THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: April 24, 2019

Sanctions Board Decision No. 118
(Sanctions Case No. 488)

IDA Credit No. 4938-BD
Bangladesh

Decision of the World Bank Group[1] Sanctions Board imposing sanctions of debarment with conditional release on the respondents in Sanctions Case No. 488 (the "Respondents"), together with certain Affiliates,[2] with minimum periods of ineligibility of nine (9) years and six (6) months for the respondent entity (the "Respondent Firm"); and six (6) years and six (6) months for the individual respondent (the chairman and chief executive officer of the Respondent Firm, hereinafter referred to as the "Individual Respondent"), beginning from the date of this decision. These sanctions are imposed on the Respondent Firm for collusive, corrupt, and obstructive practices; and on the Individual Respondent for collusive and corrupt practices.

I. INTRODUCTION

1. The Sanctions Board convened as a panel composed of J. James Spinner (Chair), Olufunke Adekoya, and Mark Kantor to review this case. A hearing was held on March 5, 2019, at the World Bank Group's headquarters in Washington, D.C. at the request of the Respondents, and in accordance with Section III.A, sub-paragraph 6 of the Sanctions Procedures. The World Bank Group's Integrity Vice Presidency ("INT") participated in the hearing through its representatives attending in person. The Respondents were represented by their respective outside counsel and the Individual Respondent, all attending in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

2. In accordance with Section III.A, sub-paragraph 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following:

i. Notice of Sanctions Proceedings issued by the World Bank's Acting Suspension and Debarment Officer (the "Acting SDO") to the Respondents on March 8, 2018

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[1] In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued on June 28, 2016 (the "Sanctions Procedures"), the term "World Bank Group" means, collectively, the International Bank for Reconstruction and Development ("IBRD"), the International Development Association ("IDA"), the International Finance Corporation ("IFC"), and the Multilateral Investment Guarantee Agency ("MIGA"). The term "World Bank Group" includes Bank Guarantee Projects and Bank Carbon Finance Projects, but does not include the International Centre for Settlement of Investment Disputes ("ICSID"). As in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section II(x).

[2] Section II(a) of the Sanctions Procedures defines "Affiliate" as "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." The sanctions imposed by this decision apply only to those Affiliates that are directly or indirectly controlled by either of the Respondents. See infra Paragraph 93.

(the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the Acting SDO by INT (undated);

ii. Explanations submitted by the Respondents to the World Bank's Suspension and Debarment Officer (the "SDO") on April 12, 2018 (each, individually, an "Explanation");

iii. Response submitted by the Respondents to the Secretary to the Sanctions Board on September 21, 2018 (the "Response");

iv. Reply submitted by INT to the Secretary to the Sanctions Board on January 7, 2019 (the "Reply"); and

v. Additional filings submitted by the Respondents to the Secretary to the Sanctions Board on February 27, 2019 (each, individually, an "Additional Submission").

3. Pursuant to Article II of the World Bank Sanctions Procedures as adopted April 15, 2012 (the "2012 Sanctions Procedures"), which provides for early temporary suspension prior to sanctions proceedings in certain circumstances, the Evaluation and Suspension Officer temporarily suspended the Respondent Firm on May 12, 2016, from eligibility[3] with respect to any Bank-Financed Projects.[4] The temporary suspension applied across the operations of the World Bank Group and also extended to any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm. Upon submission of the SAE to the Acting SDO, the Respondent Firm's temporary suspension was automatically extended pending the final outcome of these sanctions proceedings pursuant to Section III.A, sub-paragraphs 2.04(b) and 4.02 of the Sanctions Procedures.

4. On March 8, 2018, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the Acting SDO issued the Notice naming the Respondents and temporarily suspended the Individual Respondent, together with three specified Affiliates and any other entity that is an Affiliate directly or indirectly controlled by the Individual Respondent, from eligibility[5] with respect to any Bank-Financed Projects,[6] pending the final outcome of these sanctions proceedings. The Notice specified that the Individual Respondent's temporary suspension would apply across

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[3] The full scope of ineligibility effected by a temporary suspension is set out in the 2012 Sanctions Procedures at Sections 4.02(a) and 9.01(c), read together.

[4] Pursuant to the 2012 Sanctions Procedures, the term "Bank-Financed Projects" encompasses any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. The term "Bank-Financed Projects" includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. See 2012 Sanctions Procedures at Section 1.01(c)(i).

[5] The full scope of ineligibility effected by a temporary suspension is set out in the Sanctions Procedures at Section III.A, sub-paragraphs 4.02(a) and 9.01(c), read together.

