



African Development Bank Group



Sanctions Appeals Board Secretariat

**Date of Issuance: 20 April 2020**

**Sanctions Appeals Board Final Decision No 7.**

Sanction Decision No. 17 / Sanction Case SN / 2018 /06

ADF Loan No. 2100150030546 and NTF Loan 2200160001239

Project No. P-ZI-FAD – 008

Regional Rusumo Falls Hydropower Project

ADF Loan No. 2000130014082 – Project No. UG – FA0 – 006

Uganda Rural Electricity Access Project

ADF Loan No. 2000200000152 – Project No. P.KE – FA0 – 013

Last Mile Connectivity Project II

Respondent

SINOTEC CO. LIMITED

**Decision of the African Development Bank Group Sanctions Appeals Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. SN-2018-06 (the “Respondent”), together with any Affiliates<sup>1</sup>, with a period of**

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Section 2 of the Sanctions Procedures of the African Development Group defines “affiliate” as any natural or legal persons that controls, is controlled by, or is under the common control with the Respondent as determined by the Bank Group. Where such affiliate is a corporate group, this definition shall incorporate the principle outlined in the MDB Harmonized Principles on Treatments of Corporate Groups adopted on 10<sup>th</sup> September 2012

Section 8.8 of the Sanctions Procedures of the African Development Group: Hearings. The Record for consideration by the Sanctions Appeals Board shall consist of the Notice, Response, the Sanctions Decision, the Appeal, the Reply, the Rebuttal and any other evidence necessary to shed light on all matters in dispute before the Sanctions Appeals Board. The Sanctions Appeals Board shall make its Final Decision based on the Record and parties have no right to an oral hearing. The Sanctions Appeals Board may however, in its discretion, hold such hearing(s) as it deems appropriate upon the request of the Respondent or PIAC provided that the request for a hearing is supported by whatever the Sanctions Appeals Board deems reasonable cause for such hearing. The Sanctions Appeals Board may also request an oral hearing(s) on its own volition. The Sanctions Appeals Board shall determine the nature, length and form of all oral hearings. Except otherwise provided, parties shall bear their own costs in relation to hearings.



**ineligibility of three (3) years beginning from the date of this decision. This sanction is imposed on the Respondent for fraudulent practices.**

## **I. INTRODUCTION**

1. The Sanctions Appeals Board met in a panel session on November 21<sup>st</sup>, 2019 at the African Development Bank Group's headquarters in Abidjan, Cote d'Ivoire, to review this case. The Sanctions Appeals Board was composed of Ademola Oluremilekun ADEGOKE (Chair), Marie-Andrée NGWE, and Omobola Idowu HOLLIST.

2. The hearing was held following requests from the Respondent (SINOTEC Co. Limited), and in accordance with Section 8.8<sup>2</sup> of the Sanctions Procedures of the Bank Group. The Respondent was represented by its Counsels, Professor Albert Mumma and Justus Omollo. Were also present at the hearing, Mr. Jin Guang Ming, Chairman of the Board of the Sinotec, Mr. Jin Hua Regional Director of Eastern Africa, Sinotec Co. Limited, and Mr. Dr. Anil Bhandari, Consultant. PIAC participated in the hearing through its representatives, all attending in person. The Sanctions Appeals Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

3. In accordance with Section 8.2 of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following:

- i. Notice of Sanctions Proceedings "Notice" issued to the Respondent
- ii. Response of the Respondent dated 11 April 2018
- iii. The Sanctions Decision
- iv. The Appeal
- v. The Reply
- vi. The Rebuttal

4. On May 13, 2019, the Sanctions Commissioner, pursuant to Section 5.4<sup>3</sup> of the Sanctions Procedures, issued a Notice of Sanctions Proceedings "Notice". The Sanctions Decision barred the Respondent for a period of five (5) years, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility with respect to any Bank-Financed Projects.

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<sup>3</sup> Section 5.4: If the Sanctions Commissioner determines that the Findings of Sanctionable Practice(s) supports prima facie finding that the Respondent has engaged in a Sanctionable Practice, the Sanctions Commissioner shall issue a Notice of Sanctions Proceedings ('Notice') to the Respondent, and notify PIAC, as well as the Sanctions Appeals Board through the Appeals Secretary.



5. Respondent avers that the entire Sanctions Decision No. 17 issued on 13th May 2019 by the Sanctions Commissioner is materially flawed and contrary to the AfDB Sanctions Procedures. Respondent therefore lodged an appeal on 14 June 2019, requesting the Sanctions Appeals Board for a de novo review on the following grounds:

- a) The Sanctions Decision, more particularly the choice of sanction which has been imposed, is motivated by the desire on the part of the Commissioner "to send a warning message" to Respondent, and not an objective evaluation of the factors stipulated in Section 11.4 of the AfDB's Sanctions Procedures. As a result, the Sanctions Commissioner, in making the Sanctions Decision, took account of irrelevant considerations and failed to take account of relevant considerations.
- b) The Sanctions Decision, more particularly the choice of sanction which has been imposed, is actuated by the Commissioner's "outrage" against Respondent, and not an objective evaluation of the factors stipulated in Section 11.4 of the AfDB's Sanctions Procedures. Consequently, in making the Sanctions Decision, the Sanctions Commissioner took account of extraneous considerations.
- c) The Sanctions Commissioner failed to inquire into and take account of the procedural unfairness that characterized the conduct of the investigation by PIAC which formed the basis of the Findings of Sanctionable Practices against Respondent. As a result, the Sanctions Decision perpetuated the procedural unfairness that Respondent had faced in the investigations process.
- d) The Sanctions Decision is not supported by the evidence on record and goes against the factual findings of the Commissioner or which otherwise does not meet the standard of proof contrary to Section 13 of the AfDB Sanctions Procedures. Consequently, the Sanctions Decision is marred by manifest errors of law and fact.
- e) The Sanctions Decision, particularly the choice and severity of sanction imposed, departs significantly from known precedent in previous Sanctions Decisions of AfDB and therefore defeats the principle of fair and equal treatment.

