







relevant evidence, a preponderance of the evidence supports a finding the respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, the Sanctions Board has discretion to determine the relevance, materiality, weight and sufficiency of all evidence offered; formal rules of evidence do not apply.

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

10. The TB I DCA and the TB I tender's Instructions to Bidders provided that the TB I tender would be conducted pursuant to the August 1996 Procurement Guidelines. Accordingly, the definition of "fraudulent practices" governing INT's allegations in connection with TB I may be found in Paragraph 1.15(a)(ii) of the August 1996 Procurement Guidelines, which in relevant part defines a 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."

11. The TB II DCA provided that the TB II tender would be conducted pursuant to the May 2004 Procurement Guidelines, which at Paragraph 1.14(a)(ii) defines a fraudulent practice as "a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract." Detriment to the Borrower is not required. The TB II tender's Instructions to Bidders incorporated this less stringent definition from the May 2004 Procurement Guidelines. The General Conditions of Contract for Respondent's TB II contracts, however, contained the older, more stringent definition of "fraudulent practices" in the August 1996 Procurement Guidelines, which requires proof of detriment to the Borrower. While INT asserts Respondent's conduct under both TB I and TB II in fact violated the more stringent August 1996 definition, it argues the less stringent May 2004 definition legally governs the allegations pertaining to Respondent's conduct under TB II.

12. The definitions of fraud under Paragraph 1.15(a)(ii) of the August 1996 Procurement Guidelines and under Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines do not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward.<sup>6</sup> The Sanctions Board has previously held that the "knowing or reckless" standard may be implied under the pre-October 2006 definitions, however, because the legislative history of these definitions reflects the October 2006 incorporation of this standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.<sup>7</sup>

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**D. Presentations at the Hearing**

18. At the hearing, INT clarified it was alleging sixteen (not eighteen) instances of fraud, excluding the two allegedly deceptive but not technically fraudulent performance certificates noted under TB II. Citing Respondent's failure to contest five instances of alleged forgeries under TB I, INT asserted the issue presented was not whether Respondent had engaged in fraud, but how many times it had engaged in fraud and what sanction would be appropriate. INT argued that forgery of performance certificates, even where the claimed performance took place, vitiates the value of a third-party certification. Further, INT argued, a sanctions determination should take into account the sensitive nature of the Projects, involving vulnerable, high-risk areas in a key sector.

19. Respondent's presentation emphasized Respondent's long experience and credentials as a brand leader in the pharmaceutical industry, which, according to Respondent, benefited the projects and the Borrower; its acknowledgment of mistakes in TB I, which should be balanced against its lack of fraudulent intent or management awareness of the issues at the time of either tender, and its substantially improved controls now; and evidentiary flaws in INT's case. Respondent also elaborated upon its business and recordkeeping practices, and spoke to INT's accusations regarding witness intimidation or attempted obstruction of investigation.

20. The Sanctions Board must address as a threshold matter Respondent's jurisdictional challenge to the allegations pertaining to Respondent's conduct under TB I, which Respondent argues are barred by the ten-year statute of limitations under the Sanctions Procedures. Section 4.01(d)(iddreV0d\*r, a, acc

**A. Evidence of Fraudulent Practices**

22. As stated earlier, for allegations of fraudulent practices governed by the August 1996 Procurement Guidelines, INT bears the initial burden to show Respondent (i) made a misrepresentation of facts (ii) that was knowing or reckless (iii) in order to influence the procurement process (iv) to the detriment of the Borrower. For allegations governed by the May 2004 Procurement Guidelines, INT bears the initial burden to show Respondent (i) made a misrepresentation of facts (ii) that was knowing or reckless (iii) in order to influence the procurement process.

1.

