



Date of issuance:

agencies, which specified, inter alia, arrangements for the Project's implementation, monitoring, and evaluation. The Project became effective on December 4, 2012, and is scheduled to close on November 30, 2020.

5. On July 25, 2013, the agency responsible for implementing the Project (the "PIU") issued bidding documents (the "Bidding Documents") for a contract to build water reservoirs, pumping stations, and distribution networks in a specific geographic area under the Project (the "Contract"). On August 28, 2013, the Respondent's then-Executive Director (the "former Executive Director") authorized an individual agent (the "Agent") to act on behalf of the Respondent. On September 24, 2013, the Agent submitted a bid for the Contract (the "Bid") on the Respondent's behalf. On January 22, 2014, the PIU notified the Respondent that it was being awarded the Contract and on January 28, 2014, the Agent signed the Contract as the Respondent's representative. After the Contract was signed, the Agent established a branch representing the Respondent in Lebanon and worked with a subcontractor and other staff to implement works under the Contract.

6. INT alleges that the Respondent engaged in fraudulent practices by knowingly misrepresenting its work experience and financial turnover in the Bid.

III. APPLICABLE STANDARDS OF REVIEW

7. **Standard of proof** Pursuant to Section III.A, sub-paragraph 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 III.A, sub-paragraph 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.

8. **Burden of proof** Under Section III.A, sub-paragraph 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 its conduct did not amount to a sanctionable practice.

9. **Evidence:** As set forth in Section III.A, sub-paragraph 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.

10. **Applicable definition of fraudulent practice:** The Financing Agreement provided that procurement of goods and works under the Project should follow the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (

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Procurement Guidelines.⁵ The Sanctions Board, therefore, concludes that the definition of fraudulent practice set out in the May 2010 Procurement Guidelines applies to the allegations in this case. Paragraph 1.14(a)(ii) of these Guidelines defines “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[.]” A footnote to this definition explains that the term “party” refers to a public official; the terms “benefit” and “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 Contentions in the SAE

11. INT alleges that the Respondent’s staff engaged in fraudulent practices by knowingly submitting, as part of the Bid, t.0 Td 9/nC3.04 Tw 4 . (as)-e (as)-(act)-a(act)-em (l)-6 (en)-4 (t)- (as)-5 [(ani)2

and corrective measures by the Respondent's current management, passage of time since termination of the Respondent's settlement negotiations with INT, and the absence of a variety of potentially aggravating factors.

C. INT's Principal Contentions in the Reply

14. INT argues that the Respondent is culpable for the acts of its staff and agent and that the Respondent has failed to prove a "rogue employee" defense. Specifically, INT contends that the Respondent's focus on the former Executive Director and the Agent is misplaced, as the relevant staff members may have well been other individuals who prepared the Bid at the Respondent's offices in Bulgaria. Those staff members, INT argues, acted well within the course and scope of their employment and in the Respondent's interest. Furthermore, INT contests the Respondent's characterization of the Agent and the former Executive Director as "rogue employees" and argues that they were motivated by an intent to serve the Respondent during an economic downturn in the Respondent's primary market. INT also notes the absence of evidence of any embezzlement, improper self-dealing, or other illicit enrichment in relation to the Contract. Finally, INT states that the Respondent has failed to substantiate a key part of its "rogue employee" defense – the existence and implementation of a robust system of internal controls.

15. INT supports the application of mitigating credit on the basis of the Respondent's cooperation, its integrity compliance measures, the passage of time, and the period of temporary suspension served. INT argues that no mitigating credit is warranted for the Respondent's asserted internal investigation, other voluntary corrective actions, collateral consequences of debarment, or absence of potentially aggravating circumstances.

D. Additional Submissions Prior to Hearing

16. On October 10, 2019, after having filed the Reply, INT submitted additional documents relating to the Respondent's asserted integrity compliance measures, which INT had obtained in the course of recent settlement negotiations with the Respondent. The Sanctions Board Chair

into the record, and authorized INT to comment on the substance of these materials in writing after the hearing.

19. In its presentation on the merits of the case, INT reiterated that the alleged misrepresentations in the Bid constituted deliberate and significant fraud and served to improve the Respondent's business position and expand its market. INT argued that the Respondent was liable for the conduct of its former Executive Director and other staff involved in preparation of the Bid (at least some of whom had held short-term consultancy contracts), who had acted within the scope of their emp.01 TwCTc 0 Tw 7.b578[(t-2 (e)4 (-0.003 T1 0 Td ()Tj 0.002 Tc f0.003 T1ho (r)3 (i

provide sufficient support for either a “rogue employee” defense or mitigation based on asserted compliance measures. INT also argues that the Respondent’s third-party documents relating to the Agent and branch registration in Lebanon did not prove that the Agent had been duplicitous or that the branch was formed improperly.⁷ With respect to compliance-related documentation, INT takes the position that these documents do not reflect implementation of timely measures to prevent the type of misconduct at issue in this case and, therefore, merit “only modest” mitigating credit. On the second point relating to financial transfers, INT states that it does not possess additional evidence of such transfers, but shares financial records that it had received from the Lebanese branch office for comprehensiveness and as a matter of courtesy to the Respondent.⁸

