



Date of issuance: February 2020

Sanctions Board Decision No. 23
(Sanctions Case No. 640)

IBRD Loan No. 8380E
IBRD Loan No. 8494E
Georgia

Decision of the World Bank Group 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, with a minimum period of ineligibility of three 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") board deliberated and reached its decision based on the written

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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

- 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 eligibility⁴ 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



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

“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 C

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.

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26. The Sanctions Board has consistently held that, where the record indicates that a

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. (s)-af0 Tw 0.-2 (a)8 27 >>BDu47 >>nductotentiaTj E



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 ProjTj 0 Tc1 (wa)4 (c) -34.34 (t)-6f* 351.48 752.4 188.52 3.ace Bio t2 (e)4.52BT 0 scn /TT0 1 Tb



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 224.039 -26.2 re W n q /GS0 gs

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:* T1 1 Tf:

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'

