank’s website for a minimum period of six (6) months beginning on the date of this decision, and until the Respondent has met conditions as specified below. This sanction is imposed on the Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on May 28, 2013, at the World Bank’s headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of L. Yves Fortier (Chair), Hassane Cissé, Ellen Gracie Northfleet, Catherine O’Regan, Denis Robitaille, and J. James Spinner. Neither the Respondent nor the World Bank Group’s Integrity Vice Presidency (“INT”) requested a hearing. Nor did the Sanctions Board Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.²

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

- i. Notice of Sanctions Proceedings issued by the World Bank’s Evaluation and Suspension Officer (the “EO”)³ to the Respondent on June 13, 2012 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) presented to the EO by INT, dated March 30, 2012;

¹ In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (the “Sanctions Procedures”), the term “World Bank Group” means, collectively, the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), and the Multilateral Investment Guarantee Agency (“MIGA”). For the avoidance of doubt, the term “World Bank Group” includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes (“ICSID”). As in the Sanctions Procedures, the terms “World Bank” and “Bank” are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section 1.01(a), n.1.

² See Sanctions Procedures at Section 6.01.

³ Effective March 31, 2013, the EO’s title changed to “IBRD/IDA Suspension and Debarment Officer” (“SDO”). For consistency with the Sanctions Procedures and the pleadings in this case, this decision refers to the former title.

- ii. Response submitted by the Respondent to the Secretary to the Sanctions Board on October 3, 2012 (the “Response”); and
- iii. Reply submitted by INT to the Secretary to the Sanctions Board on November 21, 2012 (the “Reply”).

3. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended a debarment with conditional release for the Respondent, together with any entity that is an Affiliate⁴ under its direct or indirect control. The EO recommended a minimum period of ineligibility of one (1) year, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group’s Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practice for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

4. Effective June 13, 2012, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent, together with any entity that is an Affiliate under its direct or indirect control, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;⁵ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁶ of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any project or program financed by the Bank and governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (hereinafter collectively referred to as “Bank-Financed Projects”)⁷ pending the final outcome of the sanctions proceedings.

⁴ The term “Affiliate” means “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” Sanctions Procedures at Section 1.02(a).

⁵ For the avoidance of doubt, the scope of ineligibility to be awarded a contract will include, without limitation, (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. See Sanctions Procedures at Section 9.01(c)(i), n.16.

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

⁷ For the avoidance of doubt, the declaration of ineligibility also extends to activities financed through trust funds administered by the Bank to the extent governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. See Sanctions Procedures at Section 1.01(c)(i), n.3.

II. GENERAL BACKGROUND

5. This case arises in the context of the Strategic Roads Infrastructure Project (the “Project”) in Indonesia. On September 13, 2007, IBRD and the Republic of Indonesia entered into a loan agreement (the “Loan Agreement”) to provide US\$208 million to finance the Project. The Project, which is currently scheduled to close on June 30, 2014, seeks to improve Indonesia’s economic competitiveness by improving the capacity and quality of certain strategic national roads; improving road safety; and increasing the efficiency, quality, and transparency of works procurement and implementation in the Ministry of Public Works.

6. In August 2007, Indonesia’s implementing agency for the Project issued bidding documents for a contract for certain road construction works (the “Contract”). The bidding documents required submission of a bid security in the form of an unconditional bank guarantee or a certified check.

7. On October 24, 2007, a joint venture composed of the Respondent and a partner firm submitted a bid for the Contract (the “Bid”). The Bid appended a bid security (the “Bid Security”) purportedly issued by a certain bank (the “Purported Issuer”). INT alleges that the Bid Security is a forgery. The Respondent claims that it obtained the Bid Security from the Purported Issuer through an individual acting as an agent (the “Agent”) for a guarantee insurance firm that typically provided bank guarantees (the “Insurance Firm”). Upon an inquiry of the Bid Evaluation Committee (the “BEC”), however, the Purported Issuer denied issuing the Bid Security. Subsequently, the implementing agency rejected the Bid and excluded the Respondent and its joint venture partner, jointly and severally, from participation in procurement activities related to the Project until “further stipulation . . . by the competent authority.”