## **II. GENERAL BACKGROUND**

This case arises in the context of three projects:

6. The Regional Rusumo Falls Hydropower Project - Rwanda hereinafter "the Rwanda Hydropower Project" was procured pursuant to financing from the African Development Fund ("ADF") and the Nigeria Trust Fund (represented by the AfDB"). On 31 August 2017, the Energy



Development Corporation Limited ("EDCL"), the Rwandan Implementation Unit for the Project, issued the Bidding Documents for "Design, Supply and Installation of Regional Transmission Line Rusumo-Shango and related sub-stations - Lot 2 Substations" in which Respondent participated as a bidder in a joint venture. Respondent's tender was however adjudged unsuccessful for having failed to meet the qualification criteria.

7. The Rural Electricity Access Project - Uganda hereinafter "the Uganda Rural Electrification Project" was procured pursuant to financing from ADF. In October 2017, the Rural Electrification Agency ("REA") Ugandan Executing Agency for the Project, issued bidding documents for "Design, Supply and Installation of Medium Voltage Networks and Last Mile Consumer Connections for Lot 7 - North North-West Service Territory (Gulu, Nwoya, Lira and Environs). Respondent submitted its bid in the said tender but was adjudged unsuccessful.

8. The Rural Electricity Access Project - Uganda hereinafter "the Uganda Rural Electrification Project" was procured pursuant to financing from ADF. In October 2017, the Rural Electrification Agency ("REA") Ugandan Executing Agency for the Project, issued bidding documents for "Design, Supply and Installation of Medium Voltage Networks and Last Mile Consumer Connections for Lot 7 - North North-West Service Territory (Gulu, Nwoya, Lira and Environs). Respondent submitted its bid in the said tender but was adjudged unsuccessful.

9. The Last Mile Connectivity Project - Kenya (hereinafter referred to as the "Connectivity Project"). On 17 October 2016, the Bank entered into a Loan Agreement for an amount not exceeding USD 134 640 000 with the Republic of Kenya to finance the Connectivity Project. The objective of the Connectivity Project included supporting the Government's initiatives of ensuring increased electricity access particularly among the low-income population. On 10 March 2017, the Kenyan Implementing Agency for the Project, issued a bid for Lots 1 and 2, components of the Project, which consisted of the design, supply and installation of distribution lines.

10. Respondent submitted its tenders for three lots namely Lots 5, 7 and 13. KPLC on 3rd November 2017 declared Respondent's bid for Lot No. 5 unsuccessful on the purported basis that Respondent and the "wholly owned" subsidiary CCC Nigeria Engineering Nigeria Limited (hereinafter "CCC Nigeria") were both involved in the bidding process of the same project "against the tender requirements ITB 14.3". CCC Nigeria submitted bids in Lots Number 3, 9 and 14 which were distinct from those in which Respondent had participated (5, 7 and 13).

11. On 16th November 2017, Respondent filed a Request for Review of the decision of KPLC before Kenya's Public Procurement Administrative Review Board (hereinafter "PPARB"). PPARB delivered its decision in the subject Request for Review on 7th December 2017 and determined inter alia that there was no conflict of interest as Respondent and CCC Nigeria did not bid in the same lots of the subject tender.



### **III. APPLICABLE STANDARDS OF REVIEW**

12. *Standard of proof:* Pursuant to Section 13.1 of the Sanctions Procedures, the preponderance of the evidence is determined by whether upon consideration of relevant facts and materials before the body considering such facts and materials, that it is more likely than not that the Respondent has engaged in a Sanctionable Practice.

13. *Burden of proof:* Under Section 13.2 of the Sanctions Procedures, the Integrity and Anti-Corruption Department (“PIAC”) bears the initial burden of proof to present evidence sufficient to establish that it is more likely than not that the Respondent engaged in a Sanctionable practice. The burden of proof shall subsequently shift to the Respondent to demonstrate that it is more likely than not that the Respondent’s conduct did not amount to Sanctionable practice.

14. *Admissibility and Weighing of Evidence:* As set forth in Section 13.3 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Appeals Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

### **IV. PRINCIPAL CONTENTIONS OF THE PARTIES**

PIAC submits that Respondent engaged in five separate fraudulent practices in order to demonstrate its experience, meet the bid qualification requirements and ultimately be awarded the works contracts.

#### **A. PIAC’s Principal Contentions in the Hydropower project**

15. Fraud allegation 1: For the Hydropower Project, Section 2.4.2 (a) of the Bidding Document, required bidders to show participation in at least two contracts having a “minimum value of USD 20 million”. The Respondent knowingly and recklessly listed a contract it had performed in Pakistan, indicating its value at USD 29,572.300 while the real value was USD 2,957,230.

16. Fraud allegation 2: In order to qualify for the tender and be awarded the contract of the same Hydropower Project, the Respondent knowingly and recklessly listed, as previously executed works, a contract it was awarded in Nigeria in 2006. Yet, the records show that the contract had been awarded to and executed by another company, CCC Nigeria.

#### **B. PIAC’s contentions concerning the Electrification Project**

17. Fraud allegation 3: For the Electrification Project, section 2.4.2 of the Bidding Document required “participation in at least two contracts within the past five years”. Therefore, the



Respondent knowingly and recklessly submitted its bid regarding the completion date of an electrification project it undertook in the Nyanza and Western provinces of Kenya. The confirmation letter submitted by the Respondent indicated that the project was completed in January 2014, when in fact the project has been completed in November 2011.

### **C. PIAC'S contentions concerning the Connectivity Project**

18. Fraud allegation 4: Respondent provided conflicting and therefore false information regarding works it had executed in Ghana. The Respondent indeed, quotes to the Kenyan Executing Agency a contract value of USD 33,070,850 with a construction rate of USD 1,370,000 per month and the same project is indicated to the Rwandan Executing Agency as having a value of USD 12,610,303.23 and a construction rate of USD 630,000 per month.

19. Fraud allegation 5: Finally, Respondent provided false information regarding the nature and extent of its relationship with its subsidiary CCC Nigeria in order to contest a tender disqualification decision issued against it. Indeed, Respondent claimed to hold 40% shares in CCC Nigeria while it was in fact the majority shareholder of CCC Nigeria with over 80% shares. This issue arose because for the Kenyan authorities, for two related companies to bid in the tender was a violation of the tender requirements.