23. The Respondent’s post-hearing submission relating to labor/employment law in Bulgaria includes a legal opinion from the Respondent’s counsel and a form contract between an entity and its representative agent. In its arguments, the Respondent submits that an agency or employment contract must be formalized in writing, with reference to the Bulgarian Commercial Act and the EU Directive on Commercial Agents. The Respondent argues that there was no valid contract for agency, management, or representation between the Respondent firm and the Agent, and that the Agent therefore had no valid authorization to represent the Respondent at any point.

24. The parties were authorized to file comments on their respective post-hearing submissions, which they did during the period of January 2-8, 2020. INT submits that the Respondent’s additional materials filed after the hearing deserve limited evidentiary weight and still fail to prove the Respondent’s “rogue employee” defense. INT additionally states that the Respondent’s arguments regarding a contractual relationship between the Respondent firm and the Agent conflict with the Respondent’s prior submissions and its course of conduct, which includes having accepted Contract-related obligations and having sought and received Contract-related payments. INT emphasizes that the legal authorities cited by the Respondent and the “made-for-litigation legal opinion” in the post-hearing submission are questionable, provide limited persuasive value to the Sanctions Board, and do not address the specific test for corporate liability under the World Bank Group’s sanctions framework. The Respondent reiterates its arguments against liability and for mitigation and again denies having submitted the Bid or drawn any benefit from the Bid, the Contract, the Project, or the creation of the Lebanese branch. With respect to its staff, the Respondent concedes that it has hired individuals “under more flexible and project-specific working arrangements” than a standard labor contract, but states that such staff would not be tasked with preparing or delivering a bid.

V. THE SANCTIONS BOARD’S ANALYSIS AND CONCLUSIONS

25. The Sanctions Board will first review the remaining evidentiary matter raised in this case. The Sanctions Board will then examine whether it is more likely than not that the Respondent

⁷ For example, the Respondent presented search-term results from a Bulgarian corporate registry seeking to verify the existence of the Agent’s asserted former employer. INT noted that (i) a single corporate registry search may not be adequate to conclude that a party misrepresented facts and (ii) the Respondent’s search included a typographical error and a search of the corrected term by INT did produce results.

⁸ The Respondent had complained during the hearing that it did not have access to the branch office’s corporate or banking records.

engaged in the alleged fraudulent practices. If a finding of liability is reached, the Sanctions Board will determine what sanction should be imposed on the Respondent.

A. Evidentiary Matter

26. On November 24, 2019, the Respondent requested access to audio recordings of all INT

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investigation produced copies of authentic financial statements that the Respondent had filed with national authorities, reflecting annual revenues significantly below the amounts claimed in the Bid for the same time period. Again subject to its claim of non-responsibility, the Respondent does not dispute, in its pleadings, the alleged misrepresentations relating to financial turnover and, during INT's investigation, its current Executive Director agreed that revenue figures claimed in the Bid appeared excessive for at least 2012.

34. In these circumstances, the Sanctions Board finds the evidence sufficient to conclude that the Bid contained multiple misrepresentations relating to the Respondent's work experience and its financial turnover.

2. That knowingly or recklessly misled, or attempted to mislead, a party

35. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.¹³ INT submits that the misrepresentations were made knowingly. The Respondent's submissions do not opine on the mens rea of staff involved in preparing the Bid, but assert the misrepresentations were made by rogue employees and others. In its analysis on this point, the Sanctions Board has generally assessed INT's allegations against evidence of how the misrepresentations were introduced into the relevant documents.¹⁴ However, INT does not explain the process by which each of the misrepresentations was introduced into the Bid, stating only that the Bid was prepared in the Respondent's offices in Bulgaria.

36.



from the misconduct or the Contract. The Sanctions Board has previously found sufficient

step in the interests of the Respondent and disputes the Respondent's "rogue employee" defense with respect to both the former Executive Director and the Agent.

41. The Sanctions Board observes that the burden of proof with respect to a "rogue employee" defense, as a rule, lies with the respondent. The Respondent has not satisfied this burden in the present proceedings and has presented arguments inconsistent with or poorly supported by the evidentiary record. For example, the Respondent proposes that the former Executive Director and the Agent benefited personally

citing Sanctions Board precedent. As the Sanctions Board has repeatedly held, the expected future business impact of a sanction on a respondent firm is not relevant to a respondent's culpability for the alleged misconduct and the Sanctions Board's analysis in a specific case.³⁵ Similarly, no mitigation is warranted in the present case.

59. Absence of aggravating circumstances. The Respondent requests mitigation for lack of:
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