[6] The term "Bank-Financed Projects" encompasses an investment project or a program for results operation, for which IBRD or IDA (as the case may be), whether acting for its own account or in the capacity as administrator of trust funds funded by donors, has provided financing in the form of a loan, credit or grant and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. See Sanctions Procedures at Section II(e).

the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the Acting SDO recommended in the Notice the sanction of debarment with conditional release for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents.[7] For the Respondent Firm, the Acting SDO recommended a minimum period of ineligibility of eleven (11) years and two (2) months, after which period the Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer (the "ICO") that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank. For the Individual Respondent, the Acting SDO recommended a minimum period of ineligibility of ten (10) years, after which period the Individual Respondent may be released from ineligibility only if he has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the ICO that he has (i) taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned, (ii) completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and (iii) adopted and implemented an effective integrity compliance program with respect to any entity that is an Affiliate directly or indirectly controlled by him in a manner satisfactory to the Bank.

II. GENERAL BACKGROUND

5. This case arises in the context of the Identification System for Enhancing Access to Services Project (the "Project") in the People's Republic of Bangladesh (the "Recipient"). The Project sought to assist the Recipient in establishing a secure, accurate, and reliable national identification system that serves as the basis for a more efficient and transparent service delivery. On July 21, 2011, IDA entered into a financing agreement with the Recipient to provide Special Drawing Rights ("SDR") 123 million, or the equivalent of US$195 million to finance the Project (the "Financing Agreement"). The Project became effective on August 28, 2011, and closed on February 28, 2018.

6. On April 28, 2014, the implementation unit for the Project (the "PIU") issued bidding documents for a contract for the production and distribution of smart national identification ("NID") cards (the "Contract"). On June 24, 2014, a technology company incorporated in a foreign jurisdiction (the "Contractor") submitted a bid for the Contract, identifying the Respondent Firm, a local company, as its only subcontractor for the Contract. The Respondent Firm entered into an agreement with another company incorporated in a foreign jurisdiction (the "Supplier"), pursuant to which the Supplier agreed to supply certain equipment in connection with the Contract. On January 14, 2015, the Contractor and the PIU signed the Contract, valued at approximately US$96.5 million.

7. INT alleges that the Respondents engaged in collusive practices by (i) arranging with the Contractor and the Supplier to have the Contract's technical specifications rigged, and (ii) orchestrating the PIU's responses to competing bidders' queries regarding the specifications. INT also alleges that the Respondents engaged in corrupt practices by soliciting the Contractor to pay bribes to a senior government official. Finally, INT alleges that the Respondent Firm

[7] This includes three specified Affiliates identified as controlled by the Individual Respondent in the Notice.

obstructed its audit by refusing to produce project-related emails and correspondence of the Individual Respondent.

III. APPLICABLE STANDARDS OF REVIEW

8. *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.

9. *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 the conduct did not amount to a sanctionable practice.

10. *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.

11. *Applicable definition of sanctionable practices*: The Financing Agreement provided that the World Bank's Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers (January 2011) would govern procurement for the Project. However, the bidding documents for the Contract defined sanctionable practices in accordance with the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 1, 2006, and May 1, 2010) (the "May 2010 Procurement Guidelines"). Pursuant to 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 or recipient country and the respondent as governing the particular contract at issue, rather than the standards agreed between the borrowing or recipient country and the Bank.[8] Therefore, the alleged collusive, corrupt, and obstructive practices in this case have the meaning set forth in the May 2010 Procurement Guidelines. The applicable definitions of collusive, fraudulent, and obstructive practices are set out below in the Sanctions Board's analysis of each of INT's allegations (Section V).

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

1. Allegations of sanctionable practices

12. *Collusion allegation*: INT alleges that the Respondents engaged in schemes with the Contractor and the Supplier – exclusive partners with the Respondent Firm – to fix the Contract's

[8] See Sanctions Board Decision No. 59 (2013) at para. 11.

technical specifications in favor of the Contractor and the Supplier. INT further alleges that the Respondents colluded with the Contractor and the Supplier to draft the PIU's official responses to challenges to the fixed specifications submitted by competing bidders. According to INT, as a result of the collusive arrangement, the Contract was tendered in an artificial and non-competitive manner that was not reflective of true market conditions.

13. *Corruption allegation*: INT alleges that the Respondents solicited the Contractor for the payment of bribes to a specifically identified senior government official (the "Government Official") – who is, according to INT, often referred to in the record by the moniker "G." INT asserts that the Respondents arranged for a €730,000 payment to the Government Official in order to increase the volume of NID cards under the Contract and to secure the Contract for the Contractor. INT further asserts that the Respondents solicited from the Contractor a bribe for the Government Official in connection with the hologram security feature for the NID cards, and that at least €2,160,000 was paid to an entity controlled by the Individual Respondent on the representation that some of those funds would in turn be paid to the Government Official.

