This case arose in the context of the Community Agricultural and Infrastructure Improvement Programme-Project III (CAIIP III), an African Development Fund (ADF) financed rural infrastructure improvement project based in Uganda. The Rubirizi District Local Government (Rubirizi DLG) conducted the procurement on behalf of the Republic of Uganda, the specified borrower in the loan agreement. In March 2013, the Rubirizi DLG published invitations for bids for lots from interested parties for the rehabilitation of two community access roads.

In April 2013, Veto-Co (U) Limited (Respondent) submitted bids for Lot 16 and Lot 18. Although the Respondent was awarded both bids, allegations of fraud later emerged prompting an investigation by the African Development Bank’s (AfDB) Integrity and Anti-Corruption Department (IACD). Specifically, it was alleged that the Respondent knowingly misrepresented information in its bid application by submitting (i) inflated annual construction turnover figures for the years requested (2008-2012) and (ii) an invalid VAT Registration Certificate, also requested.

Following the investigation, IACD concluded that it was “more likely than not” that the Respondent had engaged in the two aforementioned sanctionable practices, submitting its Findings of Sanctionable Practices (FOSP) report to the AfDB’s Sanctions Office (SANO) on November 19, 2014 for review by the Sanctions Commissioner (SC). IACD recommended a sanction of debarment for two (2) years, also incorporating its findings of aggravation for (i) repetitive fraudulent conduct and (ii) an alleged failed attempt to mislead IACD investigators by the Respondent’s Managing Director during an interview. IACD did not identify any mitigating factors.

On July 29, 2015, the SC issued Sanctions Decision No. 3 debarring the Respondent from AfDB financed projects or contracts for the recommended two (2) year period, affirming IACD’s findings that (i) the Respondent “more likely than not” committed the above alleged sanctionable practices, (ii) aggravating circumstances existed, and (iii) mitigating factors did not exist. During the SC’s administrative due-process review, the Respondent failed to file a timely response to the Notice of Sanctions Proceedings, thereby rendering IACD’s findings ‘uncontested’ under the AfDB’s Sanctions Procedures.

On August 24, 2015, the Respondent submitted a timely appeal of the Sanctions Decision No. 3 to the Sanctions Appeal Board Secretariat (SABS). Following a de novo review of the written record (including additional appeals submissions by the Respondent and IACD) and deliberations by the Sanctions Appeals Board (SAB), the SAB issued Final Sanctions Decision No. 1 on September 1, 2016 imposing a reduced sanction on the Respondent of one (1) year of debarment, effective as of the issue date.

Despite the SAB’s findings (i) that the Respondent “more likely than not” engaged in the above alleged sanctionable practices and (ii) that no mitigating circumstances could be identified, both in conformity with IACD and the SC, the key distinction is that the SAB did not find sufficient evidence in the record to support a finding that aggravating factors existed.