### **D. The Respondent principal contentions in its Appeal**

20. To the first fraud allegation, Respondent states that this was an arithmetic/typographical mistake. The documents submitted in support of the tender correctly stated the contract value as RMB 20358318. RMB 20358318 is equal to USD 2,957,230 rounded off using the exchange rate of 1 USD = 6.88426 which was in fact used. However erroneously in the process of converting from RMB to USD, a mistake was made, and the amount stated as USD 29,572,300 instead of USD 2,957,230. The Respondent sustains that it was a genuine arithmetic and typographical error and not a misrepresentation meant to knowingly or recklessly mislead.

21. As to the second allegation of fraud, Respondent submits that CCC Nigeria Respondent's local presence in Nigeria. It is a locally registered Nigerian company in Nigeria. It was registered by Respondent in 2003. While its shareholding has varied over time, Respondent has always had the majority shareholding. The law in Nigeria stipulates that a company must be registered with at least two shareholders and therefore as of February 2018, there are only two shareholders, the second (minority) shareholder is an official employee of Respondent based in Nigeria.

22. The Respondent submits that it is a normal practice in the Chinese corporate world for a parent company to claim the experience of its subsidiary company in carrying out contracts awarded to the subsidiary as the parent company's experience. Respondent has similarly also





always claimed the experience in carrying out contracts awarded to CCC Nigeria as its own experience because such contracts are implemented using Respondent's resources, expertise, skill, work force, assets and reputation.

23. To the third allegation of fraud in which the Respondent stated the completion date for the Uganda Rural Electrification Power Project as 30th January 2014 when the project had been completed in November 2011. Respondent accepted that it had made a mistake in stating the completion date as the date when all works were finalized without clarifying this further. Respondent regrets its mistake and has committed itself to improve its quality assurance systems. Respondent indicated that, further disciplinary action was promptly taken against the staff concerned.

24. To the fraud allegation of providing conflicting and therefore false information, regarding works executed in Ghana. Respondent acknowledges its mistake. The Respondent submits that following the completion of the project the Ghana project office was closed down and staff dispersed to other locations around the world. It has proved difficult to track down the contract documents as well as staff with first-hand information about the project, which accounts for the inability to supply the contract documents.

25. Finally, to the fraud allegation with regard to its relationship with CCC Nigeria. Respondent submits that the initial tender was split into different lots, Respondent, and CCC Nigeria bid in different lots and therefore they were not in direct competition between the two of them regardless of the degree of shareholding. The tender allowed a bidder to bid in more than one lot, and therefore there was no restriction on either the same bidder or related bidders bidding in different lots.

26. As part of the tender submission, the bidders, Respondent and CCC Nigeria, provided all the incorporation documents and therefore, there was no effort to conceal the relationship between the two companies, nor to falsely imply that Respondent was a minority shareholder.

27. Respondent contends that it did not attempt to mislead Kenyan Power and lighting Company (KPLC). The corporate relationship between the two companies was self-evident from the incorporation documents, which it attached to the tender. It also contends that it was not necessary to misrepresent this relationship, as shareholding was not part of the tender evaluation criteria nor a factor in determining the conflict of interest.

#### **E. PIAC's Principal Contentions in the Reply**

28. With respect to the Respondent's allegation that the Sanctions Commissioner took in account extraneous considerations and failed to take in account relevant considerations, PIAC



submits that the Sanctions Commissioner evaluated the evidence and the mitigating and aggravating factors before proceeding to impose an appropriate sanction.

29. Article 11.4<sup>4</sup> of the African Development Bank Procedures gives a discretion to the Sanctions Commissioner on what factors to consider and conversely not to consider.

30. As regards the procedural unfairness in the investigation and sanctions proceedings, imposition of unreasonable timelines, intimidation and threats, PIAC submits that the Respondent had every opportunity to raise its perceived allegation of unfairness throughout the months of investigation. PIAC submits that aside from requesting extension of time, the Respondent did not raise any allegations or concerns about the investigation.

31. PIAC submits that it made all efforts and availed sufficient opportunities during the investigation of the case to ensure that the Respondent received a fair hearing in this matter.

32. In the course of this matter, while pursuing the possibility of a settlement, on 24<sup>th</sup> August 2018, the Respondent requested an extension of time within which to respond to PIAC. In PIAC's response dated 28<sup>th</sup> August 2018<sup>5</sup>, the extension was granted.

33. PIAC avers that at no time the Respondent was placed in a position whereby it was not able to take a decision free of duress.

34. PIAC submits that the allegation by Respondent that PIAC led it to believe that sanctions would be imposed if it did not enter a negotiated settlement is without merit. PIAC avers that nowhere in its exchanges<sup>6</sup> (letter to show cause) with the Respondent, it expressly stated or implied that it had the authority to impose sanctions against the Respondent or influence the imposition of any sanction.

35. Finally, concerning the Respondent's allegation that PIAC erred in finding five Sanctionable practices. PIAC submits that Respondent has misunderstood the number of types of Sanctionable practices, of which they are five as found in Section 4<sup>7</sup> of the Sanctions Procedures, with the number of instances of Sanctionable practices. In this case, the Respondent committed five distinct instances of sanctionable practices. Respondent, five times, knowingly or recklessly provided information to meet the bid qualification requirements and ultimately be awarded the

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<sup>4</sup> Section 11.4(l) of the Sanctions Procedures - Factors Affecting Choice of Sanctions. In issuing a Sanction, the following factors may be considered: any other factor that the Sanctions Commissioner or Sanctions Appeals Board deems relevant.

<sup>5</sup> PIAC Response to Respondent dated 28 August 2018

<sup>6</sup> Respondent response to PIAC's letter to show cause dated 27 March 2019

<sup>7</sup> Section 4 of the Sanctions Procedures of the African Development Bank - Sanctionable Practices





works contracts. The information came to be false. Although of the same nature, these instances constituted separate fraudulent practices.

#### **F. Presentation at the Hearing**

36. At the Hearing, Respondent requested the Sanctions Appeals Board for a de novo review on the following grounds:

- (i) Procedural unfairness
- (ii) Merit
- (iii) Choice and gravity of the sanctions

37. Respondent submits that the choice of sanction which has been imposed is motivated by the desire on the part of the Sanctions Commissioner “to send a warning message” to Respondent, and not an objective evaluation of the factors as stipulated in Section 11.4 of the Bank’s Sanctions Procedures. The sanction which has been imposed is not supported by evidence on record but is actuated by the Sanctions Commissioner’s “outrage” against the Respondent.