14. *Obstruction allegation*: According to INT, it issued an audit and inspection letter to the Respondent Firm requesting documentation relating to the procurement and execution of the Contract. INT alleges that, after initially providing a limited sample of relevant documentation, the Respondent Firm advised INT that it would not produce the Project-related emails or correspondence of the Individual Respondent. INT submits that the Respondent Firm's continued and categorical refusal to produce relevant documentation constitutes obstruction.

2. Sanctioning factors

15. INT asserts that aggravation is warranted for the Respondents for (i) sophisticated means, (ii) central role in the misconduct, and (iii) the involvement of senior management in the misconduct. INT asserts that no mitigating factors apply to the Respondents.

B. The Respondents' Principal Contentions in the Explanations and the Response

1. Contentions regarding preliminary matters

16. The Respondents submit that the Individual Respondent is a government official for purposes of INT's allegations, and that the Sanctions Board therefore does not have jurisdiction to consider or impose any sanctions against him. In addition, the Respondents argue that there have been frequent procedural flaws and irregularities in INT's prosecution of both the investigative process and the presentation of the SAE, and that the cumulative effect of these procedural irregularities has rendered the current proceedings both unfair and at odds with the Respondents' right to a fair hearing.

2. Contentions regarding INT's allegations of sanctionable practices

17. *Collusion allegation*: The Respondents argue, inter alia, that the Respondent Firm was relied upon by the Recipient's government and the PIU for advice as a trusted adviser, and that evidence of communications between the Respondents and the Contractor merely shows "reasonable and sensible, commercial dialogue." The Respondents further argue that INT's

allegation that the Contractor colluded with its own subcontractor (i.e., the Respondent Firm) is akin to accusing the Contractor of colluding with itself. In addition, the Respondents argue that they at no stage entered into an agreement designed to achieve an improper purpose, that any attempt by the Respondents to obtain a commercial advantage in the way described by INT "cannot be said to have been 'to establish bid prices at artificial, non-competitive levels,'" and that INT failed to discharge its burden to show that any arrangement was "by a party who was a participant in the procurement process."

18. *Corruption allegation*: The Respondents argue that the Government Official – as identified by INT – was not "G" and did not have any material impact on the bidding process for the Contract. The Respondents further argue that any reference to "G" within communications between the Respondents or their associates was part of the overall strategy employed by the Respondents in dealing with the Contractor. According to the Respondents, the existence of "G," ostensibly a government official, was a fiction deployed by the Respondents to recover monies consequent to the Contractor's failure to honor agreements between the parties. The Respondents contend that the Respondent Firm and its affiliates were the ultimate beneficiaries of the payments in question. According to the Respondents, the €730,000 sum was a legitimate payment sought by the Respondent Firm and was never intended to be passed on to any third parties. In addition, the Respondents dispute INT's allegation regarding the hologram solicitation, asserting that the allegation is based on hearsay evidence.

19. *Obstruction allegation*: The Respondents argue that they have complied with the obligations imposed upon them in relation to the Bank's inspection and audit rights, and that they acted within their own rights, including the competing right to withhold documents which may be subject to restriction. According to the Respondents, INT failed to properly particularize the totality of the steps taken by the Respondents in relation to the audit and that, consequently, the narrative in the SAE is misleading. In addition, the Respondents contend that they made reasonable requests during the audit and investigation process, and that INT made no attempt to accommodate the requests and concerns raised. The Respondents further argue that INT has failed to demonstrate the requisite intent on the part of the Respondents and that the Bank's investigation was not materially impeded.

3. Sanctioning factors

20. The Respondents dispute the application of the aggravating factors raised by INT. The Respondents argue for mitigation based on (i) cooperation with INT's investigation, (ii) absence of specified aggravating factors, (iii) period of temporary suspension served, and (iv) proportionality of sanctions relative to the sanction imposed on the Contractor.

C. INT's Principal Contentions in the Reply

1. Contentions regarding preliminary matters

21. INT submits that jurisdictional immunity does not apply to the Individual Respondent because he participated in the Contract in his private capacity as chairman and chief executive officer ("CEO") of a private corporation (i.e., the Respondent Firm). In addition, INT disputes the

procedural flaws raised by the Respondents, arguing that the Respondents have not presented valid defenses to the substantive misconduct alleged.

2. Contentions in support of allegations of sanctionable practices

22. *Collusion allegation*: INT argues that, in the absence of any concrete evidence concerning the existence, nature, and scope of the Respondents' purported advisory relationship with the PIU, it is more likely than not that the Respondents obtained confidential information through unofficial and improper means. INT further argues that the collusive conduct eliminated the genuine competitiveness of the Contractor's bid, and that the Respondents qualify as "participants in the bidding process" as they were intimately involved in the bidding process for the Contract.

23. *Corruption allegation*: INT argues that the focus of the Respondents as to whether "G" is the Government Official or even exists is entirely misplaced. INT contends that the Respondents solicited and received payments from the Contractor on the representation that the money would be used to bribe a government official in relation to the Contract; and that there is an ample basis to support the conclusion that the Contractor understood that it was paying a bribe to the Government Official.