III. APPLICABLE STANDARDS OF REVIEW

8. Pursuant to Section 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is “more likely than not” that the respondent engaged in a sanctionable practice. Section 8.02(b)(i) defines “more likely than not” to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

9. Under Section 8.02(b)(ii) of the Sanctions Procedures, INT bears the initial burden of proof to present evidence sufficient to establish that it is more likely than not that a respondent engaged in a sanctionable practice. Upon such a showing by INT, the burden of proof shifts to the respondent to demonstrate that it is more likely than not that the respondent’s conduct did not amount to a sanctionable practice.

10. The Loan Agreement provided that the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) would govern the Project’s procurement. The

bidding documents for the Contract, however, defined sanctionable practices consistent with the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (January 1995, revised in January and August 1996, September 1997, and January 1999) (the "January 1999 Procurement Guidelines"). In accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the applicable standards in the event of such conflict shall be those agreed between the borrowing country and the respondent as governing the particular contracts at issue, rather than the standards agreed between the borrowing country and the Bank.⁸ Therefore, the alleged sanctionable practice in this case has the meaning set forth in the January 1999 Procurement Guidelines.

11. Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines defines the term "fraudulent practice" as "a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower." This definition does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward.⁹ However, the legislative history of the Bank's various definitions of "fraudulent practice" reflects that the October 2006 incorporation of the "knowing or reckless" standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.¹⁰ Accordingly, the Sanctions Board has held that the "knowing or reckless" standard may be implied under the pre-October 2006 definitions.¹¹

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

12. INT asserts that it is more likely than not that the Respondent engaged in a fraudulent practice by knowingly submitting a forged bid security with the Bid in order to meet the requirements of the bidding documents for the Contract. In support of its allegation, INT notes that the Purported Issuer confirmed to the BEC that it had not issued the Bid Security; and claims that the Insurance Firm stated that it did not have any record of the Bid Security and had never employed an agent with a name similar to that of the Agent named by the Respondent. INT also asserts that obvious differences exist between a valid surety bond and the Respondent's Bid Security, and argues that the Respondent must have been aware at the time of the Bid's submission that the Bid Security was false. Finally, INT asserts that the forged Bid Security was submitted in order to mislead the BEC to the Respondent's benefit, and that such conduct was to the detriment of the member country concerned.

⁸ See Sanctions Board Decision No. 59 (2013) at para. 11.

⁹ See, e.g., Guidelines: Procurement Under IBRD Loans And IDA Credits (May 2004, rev. October 2006) at para. 1.14(a)(ii) (defining "fraudulent practice" as "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation") (emphasis added).

¹⁰ See Sanctions Board Decision No. 41 (2010) at para. 75.

¹¹ Id.

13. INT submits that the Respondent's central role in the joint venture, and sole responsibility for obtaining the Bid Security, constitute an aggravating factor. INT asserts that no mitigating factors apply.

B. The Respondent's Principal Contentions in the Response

14. The Respondent objects to the imposition of sanctions, and claims that it is a victim of fraud committed by the Agent, who obtained the Bid Security. The Respondent asserts that its former supplier of construction materials, which had employed the Agent (the "Agent's Employer"), had referred the Respondent to the Agent with the representation that the Agent was also a sales representative of the Insurance Firm and could quickly obtain a bank guarantee.

15. Although the Respondent does not directly address any sanctioning factors, it claims to have (i) reported the forgery of the Bid Security to the police, (ii) made relevant employees available as witnesses during the ensuing police investigation, and (iii) terminated its relationship with the Agent's Employer because the latter failed to provide the information that the Respondent had requested regarding the Agent's identity and address.