38. Respondent submits that the Sanctions Commissioner failed to inquire into and take account the procedural unfairness that characterized the conduct of the investigation by PIAC, which formed the basis of the findings of Sanctionable practices against Respondent. As a result, the Sanctions Commissioner perpetuated the procedural unfairness that Respondent had faced in the investigation process.

39. Respondent submits that the Sanctions Decision defeated the principle of fair and equal treatment in the choice and severity of sanction imposed because it departed significantly from known precedent in previous Sanctions Decisions of the Bank.

#### **V. THE SANCTIONS BOARD’S ANALYSIS AND CONCLUSIONS**

The Sanctions Appeals Board will first consider whether the investigation was marred with procedural unfairness and whether the Respondent engaged in the alleged sanctionable practices.

##### **A. Procedural Unfairness**

40. Regarding the Respondent’s aversion that PIAC’s investigation is marred with procedural unfairness, it is on record and it has not been refuted that there was exchange of correspondences between the parties which included informing the Respondent of the allegations and the ongoing investigation and requesting the Respondent to respond or supply any other information in respect to the allegations. The Respondent responded on several occasions and sometimes requested for extension of time within which to respond which PIAC granted.



41. This Board agrees with the Respondent's argument that investigation is intended to "examine and determine the veracity of allegations of corrupt or fraudulent practices and by this, the investigative office is obliged to maintain objectivity, impartiality and fairness all through the investigative process". However, this Board finds and holds that nothing on record shows that PIAC did less.

42. It is illustrative that; PIAC delivered to Respondent on 13 March 2018, a letter of preliminary inquiry duly responded to by Respondent on 11 April 2018, providing the information requested by PIAC. PIAC requested for additional information through e-mail on 13 April 2018 and responded to by Respondent on 1 June 2018; PIAC's request for additional documentation on 19 June 2018 was responded to by Respondent on 4 July 2018; a show cause letter written on 5 July 2018,<sup>8</sup> was responded to by Respondent on 23 July 2018 and further response dated 30 July 2018 followed. PIAC submitted to Respondent on 9 August 2018, a Settlement Proposal, to which Respondent responded on 23 August 2018, including among others, exculpatory information and mitigating circumstances to be taken into account. PIAC through the e-mail dated 23 August 2018<sup>9</sup> rejected Respondent's terms for the proposed Settlement. Respondent's request for enlargement of time to enable it adequately to consult on the Settlement Proposal was allowed by PIAC, though its subsequent response to the Settlement Proposal was rejected. Respondent's further written correspondence dated 5 October 2018, regarding the Settlement Proposal was allegedly ignored by PIAC.

43. In determining whether the Respondent had ample opportunity to be heard during the investigative process, in line with the principles of fair hearing, given all that had been catalogued above, this Board has no doubt in finding and holding that there was procedural fairness all through the investigations leading to the instant case.

44. With respect to the deadlines, the hardship that would have purportedly worked against the Respondent can be seen to have been ameliorated by the often extensions granted by PIAC whenever requested for by the Respondent. Therefore, the Sanctions Appeals Board finds that the Respondent was given sufficient opportunity to respond to PIAC's allegations, both during the investigation and in the course of the present proceedings.

**B. Sanctions Decision regarding the choice and severity of sanctions departs significantly from known precedents**

45. The Respondent submits that PIAC failed to follow the known precedent in the matter of *CHINT ELECTRIC CO. LTD*, in which a sanction of 36 months debarment was imposed with an

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<sup>8</sup> Show cause letter issued 5 July 2018

<sup>9</sup> Letter from Respondent August 2018 – Ref. SINO-PIAC 201808/24-004/ Settlement Proposal



option to be reduced to 24 months in respect to at least seven (7) instances of misconduct between 2012 and 2017.

46. The Respondent submits further that PIAC failed to consider the holding in Final Decision No.1 of 2016 where the Sanctions Appeal Board reduced a two-year debarment Sanctions Decision by the Sanctions Commissioner on *VETO-CO (U) LTD* to one year because the aggravating circumstances had not been established from the evidence on record. Therefore, based on the above two precedents, the Respondent concluded that the choice and scope of the sanction imposed on Respondent is manifestly unfair.

47. PIAC avers that the Respondent has failed to discharge the duty it owes to demonstrate before the Sanctions Commissioner that the cases it has cited involves the same legal principles with and similar facts to this case.

48. The Sanctions Appeals Board finds and holds that the Respondent failed to establish the precedent that is either binding on or persuasive for this Board or the Sanctions Commissioner when deciding subsequent cases with similar issues or facts.

49. It is the Respondent's right to refer and consider the application of a precedent in its case. However, in the case at stake, there is no reference to any particular precedent from which the Sanctions Appeals Board must draw references.

### **C. Evidence of Sanctionable practices**

50. In accordance with Section 13.2 of the Sanctions Procedures, PIAC bears the initial burden to show that it is more likely than not that the Respondent:

- (i) engaged in any act or omission, including a misrepresentation,
- (ii) that knowingly or recklessly misled, or attempted to mislead, a party
- (iii) to obtain a financial or other benefit or to avoid an obligation.

*Fraudulent Practice is defined by paragraph 4.2 (b) of the African Development Bank's Sanctions Procedures and by Section 1.14 (a)(ii) of its Rules and Procedures for Procurement of Goods and work, excerpt May 2008 Edition and revised in 2012 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".*

### **Fraud allegation 1: Alleged submission of inflated contract value**

- a. Act or omission, including a misrepresentation



51. PIAC states that the Respondent submitted its bid for the Hydropower Project by inflating the contract value of a reference contract performed in Pakistan. In past decisions finding that the Respondent submitted forged documents, the Sanctions Board of the World Bank has relied primarily on written statements from the parties named in or supposedly issuing these documents, as well as the respondent's own admissions<sup>10</sup>. In this case, the Respondent acknowledges the discrepancy between the value of the referenced contract submitted in its bid and the actual contract value performed in Pakistan. Respondent "accepts responsibility for submitting an inaccurate information which it explained, arose from: (i) mistakes committed by inadequately supervised staff in haste to meet the deadline for submission of the tender; (ii) arithmetic and typographical errors committed in making a conversion from the correctly stated amount in Chinese RMB to USD; (iii) insufficiently robust quality assurance standards<sup>11</sup>. Section 13.3 of the Bank's Sanctions Procedures provides that the Sanctions Appeals Board shall have discretion to determine admissibility, relevance, materiality weight and sufficiency of evidence. The Board finds the evidence of a sanctionable practice on the Respondent's own admission.