24. *Obstruction allegation*: INT argues that the decision by the Respondent Firm not to produce the relevant emails and other correspondence of the Individual Respondent was a considered and intentional decision to withhold evidence material to the Bank's investigation, and that this decision was not based on credible privilege or confidentiality concerns.

D. The Respondent Firm's Principal Contentions in Its Additional Submission

25. Pursuant to Section III.A, sub-paragraph 5.01(c) of the Sanctions Procedures, the Sanctions Board Chair granted the Respondent Firm's request to file an additional submission in response to INT' Reply.

1. Contentions regarding preliminary matters

26. According to the Respondent Firm, new evidence presented in the Reply illustrates the questionable credibility of witness testimony in the record, as well as the procedural unfairness throughout this process.

2. Contentions regarding INT's allegations of sanctionable practices

27. *Collusion allegation*: The Respondent Firm submits that INT has not established that any information was obtained improperly; that there was an arrangement with someone in the procurement process; or that prices were set at artificial, non-competitive levels.

28. *Corruption allegation*: The Respondent Firm contends that INT's attempt to meet the second element of corrupt practice by relying solely on evidence of the Contractor's intent and understanding is not supported by precedent, and that the allegation should be dismissed. The Respondent Firm further argues that INT fails to establish the Respondent Firm's intent, that "G"

is the Government Official, and that the Government Official is a public official acting in relation to the procurement process or execution of the Contract.

29. *Obstruction allegation*: The Respondent Firm argues that INT's obstruction allegation fails because it rests on the Respondent Firm's decision not to provide INT with access to certain materials falling outside the scope of INT's audit and inspection rights. According to the Respondent Firm, INT did not engage in discussions about the legal basis of its audit rights in response to legitimate concerns raised by counsel for the Respondent Firm – and now continues to misrepresent the scope of its rights and also the Respondent Firm's valid inquiries.

E. The Individual Respondent's Principal Contentions in His Additional Submission

30. Pursuant to Section III.A, sub-paragraph 5.01(c) of the Sanctions Procedures, the Sanctions Board Chair granted the Individual Respondent's request to file an additional submission in response to INT's Reply.

31. *Collusion allegation*: The Individual Respondent contends that INT has not shown that the information it asserts to be confidential was in fact confidential as to the Individual Respondent, that there was an arrangement with someone in the procurement process, or that bids were designed to be at artificial or non-competitive levels. The Individual Respondent further contends that INT has not shown an arrangement for an improper purpose.

32. *Corruption allegation*: The Individual Respondent submits that INT has not substantiated the existence of a public official, as there is no "G;" and that even assuming "G" is the Government Official, that individual did not act in the procurement process or execution of the Contract. The Individual Respondent further argues that the intent of the Contractor cannot be imputed to the Individual Respondent.

F. Presentations at the Hearing

33. *Preliminary matters*: During its presentation, INT maintained its position that the Bank may exercise jurisdiction over the Individual Respondent in this case. In addition, INT represented that it has complied with the applicable procedures in the course of the investigation and current proceedings, including with respect to its duty to disclose all exculpatory evidence. The Individual Respondent, through his counsel, stated that "the immunity argument is not one we're pursuing," as initially had been raised in the Response.

34. *Collusion allegation*: INT submitted that the Respondents' collusive arrangement involved not only the Contractor and the Supplier, but also public officials. INT asserted that the scheme affected bid prices and resulted in the technical disqualification of at least one competing bidder. The Respondents argued that the Respondent Firm had a legitimate contractual relationship with the Contractor and the Supplier, and that INT failed to prove an improper arrangement between the Respondents and any public officials or other parties external to their business partners. The Respondents also denied having obtained any confidential information relating to the Contract's technical specifications. In addition, the Respondents stated that their asserted role as advisers to the PIU is not necessary to their defense.

35. *Corruption allegation*: INT asserted that financial records reveal that the Contractor paid the sum that the Respondents had solicited as a bribe for "G." INT further argued that evidence supports the conclusion that "G" exists and is a government official with influence over the technical specifications of the Contract, and that the Respondents solicited and received payments from the Contractor to bribe "G." INT also argued that testimonial and circumstantial evidence indicates that "G" was more likely than not the Government Official. The Respondents maintained that INT failed to prove the Respondents' alleged corrupt intent, because nothing in the record supports that "G" ever existed or was a public official involved in the procurement or implementation of the Contract. The Respondents further argued that testimonial evidence corroborates their alternative explanation for the solicitation, i.e., that "G" was a negotiation tactic used to recover monies owed by the Contractor.