C. INT's Principal Contentions in the Reply

16. INT contends that the Respondent's explanation that the Respondent had requested the assistance of the Agent to obtain the Bid Security from the Purported Issuer "belies belief" in several respects, particularly given the lack of evidence to show that the Respondent sought to verify the Agent's affiliation and given the Respondent's pre-existing relationship with the Purported Issuer. INT additionally asserts that the Respondent acted recklessly, if not knowingly, in failing to carry out basic due diligence in respect of the Agent or the Bid Security that the Agent provided. INT submits that "any mitigating factors that may apply" have already been taken into account in the EO's recommended sanction.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

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

A. Evidence of Fraudulent Practice

18. In accordance with the definition of a fraudulent practice under the January 1999 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) made a misrepresentation of facts (ii) that was knowing or reckless (iii) in order to influence a procurement process or the execution of a contract (iv) to the detriment of the Borrower.

1. Misrepresentation of facts

19. In a number of past decisions finding that respondents had submitted forged bid documents, the Sanctions Board relied primarily on written statements from the parties named in or supposedly issuing the allegedly fraudulent documents, as well as the respondents' own admissions.¹² The record in this case includes a letter from the Purported Issuer stating that it did not issue, and has no record of, the Bid Security. The letter is signed by two of the Purported Issuer's representatives, including one of the Bid Security's ostensible signatories. In addition, INT's summary record of an interview with representatives of the Insurance Firm reports that the Insurance Firm had ceased obtaining bid bonds from the Purported Issuer in 2005 – approximately two years before the date on the Bid Security. Moreover, the Respondent itself appears to acknowledge that the Bid Security was falsified by describing itself as a victim of fraud in the issuance of the Bid Security. In these circumstances, the Sanctions Board finds that it is more likely than not that the Bid contained a misrepresentation in the form of the falsified Bid Security.

2. Made knowingly or recklessly

a. Whether the Respondent acted knowingly

20. In the SAE, INT asserts that the Respondent acted knowingly in submitting the forged Bid Security. INT's assertion that the Respondent must have been aware of the Bid Security's inauthenticity at the time of the Bid's submission appears to rest upon the format of the Bid Security, which INT describes as inconsistent with the standard format for such documents; and upon the Respondent's claim to have obtained the Bid Security through the Agent affiliated with the Insurance Firm, which INT views as inconsistent with the Insurance Firm's statement to INT.

21. Section 7.01 of the Sanctions Procedures vests the Sanctions Board with discretion to infer knowledge from circumstantial evidence. The Sanctions Board has previously found in cases of alleged fraud that knowledge could be inferred from respondents' statements or indicia of falsity readily apparent to them.¹³

22. In the present case, the record does not support a finding that the falsification of the Bid Security must have been apparent to the Respondent at the time of the Bid's submission. First, the record does not reveal obvious indicia of falsity on the face of the Bid Security,

¹² See, e.g., Sanctions Board Decision No. 2 (2008) at para. 4 (stating that the Sanctions Board "relied primarily" on a written statement from the purported issuer of the documents at issue that the documents had been forged, as well as the respondent's oral and written admissions, in finding that the respondent had engaged in fraudulent practices by forging documents); see also Sanctions Board Decision No. 61 (2013) at para. 21 (considering written denials of authenticity by the purported issuers and signatories of the documents at issue, as well as the additional indicia of falsity on the face of the documents and the respondents' tacit acknowledgement that the documents are inauthentic, in finding that the documents were forged).

¹³ See, e.g., Sanctions Board Decision No. 55 (2013) at para. 46 (where the manager who submitted the bid repeatedly stated that the forgeries were apparent on the face of the documents, finding that falsified bid documents had been submitted knowingly).

based on which the Sanctions Board could impute knowledge of the forgery to the Respondent. The Purported Issuer's letter to the BEC does not describe any obvious errors in the format, content, or style of the Bid Security. Although INT claims an inconsistency between the appearance of the Bid Security and a "surety bond" that the Insurance Firm provided to INT, the Sanctions Board notes that the two documents are not comparable. The document provided by the Insurance Firm does not appear to be a surety bond, but rather a receipt in payment for a surety bond. Moreover, as the receipt appears to have been issued by the Insurance Firm more than two years after the date of the Bid Security, an ex post comparison of the documents – even if they were more analogous in type – would not illuminate the Respondent's awareness of discrepancies at the time of the Bid's submission.