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

52. PIAC alleges that the Respondent knowingly inflated the value of the contract performed in Pakistan to mislead the Project Manager into believing that it met the requirement when in reality it did not because, Section 2.4.2(a) essentially required bidders to show participation in at least two contracts having a "minimum value of USD 20 Million". The Respondent knowingly submitted a forged document in order to meet the Qualification Criteria. In line with the Sanctions Commissioner's holding on this, the Sanctions Appeals Board holds that the Respondent provided false information regarding the value of a contract performed in Pakistan.

c. To obtain a financial or other benefit or to avoid an obligation

53. The Sanctions Board of the World Bank has consistently held that, where the record demonstrates that a misrepresentation was made in response to a tender requirement, the intent to obtain a benefit or avoid an obligation may be inferred<sup>12</sup>. Because the inflation of the contract value submitted by the Bidder was in response to a tender, the Sanctions Appeals Board can and does infer the intent to obtain a financial or other benefit or to avoid an obligation.

**Fraud allegation 2: Alleged listing as previously executed works a contract awarded to another company**

a. Act or omission, including a misrepresentation

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<sup>10</sup> Sanctions Board Decision No. 61 (2013) at para. 21

<sup>11</sup> Respondent response to AFDB to show cause dated 27 March 2019.

<sup>12</sup> Sanctions Board Decision No. 74 (2014) at para. 29



54. Qualification Criteria 2.4.2(b) of the tender required that at least one contract had to have been carried out in a country other than the country in which the bidder usually operates. PIAC alleges that the Respondent listed, as previously executed works, a contract it was awarded in Nigeria in 2006. Yet, the said contract had been awarded to and executed by another company, CCC Nigeria. Indeed, the records show that at the time the work was executed, Respondent and CCC Nigeria were two separate entities. Respondent acquired CCC Nigeria in 2007. Therefore, the experience deriving from this contract cannot be ascribed to the Respondent.

55. Respondent's explanation that it is normal practice in the Chinese corporate world for a parent company to claim the experience of its subsidiary company in carrying out contracts awarded to the subsidiary, as the parent company's experience is irrelevant. Because at the time CCC Nigeria executed the work, they were two separate entities. Therefore, to claim work executed by other as it is in this case, Respondent clearly misrepresented the facts.

b.To obtain a financial or other benefit or to avoid an obligation

56. The Sanctions Appeals Board finds sufficient evidence of intent to obtain a financial or other benefit or to avoid an obligation where the record showed that misrepresentations were made in response to a tender requirement. Under Section 13.4<sup>13</sup> of Sanctions Procedures, the Sanctions Appeals Board have the discretion to infer purpose, intent and /or knowledge on the part of the Respondent from circumstantial evidence. Therefore, the Sanctions Appeals Board concludes in this case that, the submission of the contract awarded to CCC Nigeria served to obtain a financial or other benefit for the Respondent or to avoid the obligation of obtaining valid documents as required.

**Fraud allegation 3: Providing false information regarding the completion date of a contract when bidding for the electrification project**

a. Act or omission, including a misrepresentation

57. PIAC contends that Respondent provided false information in its bid submission regarding the completion date of an electrification project it undertook in the Nyanza and western provinces of Kenya. PIAC contends that the confirmation letter submitted by Respondent, dated 30<sup>th</sup> January 2014 and purportedly issued by EDF and Aberdare Engineering was fake.

58. Respondent accepted that it had made a mistake in stating the completion date as the date when all works were finalized without clarifying this further. Respondent regrets its mistake and has committed itself to improve its quality assurance systems.

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<sup>13</sup> 13.4 Inference of Knowledge. The Sanctions Appeals Board have the discretion to infer purpose, intent and/or knowledge on the part of the Respondent, or any other party, from circumstantial evidence. Formal rules of evidence shall not apply



59. Here again, Respondent “accepts responsibility for submitting an inaccurate information which, it acknowledges arose from a poor-quality assurance system and that further disciplinary action was promptly taken against the staff concerned. The Sanctions Appeals Board finds the evidence of a sanctionable practice on the Respondent’s own admission.

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

60. In accordance with the Qualification Criteria 2.4.2 of the Bidding Document, bidder has to show that they participated in at least two contracts with the past five years. Respondent knowingly submitted a forged document in order to meet the Qualification Criteria. By doing so, Respondent misrepresented the fact and attempted to mislead the Project Manager in the bidding process. Therefore, the Sanctions Appeals Board concludes that the Respondent knowingly or recklessly attempted to mislead a party.

c. To obtain a financial or other benefit or to avoid an obligation

61. Here again, the Sanctions Appeals Board finds sufficient evidence of intent to obtain a financial or other benefit or to avoid an obligation where the record showed that misrepresentations were made in response to a tender requirement. Under Section 13.4 of Sanctions Procedures, the Sanctions Appeals Board have the discretion to infer purpose, intent and /or knowledge on the part of the Respondent from circumstantial evidence. Therefore, the Sanctions Appeals Board concludes that the submission of the forged letter served to obtain a financial or other benefit for the Respondent or to avoid the obligation of obtaining valid documents as required, is a sanctionable practice.

**Fraud allegation 4: Providing false information regarding work executed in Ghana**

a. Act or omission, including a misrepresentation

62. PIAC submits that in response to Qualification Criteria 2.4.2 of the “Connectivity” tender, Respondent listed a contract it had in Ghana to have a value of USD 33,070,850 and a construction rate for key activities of USD 1,370,000 per month. Respondent listed the same contract to REA, Uganda as having a value of USD 12,610,303.23 and a construction rate for key activities of USD 630,000 per month.

63. Respondent accepts that it was wrong to have given contradictory information about the same project and regrets this lapse in quality assurance systems.