36. *Obstruction allegation*: INT argued that the Respondent Firm's interpretation of the applicable audit clause is unreasonable and not credible. The Respondent Firm submitted that its refusal to provide the Individual Respondent's emails and other correspondence to INT did not constitute obstruction, because the applicable audit clause did not require a review of correspondence or documents unrelated to the performance of the Contract. The Respondent Firm acknowledged that it did not conduct a comprehensive review of the Individual Respondent's correspondence to identify any materials responsive to the audit clause.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

37. The Sanctions Board will first address the jurisdictional challenge raised by the Respondents in the Response and the preliminary evidentiary and procedural matters raised in the course of these sanctions proceedings. The Sanctions Board will then consider whether it is more likely than not that the alleged sanctionable practices occurred and, if so, which of the Respondents may be held liable for each of the sanctionable practices. Finally, the Sanctions Board will determine what sanction, if any, should be imposed on each of the Respondents.

A. Preliminary Matters

1. Jurisdiction over the Individual Respondent

38. The Respondents argued in the Response that the Individual Respondent is a government official for purposes of INT's allegations, and that the Sanctions Board therefore does not have jurisdiction to consider or impose any sanctions against him. However, as noted above, the Individual Respondent stated at the hearing that "the immunity argument is not one we're pursuing." Considering that the Respondents are not pursuing their jurisdictional argument with respect to the Individual Respondent, and consistent with past precedent,[9] the Sanctions Board finds that the Bank may exercise jurisdiction over the Individual Respondent with respect to conduct allegedly performed in his private capacity as a representative of the Respondent Firm.

[9] See Sanctions Board Decision No. 115 (2019) at paras. 29-33.

2. Procedural and evidentiary matters

39. The Respondents submit that there have been frequent procedural flaws and irregularities in INT's prosecution of this case, arguing that INT (i) did not adequately disclose evidence, (ii) selectively used transcripts of interviews, and (iii) relied on biased evidence from the Contractor. According to the Respondents, the cumulative effect of these procedural irregularities has rendered the current proceedings both unfair and at odds with the Respondents' right to a fair hearing. For the reasons discussed below, the Sanctions Board finds no unfairness or fundamental procedural flaw that affected the Respondents' ability to mount a meaningful response to INT's allegations.

40. *Disclosure of evidence*: Noting that the Bank reached a settlement agreement with the Contractor in relation to the allegations at issue in this case, the Respondents contend that the particular details of that settlement are relevant and should be disclosed. Although Section III.A, sub-paragraph 7.03 of the Sanctions Procedures provides that there is no right to discovery in sanctions proceedings, the Sanctions Board notes that INT is obligated to produce all exculpatory and mitigating evidence in its possession under Section III.A, sub-paragraph 3.02 of the Sanctions Procedures. Considering these provisions, and all other relevant provisions of the sanctions framework, the Sanctions Board denies the Respondents' request for the following reasons. First, the sanctions framework does not give the Sanctions Board the mandate to review settlement agreements or to compel INT to disclose details of its confidential discussions with settling parties. Second, nothing in the record indicates that details of INT's settlement with the Contractor are exculpatory or constitute mitigating evidence within the meaning of Section III.A, sub-paragraph 3.02 of the Sanctions Procedures. Indeed, the Sanctions Board has consistently considered this sort of settlement information to be irrelevant in contested sanctions cases for purposes of determining sanctions, noting that sanctions as agreed between settling parties may be shaped by considerations extrinsic to the sanctioned party's relative culpability or responsibility for misconduct.[10]

41. The Respondents also argue that evidence reveals that INT had meetings and interviews with certain apparently key witnesses, and that the transcripts and minutes of those meetings are not in the record and should be disclosed. The Sanctions Board finds that the Respondents have not identified, and the record does not suggest, which of the requested records may contain exculpatory or mitigating evidence. Considering that the Sanctions Procedures provide no right to discovery, and consistent with precedent,[11] the Sanctions Board denies the Respondents' disclosure request.

42. *Use of transcripts of interviews*: The Respondents argue that INT has adopted a particular and selective approach to its references to transcripts of interviews with witnesses. The Respondents contend that, as the investigatory body in these proceedings, INT has a duty to present its case in a fair and balanced way – and that INT's failure to do so offends general principles of

[10] See, e.g., Sanctions Board Decision No. 56 (2013) at para. 82; Sanctions Board Decision No. 92 (2017) at para.132; Sanctions Board Decision No. 108 (2018) at para. 83; Sanctions Board Decision No. 109 (2018) at para. 55.

[11] See, e.g., Sanctions Board Decision No. 96 (2017) at para. 51 (denying the disclosure request where the respondent managing director had not asserted, and the record did not indicate, that the requested evidence was exculpatory or mitigating).

justice and a right to a fair hearing. INT does not specifically address this argument. The Sanctions Board has carefully reviewed the transcripts of interviews – not merely those passages referenced by the parties – and finds no unfairness or fundamental procedural flaw in relation to INT's use of the transcripts. The Sanctions Board does, however, take into account in determining the appropriate weight to be accorded to this evidence all relevant considerations, including any inconsistent, unclear, or conflicting testimony.

