THE WORLD BANK GROUP

EXECUTIVE BOARD

Debarment Decisions (the "Cross-Debarment Agreement") so 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.[5] This sanction is imposed on Respondent and the Named Affiliate for fraudulent practices as defined in Paragraph 1.15(a)(ii) of the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (January 1995, revised January and August 1996, September 1997 and January 1999) (the "January 1999 Procurement Guidelines"). The periods of ineligibility shall begin on the date this decision issues.

I. INTRODUCTION

1. The Sanctions Board met in plenary session on October 4, 2011, at the World Bank's headquarters in Washington, D.C., to review this case. The Sanctions Board was represented by Fathi Kemicha (Chair), Hassane Cissé, Marielle Cohen-Branche, Patricia Diaz Dennis and Hartwig Schafer.

4. Pursuant to Section 4.01(c), Section 9.01 and Section 9.04 of the Sanctions Procedures, the EO recommended in the Notice that Respondent (together with any Affiliates Respondent directly or indirectly controls) and the Named Affiliate (together with any Affiliates the Named Affiliate directly or indirectly controls) be declared ineligible (i) to be awarded a contract for any Bank-Financed Project, (ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Project; provided, however, after a minimum period of ineligibility of two (2) years, Respondent and/or the Named Affiliate may be released from ineligibility only if such entity has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the Bank Group's Integrity Compliance Officer it has complied with the following conditions: (a) it has taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned; and (b) it has put in place an effective integrity compliance program acceptable to the Bank and has implemented this program in a manner satisfactory to the Bank.

5. Effective April 11, 2011, both Respondent and the Named Affiliate (together with any Affiliates Respondent or the Named Affiliate directly or indirectly controls) were temporarily suspended from eligibility to be awarded additional contracts for Bank-Financed Projects or participate in new activities in connection with Bank-Financed Projects, pursuant to Section 4.02 of the Sanctions Procedures, pending the outcome of this sanctions proceeding.

II. GENERAL BACKGROUND

6. This case arises in the context of the Peru Trade Facilitation and Productivity Improvement Technical Assistance Project (the "Project"). On September 11, 2003, IBRD and the Republic of Peru (the "Borrower") entered into a Loan Agreement (the "Loan Agreement") to provide US$20 million for the Project. The Project, which closed November 30, 2008, sought to assist the Borrower in: (i) establishing a streamlined, integrated and effective institutional and policy framework to increase non-traditional exports; and (ii) developing and implementing initiatives designed to foster the entrance of new export market participants, especially small and medium producers of non-traditional goods. The Loan Agreement stipulated goods and works were to be procured in accordance with, inter alia, the provisions of Section I of the January 1999 Procurement Guidelines regarding fraud and corruption.

7. In support of a Project component to develop technology innovation centers, the Borrower in May 2007 published an invitation for bids for the procurement of industrial equipment (the "Tender"). Bidding documents for the Tender expressly required bidders that did not manufacture the goods they offered to supply to submit manufacturer's authorizations showing their ability to supply the goods in question.

8. On August 14, 2007, Respondent submitted a bid for the Tender (the "Bid"). Respondent's Bid did not include any manufacturer's authorizations, even though Respondent did not manufacture all the goods it offered to supply for the Tender. The Project's Bid Evaluation Committee ("BEC") asked Respondent to provide the missing authorizations. INT

ii. Respondent did not act knowingly with an intention to mislead. The Named Affiliate's employee who created the forged documents did so only after extensive contact with the actual manufacturers, whom he believed to be willing and able to supply the equipment in question, and in light of pressure from the BEC. It was only because the manufacturers failed to timely provide genuine authorizations that Respondent and the Named Affiliate took it "upon themselves to solve the problem . . . by creating authorization letters that would explain the true state of affairs."

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iii. The misconduct caused detriment to the Borrower by tainting and undermining the credibility of the procurement process, thus depriving the Borrower of the benefits of a procurement process properly run; and forcing the Borrower to expend additional resources to investigate the misconduct.

iv. Sanctions are clearly appropriate in this case. Since 1999, the Bank has sanctioned firms that have engaged in similar misconduct. The sanctions process assists the Bank to uphold its fiduciary duty by excluding actors that have engaged in sanctionable practices such as misleading a borrower into believing they are qualified to perform a contract when they are not qualified. While the sanction may feel like punishment to Respondent and the Named Affiliate, the motivation is to fulfill the Bank's obligations.

D.

18. In its opening presentation, INT briefly asserted it had shown all elements of fraudulent practices, including the sole disputed element of detriment to the Borrower. Counsel for Respondent and the Named Affiliate reiterated its main arguments from thening helspon-N

carried out knowingly. As this finding does not rely upon the application of a lesser standard of mens rea, it is not necessary to address the arguments

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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.

35. 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. As noted earlier, Section 1.02(a) defines the term "Affiliate" to mean "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." In the present case, Respondent and the Named Affiliate do not contest INT's assertion they are Affiliates under common control, with Respondent's owners holding a controlling interest in the Named Affiliate.