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





64. PIAC contends that the Respondent inflate the contract value and the construction rate in its bid in the “connectivity” tender in order to appear more experienced in executing high value contracts than it actually is. Considering the record, including the Respondent’s own admission, the Sanctions Appeals Board finds that it is more likely than not that employees of the Respondent acted knowingly in submitting the inflated contract value.

c. To obtain a financial or other benefit or to avoid an obligation

65. Where the record demonstrates that a misrepresentation was made in response to a tender requirement, the intent to obtain a benefit or avoid an obligation may be inferred. The Sanctions Appeals Board finds that it is more likely than not that the Respondent changed the contract value of the contract in order to establish its eligibility, with the intent to obtain the “Connectivity” tender.

**Fraud allegation 5: Providing false information regarding the nature and extent of its corporate relationship with CCC Nigeria**

a. Act or omission, including a misrepresentation

66. PIAC contends that Respondent provided false information regarding the nature and extent of its relationship with its subsidiary CCC Nigeria in order to contest a tender disqualification decision issued against it.

67. In one hand, Respondent confirmed in its letter dated 11 April 2018<sup>14</sup> that it and CCC Nigeria formed one company. Whereby it held ninety percent (99%) of CCC Nigeria in 2007 and about eighty percent (80%) in 2013 and again ninety percent (99%) in 2018. Respondent contends that CCC Nigeria is Respondent’s local presence in Nigeria. However, the joint ownership as described is to comply with a local Nigerian law. This has been the Respondent’s argument to the fraud allegation of listing as previously executed works a contract awarded to another company.

68. On the other hand, Respondent when contesting the Executing Agency’s disqualification in the “connectivity project”, submits that it owns 40% percent shares in CCC Nigeria, thereby indicating that they are two separate entities entitled to bid individually on separate lots.

69. A review of the Bidding Documents by this Board show that bidders were required to disclose their relationship with other entities prior to enter in the process. This requirement was to prevent any potential conflict of interest. Respondent and CCC Nigeria entered in the bidding process as two different entities. Therefore, the Sanctions Appeals Board concludes to the Respondent’s misrepresentation as to its relationship with CCC Nigeria.

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<sup>14</sup> Letter to PIAC – Preliminary Inquiry – Request for Information – 11 April 2018



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

70. A review of the complaint filed by the Managing Director & CEO of Kenya Power Lighting Company LTD reveals that Respondent and CCC Nigeria knowingly went into the bid as two different entities against the tender requirements ITB 4.3 of the Bidding Documents. ITB 4.3(d) and (e) provide that a bidder may be considered to have conflict of interest with one or more parties in the bidding process, if:

(d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Employer regarding the bidding process; or

(e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one bid will result in the disqualification of all bids in which it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a bidder, in more than one bid.

71. To establish whether Respondent attempted to mislead the Project Manager when it entered in process with CCC Nigeria as separate entities, the Sanction Appeals Board would show the existence of an obligation and that Respondent failed to fulfill it. Bidding Document ITB 4.3 (d) and (e) require the disclosure of those situations of actual or potential conflict of interest that impact, or may reasonably be perceived to impact, their capacity to serve the Borrower's best interest. Respondent's relationship with the CCC Nigeria, no matter how it described, fell specifically under one of the categories of conflicts of interest identified above. In addition, not disclosing it, Respondent avoided an obligation, which is a sanctionable practice. Therefore, this Board can conclude that Respondent and its subsidiary knowingly or recklessly misled, or attempted to mislead, a party.

c. To obtain a financial or other benefit or to avoid an obligation

72. Here again, where the record demonstrates that a misrepresentation was made in response to a tender requirement, the intent to obtain a benefit or avoid an obligation may be inferred. The Sanctions Appeals Board finds that it is more likely than not that the Respondent changed the nature and extent of its corporate relationship with CCC Nigeria in order to improve its chances of winning the Bank-financed project the "Connectivity" tender. While Respondent was bidding for Lot 5, Lot 7 and Lot 13, CCC Nigeria its wholly owned subsidiary was bidding on Lot 3, Lot 9 and Lot 14.

**D. The Respondent's Liability for the Acts of its Employees**

73. The Sanctions Appeals Board has assessed any evidence presented regarding the scope and adequacy of the Respondent controls and supervision at the time of the imputed misconduct. The



Respondent does not argue anywhere in his rebuttal or appeal the existence of a principal – agent relationship at the time the documents were prepared and submitted. The Respondent does not present, and the evidence does not provide any basis for, a rogue employee defense. Therefore, the Sanctions Appeals Board finds the Respondent liable for the fraudulent practices carried out by its employees in the course and scope of their duties<sup>15</sup>.

## **E. Sanctioning Analysis**

### **1. General framework for determination of sanctions**

74. Where the Sanctions Appeals Board determines, that it is more likely than not that a Respondent engaged in a Sanctionable practice, Section 11 of the Sanctions Procedures requires the Sanctions Appeals Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section 11.2. The range of sanctions set out in Section 11.2: (a) letter of reprimand, (b) conditional non-debarment, (c) debarment, (d) debarment with conditional release, (e) permanent debarment (f) restitution and or remedy (g) other sanctions.

75. Where the Sanctions Appeals Board imposes a sanction on a Respondent, it may also, pursuant to Section 12.1<sup>16</sup> of the Sanctions Procedures impose appropriate sanctions on any Affiliate of the Respondent.

### **2. Plurality of Sanctionable practices**

76. Section 11.4(l) of the Sanctions Procedures of the African Development Bank provides that the Sanctions Appeals Board may consider any other factor that deems relevant in the choice of sanctions.

77. Where respondents engaged in unrelated Sanctionable practices, the World Bank Sanctions Board has considered the gravity of each allegation separately and determined that a distinct base sanction should be applied to each distinct count, even where all misconduct related to the same project or contract<sup>17</sup>. The record in this case reflects that the Respondent engaged in five separate and unrelated fraudulent practices in connection with the three tenders. In this case, the Sanctions Appeals Board finds that each count of fraud was distinct from, and not merely a means of furthering, the other count. Accordingly, the Sanctions Appeals Board concludes that the plurality of the Respondent's Sanctionable practices warrants multiplication, rather than aggravation.