43. *Evidence from the Contractor*: The record in this case includes transcripts of interviews with six of the Contractor's employees, text messages between an employee of the Contractor and the Individual Respondent, text messages between employees of the Contractor, and documentary evidence provided by the Contractor. As a primary defense, the Respondents challenge the credibility of this evidence, arguing that the evidence is tainted and that, consequently, INT's case is fundamentally flawed. In support of this argument, the Respondents assert, inter alia, that the Contractor has a vested interest in adverse findings against the Respondents, and that the relationship between the Respondents and the Contractor has been characterized by conflict that has since dissolved into acrimony and litigation. INT responds that testimonial and documentary evidence from the Contractor's staff is entitled to be treated as both credible and reliable in accordance with relevant Sanctions Board precedent.

44. In assessing the weight of witness statements, the Sanctions Board "takes into account 'all relevant factors bearing on the witness's credibility.'"[12] The record in this case indicates that the Contractor's in-house lawyers were present during at least some of INT's interviews with the Contractor's employees – even in an instance where an employee's personal counsel had requested that the in-house lawyer not attend the interview due to a potential conflict of interest. The record also indicates that the Contractor was involved in some of the misconduct alleged in this case, and that the Respondents and the Contractor have a history of conflict. Notably, the Respondents advised in the course of these proceedings that the Respondent Firm and the Contractor are actively engaged in litigation in national courts, including in relation to disputes under the Contract. In addition, a review of the transcripts reveals that INT at times took a leading approach to questioning the Contractor's employees. The Sanctions Board finds that all of the above factors may discount the value of a witness's testimony, but do not preclude its use.[13]

45. As the Respondents have asserted that evidence from the Contractor is "tainted," the Sanctions Board has also considered the authenticity of that evidence. Significantly, the Respondents have not provided evidentiary support for this assertion. It should have been possible for the Respondents to produce evidence of inauthenticity by, for example, checking emails that were sent or received by the Respondents (and submitted in these proceedings) against those found on the Respondent Firm's email server. It does not appear from the record that the Respondents undertook any such action. Moreover, the emails, text message records, and other documentary evidence provided by the Contractor appear to be internally consistent – including the dates, times, senders, and recipients as indicated on the face of the evidence. There is no indication in the record that the documentary evidence was fabricated, forged, or altered in any way. Considering the

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[12] Sanctions Board Decision No. 71 (2014) at para. 54 (quoting Sanctions Board Decision No. 50 (2012) at para. 39).

[13] See Sanctions Board Decision No. 50 (2012) at para. 39; Sanctions Board Decision No. 71 (2014) at para. 54; Sanctions Board Decision No. 87 (2016) at para. 67.

above, and having carefully considered the full record presented, the Sanctions Board concludes that it is more likely than not that the documentary evidence from the Contractor is authentic.

B. Evidence of Collusive Practice

46. In accordance with the definition of collusive practice under Paragraph 1.14(a)(iii) of the May 2010 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) engaged in an arrangement between two or more parties, (ii) designed to achieve an improper purpose, including to influence improperly the actions of another party. A footnote to this definition provides that "[f]or the purposes of these Guidelines, 'parties' refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non-competitive levels."[14]

1. Arrangement between two or more parties

47. According to INT, the Respondents engaged in schemes to fix the Contract's technical specifications and to draft the PIU's responses to bidder inquiries in relation to the technical specifications. The Respondents dispute these allegations.

48. The record supports a finding that the Individual Respondent had an arrangement with the Contractor whereby the Individual Respondent gathered information from the Contractor to fix the Contract's technical specifications in favor of the Contractor. During his interview with INT, a sales director for the Contractor (the "Contractor's Sales Director") confirmed that the Individual Respondent forwarded to him confidential technical specifications for the Contract, that there were internal discussions between employees of the Contractor to modify the specifications to the Contractor's advantage, and that the modifications were sent to the Individual Respondent and ultimately made their way into the published bidding documents. Similarly, a managing director for one of the Contractor's business units (the "Contractor's Managing Director") stated that he was aware that the Contractor had access to non-public technical specifications for the Contract, that through "informal discussions" the Contractor had the ability to make recommendations for alternate specifications, and that the final tender documents were influenced by the Contractor. The record contains contemporaneous documentary evidence that corroborates this testimony. For example, the Individual Respondent emailed the technical specifications for the Contract to the Contractor's Sales Director in September 2013 – approximately eight months before the publication of the bidding documents in April 2014. Notably, the subject line designated the email as "Extremely confidential;" and in the course of the email exchange, the Individual Respondent requested that the Contractor suggest exact clauses and scoring points in relation to certain aspects of the specifications. Additional email evidence reveals that the Individual Respondent and employees of the Contractor worked on the technical specifications through February 2014. In one email exchange, the Individual Respondent requested the Contractor's Sales Director to add any feature to the technical specifications "that will block others."