23. Second, the record does not support INT's argument that knowledge of the forgery may be inferred from the inconsistency between the Respondent's description of the Agent as affiliated with the Insurance Firm and the Insurance Firm's denial that it had employed the Agent. The Sanctions Board notes that the referenced statements are not necessarily inconsistent. In particular, the Agent may be affiliated with the Insurance Firm on a consultancy or other basis, but not be considered an employee or regular staff member. In addition, it is possible that the Agent could be affiliated with the Insurance Firm as an agent while concurrently employed by another firm (the Agent's Employer). The Sanctions Board also notes that the record does not include a verbatim transcript of INT's interview with the Insurance Firm's representatives, even though INT's summary record of interview reflects that the representatives consented to a verbatim recording. A verbatim transcript may have helped to clarify the representatives' precise statements and any potential inconsistencies with the Respondent's statements.

24. In light of the above, the Sanctions Board does not find that it is more likely than not that the Respondent knowingly submitted a forgery as the Bid Security.

b. Whether the Respondent acted recklessly

25. As stated in the SAE and noted above, the applicable Procurement Guidelines require INT to show that a respondent acted "knowingly or recklessly." In its Reply, INT alleges that the Respondent acted recklessly, if not knowingly, in failing to carry out "basic due diligence" with respect to the Agent before submitting the Bid Security.

26. In assessing recklessness, the Sanctions Board may consider whether circumstantial evidence indicates that a respondent was aware of, or should have been aware of, a substantial risk – such as harm to the integrity of the Bank's procurement process due to false or misleading bid documents – but nevertheless disregarded that risk.¹⁴ Where circumstantial evidence may be insufficient to infer subjective awareness of risk, the Sanctions Board may measure a respondent's conduct against the common "due care" standard of the degree of care that the proverbial "reasonable person" would exercise under the circumstances.¹⁵ In the

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

¹⁵ Id.

context of Bank-Financed Projects, the standard of care should be informed by the Bank's procurement policies, as articulated in the applicable Procurement or Consultant Guidelines and the standard bidding documents for the contract at issue.¹⁶ Industry standards or customary or firm-specific business policies, procedures, or practices may also be relevant in certain cases.¹⁷

27. In the present case, the record supports a finding that the Respondent should have been aware of a substantial risk that the Bid Security might not be authentic. The record indicates that the Respondent chose to rely upon the Agent to procure the Bid Security despite the Respondent's lack of basic information about the Agent, such as confirmation of his identity, qualifications, or address. While the Respondent asserts that it had previously used the Agent to obtain bank guarantees without "any complaint," the record lacks any evidence that the Respondent's employees ever verified the Agent's credentials or any guarantees that he had supplied in connection with earlier transactions. In these circumstances, the Respondent should have been aware of a substantial risk of misconduct.¹⁸ The record reflects that the Respondent did not take adequate precautions as such risk would have warranted. Although the Respondent asserts in its response to INT's show-cause letter that the Respondent had reviewed the Bid Security's "physical paper and performance" before it was submitted, the record does not reveal how any review was conducted. Rather, the record reflects an absence of sufficient controls or attempts to verify the Respondent's bid documents or the legitimacy of its agents.¹⁹ Accordingly, the Sanctions Board concludes that the record supports a finding that the Respondent acted recklessly in submitting the falsified Bid Security.

3. In order to influence the procurement process

28. The Sanctions Board has found sufficient evidence of intent to influence the procurement process where the record showed that the forged documents had been submitted in response to a tender requirement.²⁰ In the present case, the bidding documents for the Contract explicitly required all bids to be accompanied by a bid security in the form of an unconditional bank guarantee in the prescribed format or a certified check, and provided that bids not accompanied by a compliant bid security would be rejected. Accordingly, the Sanctions Board finds that it is more likely than not that the misrepresentation was intended to make the Bid appear to be compliant with bidding requirements and thus influence the procurement process for the Contract.

¹⁶ Id.

¹⁷ Id.

¹⁸ See Sanctions Board Decision No. 52 (2012) at paras. 27-29 (finding substantial risk where the respondent procured the bid security through an agent whom it knew only by a last name and his usual location near the premises of government registration and licensing offices).