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<sup>15</sup> World Bank Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30

<sup>16</sup> Affiliated Parties. If accountability is determined, sanctions may be imposed on an associated party such as the principals of a firm, owners, directors, officers, or shareholders, and other related parties ('Associated Parties') for the commission of a Sanctionable Practice. In determining association or other relationships, consideration shall be given to the Bank Group's policies on the treatment of corporate groups or such other policy, as well as to familial relationships; the ability to directly or indirectly control or significantly influence another party; common or related ownership, management, or control, whether or not related to a specific percentage of ownership or rights; and an agreement or dependency, such as a joint venture or consortium, with another party.

<sup>17</sup> World Bank Sanctions Board Decision No. 102 (2017) at para. 66



### 3. Factors considered in the present case.

#### a. Severity of the misconduct

78. Repeated pattern of conduct: The World Bank Sanctions Board in decision<sup>18</sup> apply aggravation where misconduct relates to multiple contracts and/or projects. The record reflects that the Respondent in three different bids submitted questionable documents. This is repeated pattern of conduct, which constitutes aggravation. In a recent case<sup>19</sup>, the World Bank Sanctions Board has previously found the submission of the same false documents in multiple bids to constitute a single course of action, rather than a repeated pattern of conduct. In this case, the record shows different set of false documents for multiple bids. Consistent with this precedent, the Sanctions Appeals Board will apply aggravation on this basis.

#### b. Respondent cooperation in the investigation

79. Section 11.4(i)<sup>20</sup> of the Sanctions Procedures provides for mitigation where a Respondent “cooperated in the investigation or resolution of the case. PIAC, pursuant to Section 5.3 of the Sanction Procedures, confirmed in its report that the Respondent cooperated with investigation and provided with diligence some of the documents required. The Sanctions Appeals Board notes that the Respondent admitted its culpability in two of the allegations. Therefore, the Sanctions Appeals Board agrees that these actions are mitigating factors.

#### c. Minor role in the misconduct

80. The Respondent in its appeal to the Sanctions Decision requested that the mitigating factor of minor role be included. Section 11.4(f)<sup>21</sup> of the Sanctions Procedures of African Development Bank, which relates to the nature of involvement of the Respondent in the Sanctionable practice provides for mitigation where a respondent played a minor role in the misconduct. In this case, the Respondent admitted its wrongdoing in two Sanctionable practices and pretended that in both scenarios, the mistakes were made by: (i) unsupervised and poorly trained staff or (ii) a failure of its quality assurance system. The Respondent submits that the Sanctionable practices occurred within its field offices at which the tender documents were prepared and not at the head office in Beijing. The Standard Bidding Document for Procurement of Plant Design, Supply and Installation issued by the African Development Bank, dated June 2010 and revised July 2012 (Instructions to

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<sup>18</sup> World Bank Sanctions Board Decision No. 72 (2014) at para. 56 (applying aggravation for repetition where misrepresentations were made months apart and appeared in separate bids related to two contracts under different projects).

<sup>19</sup> World Bank Sanctions Board Decision No. 79 (2015) at para. 39.

<sup>20</sup> Sanction Procedures 11.4(i): Factors Affecting Choice of Sanctions. In issuing a Sanction, the following factors may be considered: the savings of the Bank Group’s resources, or facilitation of an investigation being conducted, occasioned by the Respondent’s admission of culpability or cooperation, including any voluntary disclosure, in the investigations process;

<sup>21</sup> Sanctions Procedures - Section 11.4(f) the nature of the involvement of the Respondent in the Sanctionable Practice



Bidders), Section 1-3(1)<sup>22</sup>, and which Respondent had knowledge of, requires Bidder to observe a highest standard of ethic during the procurement and execution of such contracts. Therefore, the Sanctions Appeals Board declines to apply mitigation on this basis where the Respondent management repeatedly signed and approved submission of falsified bid documents without verification and controls.

#### d. Voluntary Corrective Action

81. Section 11.4(g) of the Bank Sanctions Procedures provides for mitigation where the respondent took any remedial measure. Respondent requires mitigation for having taken action against responsible party and the institution of corrective measure to prevent the sanctionable conduct. In this case, the Respondent in its appeal said that it has initiated a process to put in place a comprehensive Compliance and Ethics Reforms Programme to be supervised by the Bank. The World Bank Sanctions Board in an earlier case<sup>23</sup>, provides that a respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action. Respondent in this case has not presented any evidence of a voluntary corrective action. The Sanctions Appeals Board declines in this case to apply mitigation where the record contained no evidence that the Respondent had in fact implemented compliance measures.

82. As to Internal action against responsible individuals: The World Bank Sanctions Board has previously declined to apply mitigation where the record was insufficient to demonstrate that the respondent took timely and appropriate disciplinary action in response to the misconduct<sup>24</sup>. In this case, the Respondent submits a translated copy from Mandarin, dated 8th June 2018, that the employee (Zhang Jianguang), who was responsible for the collection, approval and review of the tender information in East Africa, was given a criticism and deducted the performance related salary in his second quarter assessment<sup>25</sup>. The Sanctions Appeals Board finds that the Respondent's asserted internal action lacks sufficient documentary support and, in any event, would not constitute an adequate response to the misconduct at issue. Therefore, no mitigation is warranted on this basis.

83. Effective compliance program: Section 11.4(g) of the Bank Sanctions Procedures states that mitigation may be appropriate where the record shows a respondent's intervening implementation of programmes to prevent and defect fraud or corruption or other remedial measures by the Respondent. The World Bank Sanctions Board in a similar case<sup>26</sup>, has previously

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<sup>22</sup> The Standard Bidding Document for Procurement of Plant Design, Supply and Installation issued by the African Development Bank, dated June 2010 and revised July 2012 (Instructions to Bidders), Section 1-3(1)

<sup>23</sup> World Bank Sanctions Board in Decision No. 63 (2014) at para. 104.

<sup>24</sup> Sanctions Board Decision No. 61 (2013) at para. 41; Sanctions Board Decision No. 68 (2014) at para.39; Sanctions Board Decision No. 95 (2017) at para. 45

<sup>25</sup> Exhibit 11 of Respondent/Appellant files Disciplinary action taken against staff dated 8 June 2018.