49. In addition, evidence reflects that the Individual Respondent had a similar arrangement with the Supplier to fix the technical specifications for the benefit of the Supplier. In his interview with INT, a team manager for the Supplier (the "Supplier's Team Manager") confirmed that the

[14] May 2010 Procurement Guidelines at para. 1.14(a)(iii), n.21.

Individual Respondent provided the Supplier with the opportunity to modify the technical specifications, and that employees of the Supplier suggested modifications with the understanding that the Individual Respondent would pass along the suggestions to the PIU for insertion into the bidding documents. This testimony is corroborated by contemporaneous documentary evidence. For instance, the Individual Respondent forwarded the technical specifications for the Contract to the Supplier's Team Manager in August 2013 – over eight months before the publication of the bidding documents. The record includes additional emails showing that the Individual Respondent and employees of the Supplier worked on modifying technical specifications through mid-April 2014. Other email evidence reflects that, even after the publication of the bidding documents, the Individual Respondent provided the Supplier with further opportunities to modify the technical specifications as amendments to the bidding documents.

50. The record also supports a finding that the collusive arrangement continued into a second stage. Specifically, the record indicates that, following publication of the bidding documents but prior to the bid submission deadline, the Individual Respondent worked with the Contractor and the Supplier to orchestrate the PIU's responses to inquiries from prospective bidders who were seeking adjustments to the published technical specifications. The Contractor's Sales Director stated to INT that the Individual Respondent managed to obtain questions from all prospective bidders and that the Individual Respondent shared the questions and requested the Contractor's responses to the questions. Similarly, the Supplier's Team Manager stated to INT that the Individual Respondent provided confidential questions from prospective bidders, and that the Supplier then drafted responses that were reproduced by the PIU in its official responses "[i]f not, verbatim, in spirit." Contemporaneous documentary evidence corroborates this testimony. For example, an email chain shows that the Individual Respondent forwarded a competitor's questions to the Supplier's Team Manager stating that "[w]e need to answer this." The Supplier's Team Manager subsequently circulated the questions internally, informing his colleagues that "[t]hese queries were found out by our partner [the Respondent Firm] and shared with us so we can provide our views discreetly to [the Respondent Firm] and they would work against [the competitor] by reporting a counter argument to [the PIU]." Consistent with the collusive arrangement, the record reflects that at least some of the Supplier's draft responses to competitor questions were reproduced verbatim by the PIU in its official responses.

51. The Sanctions Board is not persuaded by the Respondents' defense in the Response that they were trusted advisers to the Recipient's government and that their conduct was undertaken in that capacity. As a factual matter, the record does not contain evidence that would support a finding that the Respondents were advisers to the government in relation to the Contract. Moreover, even assuming hypothetically that the Respondents were "trusted advisers" to the Recipient's government despite the lack of persuasive evidence, this status would not preclude a finding that the above conduct – i.e., the scheme between the Individual Respondent, the Contractor, and the Supplier – constitutes a collusive arrangement. The Sanctions Board is also unconvinced by the Respondents' argument that evidence of communications between the Respondents and the Contractor merely shows "reasonable and sensible, commercial dialogue." The evidence on its face reveals an arrangement to fix the technical specifications for the Contract – and the Respondents have put forward no reasonable alternative explanation for the unambiguous communications.

52. The Sanctions Board is likewise unconvinced by the Respondents' argument that INT's claim fails because alleging that the Contractor colluded with its own subcontractor (i.e., the Respondent Firm) is akin to accusing the Contractor of colluding with itself. The applicable definition only requires that INT establish "an arrangement between two or more parties." The record is clear that the Respondents and the Contractor are distinct parties with different roles in the bidding process. In addition, INT's allegation that the Respondents engaged in collusive arrangements relates to conduct outside of the scope of the Respondent Firm's role as a subcontractor for the Contract (e.g., to deliver a software system in relation to the NID cards). Finally, the Sanctions Board rejects the Respondents' argument that INT failed to discharge its burden to show that any arrangement was "by a party who was a participant in the procurement process." According to the Respondents, they were not bidders for the Contract – but rather parties with a commercial interest in the Project from an early stage, with the Respondent Firm later becoming a subcontractor. The Respondents have not provided any authority, or put forward a persuasive basis, for such a narrow reading of the definition of collusive practices. Although the Respondents did not bid on the Contract, the record shows that they were participants in the procurement process. For example, evidence demonstrates that the Individual Respondent purchased the bidding documents, worked with the Contractor and the Supplier on the Contractor's bid, and stood to benefit financially from the Contract as the Respondent Firm was the Contractor's only identified subcontractor.