¹⁹ See Sanctions Board Decision No. 47 (2012) at para. 27 (finding that the respondent acted recklessly in failing to verify the documents at issue in the context of an admitted absence of controls over the documents' initial collection).

²⁰ See, e.g., Sanctions Board Decision No. 54 (2012) at para. 28.

4. To the detriment of the Borrower

29. The Sanctions Board has previously held that detriment to a borrowing country may include intangible as well as tangible or quantifiable harms, such as where a respondent's use of forged documents served to distort the selection process or caused the borrower to expend resources to review and evaluate an invalid bid.²¹ As the record reveals that the Respondent's use of the forged Bid Security caused the BEC to expend time and resources to review the Respondent's invalid Bid and seek to verify the authenticity of the Bid Security, the Sanctions Board finds that the element of detriment has been established.

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

30. 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.²² Where a respondent entity denies responsibility for the acts of its employees based on a rogue employee defense, the Sanctions Board has assessed any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.²³

31. In the present case, the Respondent does not dispute its liability for acts performed by its employees in relation to the Bid Security. The record, which includes the Respondent's descriptions of specific employees' duties with regard to procurement of the Bid Security, indicates that the Respondent's employees acted within the scope of their employment and were motivated by a purpose to serve the Respondent when they procured the Bid Security from the Agent. Moreover, the record does not provide any basis for, and indeed the Respondent did not present, a rogue employee defense which would require an analysis of any corporate controls or supervision in place at the time of the misconduct. Considering the totality of the evidence in the record, the Sanctions Board concludes that the Respondent may be held liable for the fraudulent practice alleged.

C. Sanctioning Analysis

1. General framework for determination of sanctions

32. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section 8.01(b) of the Sanctions Procedures requires the Sanctions Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section 9.01. The range of sanctions set out in Section 9.01

²¹ See, e.g., Sanctions Board Decision No. 47 (2012) at para. 29.

²² See, e.g., Sanctions Board Decision No. 46 (2012) at para. 29; Sanctions Board Decision No. 55 (2013) at para. 51.

²³ See, e.g., Sanctions Board Decision No. 46 (2012) at para. 29; Sanctions Board Decision No. 47 (2012) at para. 33; Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at para. 53.

includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) restitution or remedy. As stated in Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.

33. 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.²⁴ 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.²⁵

34. The Sanctions Board is required to consider the factors set forth in Section 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide a point of reference to help illustrate 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 three years.

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

2. Factors applicable in the present case

a. Severity of the misconduct

36. Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction. Section IV.A.3 of the Sanctioning Guidelines identifies a respondent's central role in the misconduct as an example of severity that may warrant aggravation, where a respondent is the "[o]rganizer, leader, planner, or prime mover in a group of 2 or more."

37. *Central role in misconduct:* INT submits that aggravation is warranted by the Respondent's central role in the joint venture between the Respondent and its partner,²⁶ with sole responsibility for obtaining the Bid Security. The Respondent does not contest that it had primary responsibility for obtaining a bid security on behalf of the joint venture. However, the record does not indicate, and INT does not assert, that the Respondent's partner was involved in the misconduct. The Sanctions Board declines to find that the Respondent played a central role in a sanctionable practice "in a group of 2 or more" where, as here, the record does not suggest that any other party participated in the misconduct.

²⁴ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

²⁵ Sanctions Board Decision No. 44 (2011) at para. 56.

²⁶ See *supra* Paragraph 7.

b. Voluntary corrective action

38. Section 9.02(e) of the Sanctions Procedures provides for mitigation where the sanctioned party 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.²⁷

39. In the present case, the Respondent asserts that it reported "the case of fraud . . . committed by [the Agent]" to police, and that it terminated its "cooperation" with the Agent's Employer, which reportedly denied the Respondent's request for information concerning the Agent's identity and address. Although the Sanctions Board has previously afforded mitigation for measures that the respondent took within its own organization to address and correct the apparent cause of the misconduct at issue,²⁸ the Sanctions Board has declined to afford mitigation where the asserted corrective measures did not appear sufficient to prevent recurrence of the same type of misconduct.²⁹ In the present case, neither the filing of a police report nor the Respondent's asserted termination of its relationship with the Agent's Employer appears adequate to address risks of misconduct arising within the Respondent's own staff or operations. Accordingly, the Sanctions Board declines to apply mitigation on this basis.

c. Cooperation

40. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C.1 of the Sanctioning Guidelines suggests that cooperation may take the form of assistance with INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance" as well as "the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance."