2. Factors applicable in the present case

36. The range of factors to be considered under Section 9.02 of the Sanctions Procedures includes a number of factors relevant in this case. The parties have not identified, and the record does not indicate, any applicable aggravating factors. The Sanctions Board addresses other potentially relevant factors in turn below.

a. Voluntary corrective action

37. 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." The respondent bears the burden of presenting evidence to show voluntary corrective actions.[15]

38. The written record includes some references to voluntary corrective actions, including statements from Respondent and the Named Affiliate claiming implementation of enhanced compliance mechanisms or training designed to prevent recurrence of similar misconduct. Considering the totality of the evidence presented, however, the Sanctions Board does not find mitigation warranted on this ground. At the hearing, counsel clarified Respondent had not yet put in place a compliance system. Although Respondent no longer employed the individual who had apparently encouraged and submitted the forgeries as Respondent's authorized bid representative, Respondent clarified at the hearing that the employee had left the company voluntarily, not due to termination. The Named Affiliate's employee who actually created the forged manufacturer's authorizations was still employed at the time of the hearing, though he

[15] See Sanctions Board Decision No. 45 (2011) at paras. 72-74 (considering the respondent did not carry its burden to show voluntary corrective actions where the first claimed action was unrelated to the misconduct and the second action was a bare assertion the respondent agreed to draft and implement a compliance

had – according to the Named Affiliate – been assigned to other duties. None of the parties expressly requested mitigation on grounds of voluntary corrective actions already taken. Further, Respondent and the Named Affiliate agree appropriate sanctions could include a condition requiring they each implement an appropriate corporate compliance and ethics program – implicitly conceding they still lack satisfactory programs.

b. Cooperation

39. 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 of the Sanctioning Guidelines suggests cooperation may take the form of assistance with INT's investigation, an internal investigation, acceptance of responsibility or voluntary restraint.

40. The Sanctions Board finds mitigation appropriate for the cooperation demonstrated by both Respondent and the Named Affiliate. The record reflects Respondent assisted with INT's investigation by making its President available for interview and providing detailed responses to INT's show-cause letter; conducting an internal investigation; and admitting the use of forged documents, for which Respondent ultimately accepted responsibility. The record reflects the Named Affiliate similarly assisted with INT's investigation by communicating with INT and making its President and the employee who created the forgeries available for interview; conducting an internal investigation; and admitting to actually forging the documents in question, for which it accepted responsibility.

c. Period of temporary suspension already served

41. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by the sanctioned party. Respondent and the Named Affiliate have been temporarily suspended since the EO issued the Notice on April 11, 2011.

d. Other considerations

42. 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." In considering each sanctioned party's culpability or responsibility, the Sanctions Board considers proportionality of sanctions across multiple parties in the same or related sanctions proceedings.[16] Here, the Sanctions Board takes into account the comparable levels of culpability of Respondent and the Named Affiliate for the underlying misconduct, as the record demonstrates and the parties have acknowledged.

43. Respondent and the Named Affiliate contend any use of debarment would be punitive and disproportionate to their conduct, and therefore inconsistent with the purpose of the sanctions system. In fact, the imposition of sanctions including debarment is a protective and

[16] See Sanctions Board Decision No. 41 (2010) at para. 87 (in determining appropriate sanctions for the contesting respondents, considering their relative culpability compared to that of the non-contesting respondent who had admitted to and was sanctioned for the same underlying misconduct).

deterrent measure within the explicit scope and purpose of the sanctions system, and is consistent with the Sanctions Board's past treatment of similarly situated respondents.

44. As set out in the introductory provisions of the Sanctions Procedures, it is the "[f]iduciary duty" of the Bank, "under its Articles of Agreement, to make arrangements to ensure that funds provided by the Bank are used only for their intended purposes."[17]

> "In furtherance of this duty, the World Bank has established a regime for the sanctioning of firms and individuals that are found to have engaged in specified forms of fraud and corruption in connection with Bank financed or executed projects . . . . This regime protects Bank funds and serves as a deterrent upon those who might otherwise engage in the misuse of the proceeds of Bank financing."[18]

45. Article III of the Sanctions Board Statute requires, "The Sanctions Board shall review and take decisions in sanctions cases and perform such other detailed functions and responsibilities as set forth in the Sanctions Procedures."[19] Section 8.01 of the Sanctions Procedures, in turn, requires the Sanctions Board to "determine, based on the record, whether or not it is more likely than not that the Respondent engaged in one or more Sanctionable

46. In past cases finding fraudulent practices in the use of forged or otherwise misleading documentation to support a bid, the Sanctions Board has, consistent with its mandate under the Sanctions Board Statute and the provisions of the applicable Sanctions Procedures and Procurement or Consultant Guidelines, sanctioned the respondents through debarments of various terms.