<sup>26</sup> Decision No. 45 (2011) at para. 74



declined to apply mitigation where the record contained no evidence that the respondent had in fact implemented compliance measures. The Records in this case show a proposed Compliance and Ethics Reform Program. Therefore, the Sanctions Appeals Board is not persuaded that the Respondent's asserted program was in fact implemented and took steps effectively to prevent future offenses. For these reasons, the Sanctions Appeals Board declines to apply any mitigation.

e. Other considerations

84. *Lack of harm:* The Respondent request mitigation on the ground that no harm to the Project was caused by the alleged misconduct. The World Bank Sanction Board in a recent case held that the absence of harm to the project is not a ground for mitigation, but a neutral fact<sup>27</sup>. The Sanctions Appeals Board is conversant and consistent with the World Bank Sanctions Board and does not find mitigation to be justified because of the lack of harm.

85. *Absence of past misconduct:* The Respondent seek mitigation based on the lack of prior history of misconduct. PIAC opposes mitigation on this basis. The World Bank Sanctions Board has repeatedly held that, while a record of past Sanctionable misconduct may merit treatment as an aggravating factor, its absence is considered a neutral fact<sup>28</sup>. Therefore, the Sanctions Appeals Board declines to apply any mitigating credit on this basis.

86. *Collateral consequences of debarment:* The Respondent asserts that it deserves mitigation for the significant adverse effects of its voluntary restraint from bidding on AFDB's financed projects, and for effects that a sanction would bring on the Respondent's ability to effectively discharge his duties. Respondent submits that it is a relatively small company and up to 76% or so of the construction work which it has implemented under contracts with Government and state agencies, has been funded by Multilateral Development Banks ("MDBs"), among them the African Development Bank. Therefore, if it were to be cut off from the possibility of being awarded an MDB financed contract it would practically cease to exist as a viable business enterprise. The Sanctions Appeals Board is consistent with the World Bank Sanctions Board and does not find mitigation to be justified for the collateral consequences of debarment on the Respondent<sup>29</sup>.

87. *The apparent of tainted or biased determination of the Sanctions Commissioner:* The Respondent asserts that it deserves mitigation for the Sanctions Commissioner's violation of Section 7 of the African Development Sanctions Procedures<sup>30</sup>. The Respondent submits that the

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<sup>27</sup> Sanctions Board Decision No. 71 (2014) at para. 85; Sanctions Board Decision No. 73 (2014) at para. 45;

<sup>28</sup> Sanctions Board Decision No. 117 (2019) at para. 44,

<sup>29</sup> Sanctions Board Decisions No. 79 (2015) at para. 56; and No. 92 (2017) at para. 131,

<sup>30</sup> African Development Sanctions Procedures Section 7 – Grant of Relief and Imposition of Sanctions by the Sanctions Commissioner





Sanctions Commissioner acted capriciously, whimsically and in manifest abuse of his discretion by anchoring the Sanctions Decision on unsubstantiated allegations.

88. Section 11.4(l) of the Sanctions Procedures gives the Sanctions Commissioner latitude to consider any other factor he deems relevant in the issuance of the sanctions. The Sanctions Commissioner may also pursuant to Section 5.4 of the Sanctions Procedures makes an independent determination of a Sanctionable Practice based on the evidence provided by PIAC, which is not provided for in PIAC's Finding of Sanctionable Practice(s).

89. The Sanctions Commissioner in issuing his final sanction in this case, added three aggravating factors:

- i) the multiplicity of fraudulent practices in connection with three projects;
- ii) the sophisticated means employed by the Respondent, namely by forging of the EDF and Aberdare Engineering letter; and
- iii) several attempts by one of the Respondent's agent to influence the sanctions decision process.

90. The Sanctions Commissioner "qualifies the latter act as serious and wishes to relay his outrage and send a warning message to the Respondent in this decision". The Sanctions Appeals Board finds no evidence in the records that this allegation was referred to PIAC for further investigation or for the possibility of affording the Respondent an opportunity to deny or affirm it. This is contrary to the principle of "Audi alteram partem" or the principle of "hearing and justice". The Sanctions Commissioner on his own cast a shadow to reach the decision. It appeared to this Board that, the Sanctions Commissioner made himself the accuser, the prosecutor and the judge. This statement of the Sanctions Commissioner portrays the likelihood of bias on his part. The issue before this Board is whether the statement casted some doubts on the fairness of the sanction and consequently its severity? The answer is yes. This Board found no evidence in the record that the Respondent attempted to influence the sanctions decision process, if so, it was not given the opportunity to be heard.

#### **F. Determination of Appropriate Sanction**

Considering the full record and all the factors discussed above, the Sanctions Appeals Board determines that:

91. The Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, are hereby debarred with conditional release for a period of three (3) years and hereby declared ineligible

- (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) to be a nominated sub-contractor,



consultant, manufacturer, 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 project or program financed by the Bank or governed by the Bank's Rules and Procedure for the Procurement of Goods and Works and the Bank's Rules and Procedure for the Use of Consultants;

Provided however, that at the end of the debarment period of three (3) years, the Respondent and all entities controlled by the Respondent may be released from ineligibility, subject to:

- (i) full adoption and implementation of an Integrity Compliance Program (hereinafter referred to as the 'ICP') consistent with the AfDB Compliance Guidelines, cleared by PIAC;
- (ii) full assistance and cooperation with PIAC in its review and clearance of the ICP;
- (iii) retention of a consultant as its Designated Representative to conduct the review and clearance of the ICP on behalf of PIAC. Respondent shall cooperate with PIAC'S ICP review process and bear the full cost of the ICP review; and
- (iv) cooperation with law enforcement agencies and regulatory authorities of the Bank Member Countries, for the duration of the debarment period, in any investigation of the Respondent, its former or present representatives, agents, employees, subcontractors and consultants.

92. The Respondent's ineligibility shall extend across the operations of the African Development Bank Group. The Bank will also provide notice of these declarations of ineligibility to the other Multilateral Development Banks that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that 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<sup>31</sup>.

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<sup>31</sup> At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for the Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The cross-Debarment provides that subject to the prerequisite conditions set forth in the Cross-Debarment Agreement, unless a participating MDB (i) believes that any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the "opt out" clause set forth in the cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs.



African Development Bank Group



Sanctions Appeals Board Secretariat

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Mrs. Ademola Oluremilekun Adegoke (Panel Chair)

On behalf of the African Development Bank Group Sanctions Appeals Board

Marie-Andrée NGWE

Omobola Idowu HOLLIST