²⁷ See, e.g., Sanctions Board Decision No. 45 (2011) at para. 72, Sanctions Board Decision No. 63 (2014) at para. 104.

²⁸ See, e.g., Sanctions Board Decision No. 63 at paras. 105-107 (applying mitigation where a respondent issued written instructions to employees from its President and CEO to ensure the cessation of misconduct, implemented disciplinary measures against specific employees, and provided documentation of a revised integrity compliance program, which included new tendering guidelines, employee training, and limits on use of joint ventures or agents).

²⁹ See, e.g., Sanctions Board Decision No. 65 at para. 77 (declining to apply mitigation where the evidence did not demonstrate the type of voluntary corrective actions that would prevent or address the type of misconduct at issue).

41. *Assistance and/or ongoing cooperation:* The Sanctions Board has previously accorded mitigation in cases where, for example, respondents replied to INT's show-cause letter and follow-up inquiries,³⁰ made staff available for INT interviews,³¹ or provided documents to INT.³² In the present case, the record indicates that the Respondent replied to INT's show-cause letter, with additional documents, within approximately two weeks, but did not reply to INT's subsequent request for additional information. The Sanctions Board finds limited mitigation appropriate on this basis.³³

d. Period of temporary suspension

42. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent's temporary suspension since the EO's issuance of the Notice on June 13, 2012.

e. Other considerations

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

44. *Passage of time:* The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.³⁴ This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented as well as the fairness of the process for respondents.³⁵ At the time of the EO's issuance of the Notice in June 2012, more than four and a half years had elapsed since the Respondent submitted the forged Bid Security in October 2007; and more than four years had elapsed since the Bank first became aware of the potential fraudulent practice in March 2008. The Sanctions Board therefore applies mitigation on this ground.

³⁰ See, e.g., Sanctions Board Decision No. 52 (2012) at para. 42.

³¹ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 58.

³² See, e.g., Sanctions Board Decision No. 63 (2014) at para. 110.

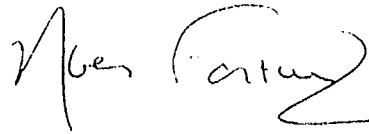
³³ See Sanctions Board Decision No. 37 (2010) at para. 45 (applying mitigation on the basis of the respondent's reply to show-cause letter); Sanctions Board Decision No. 52 (2012) at para. 42 (applying mitigation on the basis of the respondent's reply to show-cause letter and subsequent requests).

³⁴ See, e.g., Sanctions Board Decision No. 48 (2012) at para. 48 (applying mitigation where almost three years had elapsed between the Bank's awareness of the potential sanctionable practices and the initiation of sanctions proceedings); Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where approximately five years had elapsed between the Bank's awareness of the potential sanctionable practices and the initiation of sanctions proceedings); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where more than five (and up to nine) years had elapsed since the misconduct, and more than five (and up to eight) years had elapsed since the Bank's awareness of the potential sanctionable practices).

³⁵ See Sanctions Board Decision No. 50 (2012) at para. 71.

D. Determination of Liability and Appropriate Sanction

45. Considering the full record and all the factors discussed above, the Sanctions Board issues a formal letter of reprimand to the Respondent, which letter shall be posted on the World Bank's website without prejudice to the Respondent's eligibility to participate in Bank-Financed Projects, provided, however, that after a minimum period of six (6) months beginning on the date of this decision, the letter of reprimand may be removed from public notice only if the Respondent has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented procedures to verify the authenticity of bid securities in a manner satisfactory to the World Bank. This sanction is imposed on the Respondent for a fraudulent practice as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines.



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

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