23. Considering the detailed arguments and evidence presented by the parties with respect to each of the sixteen allegedly fraudulent documents at issue, the Sanctions Board finds the record shows it is more likely than not Respondent made misrepresentations of fact as to eight performance certificates and eight orders submitted in its bids for the Projects.





falsification of documents took place years prior to TB I, it cannot be found to have engaged in any misrepresentations with the requisite intent to influence the Projects specifically. Such argument is not persuasive. Regardless of the original intent of its employees in falsifying the underlying documents, the relevant point of intent for Respondent lies in its managers' subsequent use of the falsified documents to compete for contracts under the Projects.

4.

29. The Sanctions Board finds the record contains sufficient evidence to show detriment to the Borrower. As p( )3. oient to1w deCID 5 >>c12paTJ 0.09TJ -0.04(nt)-2( s)-1ua.002 Tc 0. 0.09 T

particular emphasis on whether the record includes evidence showing the employer “at any time implemented any controls reasonably sufficient to prevent or detect the fraudulent practices alleged.”<sup>15</sup> Where an employer asserted it simply relied upon the honesty of its employees, and failed to implement any controls such as “a basic ‘four-eye-principle’ (i.e., a review by someone other than the individual who forged each Authorization . . .),” for example, and the Sanctions Board found no evidence with respect to a “rogue employee” defense or any other defense, it ultimately found

36. 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.<sup>18</sup> The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented.<sup>19</sup>

37. The Sanctions Board is required to consider the types of 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 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. They further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after three years.

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

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39. Section 9.02 of the Sanctions Procedures identifies a number of factors potentially relevant in this case, which the Sanctions Board addresses in turn below.

earlier case: “Even a single instance of forgery would constitute sanctionable misconduct. A dozen or more instances is extremely egregious.”<sup>20</sup>

b.

representative of another firm stated Respondent asked that firm to retract its statements to INT, the record does not contain any evidence to suggest a threat, harassment or intimidation beyond the request itself. Respondent, on the other hand, notes its representatives never visited any of the firms in person. Respondent also credibly pointed out that given the age of INT's allegations relating to the TB I tender in 2000, and the loss of related staff and internal documentation since then, it had no way to evaluate the matter for itself other than by contacting the other firms involved. On the record presented, there is insufficient basis to find Respondent's inquiry into INT's allegations was conducted in an improper or coercive manner.

d. Minor role in the misconduct

48. Section 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party played a minor role in the misconduct." Section V.A of the Sanctioning Guidelines refers to situations in which "no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct."

49. Respondent asserts that any fraudulent acts were carried out by low-level staff acting on their own, and that the absence of "involvement of the Management for any intentional mistake" warrants leniency. The Sanctions Board does not find sufficient evidence to establish that no one with decision-making authority in Respondent's operations participated in, condoned or was willfully ignorant of the repeated use of falsified documents. Accordingly, Respondent fails to show grounds for mitigation on this account.

e. Voluntary corrective action

50. 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 suggests such voluntary corrective actions may include cessation of misconduct, internal action against a responsible individual, establishment or improvement and implementation of an effective compliance program, and restitution or financial remedy. The Sanctioning Guidelines suggest a reduction is warranted only where the corrective action apparently "reflects genuine remorse and intention to reform," rather than "a calculated step to reduce the severity of the sentence." Respondent bears the burden of presenting evidence to show voluntary corrective actions.

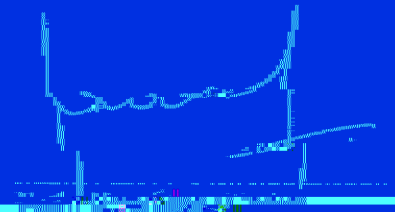
Respondent provides that “marketing certificates” shall not be used without prior verification and, if such documents would be more than six months old by the date of tender opening, prior notice to the relevant issuer. As INT points out, however, Respondent does not present evidence of more comprehensive measures to ensure improvement of its processes for obtaining, retaining or submitting performance certificates and orders. Nor does t ts

the named Respondents.”<sup>24</sup>

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Star Keimena

Star Keimena

Manette Cohen Branch

Patricia Diaz-Dominis