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 Cisse, Ellen Gracie Northfleet, Catherine O'Regan, Denis Robitaille, and J. James Spinner. Neither the Respondent nor the World Bank Group's

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11. Response submitted by the Respondent to the Secretary to the Sanctions Board
on October 3, 2012 (the "Response"); and

lll. 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

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II. GENERAL BACKGROUND

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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 it 4sy1.5 0 0(0859 2.e)Tj -0.l s8eriali4o

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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 l .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 inc6e

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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

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1. Misrepresentation of facts

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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 read°ily 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

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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.

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includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) restitution or remedy. As stated in Section 8.0l(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

b. Voluntary corrective action

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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 ider:itifies several examples of voluntary corrective actions that

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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

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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