53. In light of the above, and considering the totality of the record, the Sanctions Board finds that it is more likely than not that the Individual Respondent had an arrangement with the Contractor and the Supplier within the meaning of the applicable definition.

2. Designed to achieve an improper purpose, including to influence improperly the actions of another party

54. INT argues that the Respondents' collusive arrangement was designed to limit competition by ensuring that only bidders that used the solutions offered by the Respondent Firm would be in compliance with the technical specifications. The Respondents dispute that they engaged in any activity designed to achieve an improper purpose within the meaning of the applicable definition.

55. Evidence in the record supports a finding that the Individual Respondent's arrangement with the Contractor and the Supplier was designed to stifle open competition for the Contract by giving the companies an unfair advantage in the procurement process for the Contract. As discussed above, evidence indicates that the Individual Respondent had arrangements with the Contractor and the Supplier whereby the Individual Respondent gathered information from the companies to fix the Contract's technical specification in favor of the companies. As also discussed above, the record reveals that the Individual Respondent worked with the Contractor and the Supplier to orchestrate the PIU's responses to inquiries from prospective bidders who were seeking adjustments to the published technical specifications. Consistent with the collusive scheme, the Contractor was awarded the Contract – with the Respondent Firm as the subcontractor and the Supplier as a separately contracted provider of certain equipment in relation to the Contract. While evidence that the desired influence actually materialized is not necessary to establish this element of collusive practice, it may bolster a showing of a respondent's intent to influence, which is all

that is required.[15] In addition, the record includes an exchange between the Individual Respondent and the Contractor's Sales Director in which the Individual Respondent acknowledges that potential competitors are complaining "about biased spec." and states that "[w]e are in a good position." This communication indicates that the Individual Respondent was aware that the "biased" technical specifications were anti-competitive, and thereby provides additional support for a finding of collusive intent.

56. Considering the totality of the evidence, including evidence discussed in Paragraphs 48-50 above, the Sanctions Board finds that it is more likely than not that the arrangement under the first element of collusive practice was designed to achieve an improper purpose, i.e., to stifle open competition for the Contract.

C. Evidence of Corrupt Practice

57. In accordance with the definition of corrupt practice under Paragraph 1.14(a)(i) of the May 2010 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) offered, gave, received, or solicited, directly or indirectly, anything of value (ii) to influence improperly the actions of another party. A footnote to this definition explains that the term "another party" includes public officials acting in relation to the procurement process, who may be World Bank staff or employees of other organizations taking or reviewing procurement decisions.[16]

1. Soliciting, directly or indirectly, anything of value

58. As noted above, INT alleges that the Respondents solicited the Contractor for the payment of two separate bribes to the Government Official – who is, according to INT, often referred to in the record by the moniker "G." The Respondents do not dispute that the Individual Respondent solicited the Contractor for payments but, as discussed further below, contend that the solicitation was not made for a corrupt purpose.

59. The record reflects that the Individual Respondent solicited the Contractor for payments to an individual identified as "G" or "the General" in connection with the Contract. The Contractor's Managing Director stated during his interview that "in various stages, [the Individual Respondent] was always trying to position with us a percentage of the bid that he wanted to reserve for G." The Contractor's Managing Director also stated that the Individual Respondent sent a "constant barrage of e-mails and communications" in which he explained that fees had to be paid "because the General was so difficult." The Contractor's Sales Director provided testimony consistent with the Contractor's Managing Director's testimony. These witnesses' interview statements are corroborated by contemporaneous email evidence. In an email in June 2014, between the Individual Respondent and the Contractor's staff, the Individual Respondent references a commission to be paid to "G." Subsequent communications reveal that the Individual Respondent and the Contractor's staff discussed the way in which the Contractor should make payments to "G." For example, in emails in October and November 2014, three specific payment options are

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[15] See Sanctions Board Decision No. 87 (2016) at para. 81.

[16] May 2010 Procurement Guidelines at para. 1.14(a)(i), n.19.

discussed – with the Individual Respondent following up repeatedly with the Contractor's staff, apparently on behalf of "G," for a decision on the proposed options. In an email to the Contractor's staff in November 2014, the Individual Respondent states that "we need to settle the pending issue with G. He was asking me as these are pending for some time. I'm flexible – I'm ok with any of the three options I discussed with [the Contractor's Sales Director]." Additional email and text message evidence reveals that the Individual Respondent continued to request payments for "G" through to at least February 2015.

60. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Individual Respondent solicited a thing of value from the Contractor.

2. To influence improperly the actions of another party

61. The second element of corrupt practice requires a showing that a respondent, in soliciting a thing of value under the first element, acted with a purpose to influence improperly the action of another party, including public officials acting in relation to the procurement process. Proof of actual payment to, or influence over, public officials is not necessary for a finding of corrupt practices, though it may bolster a showing of the intent to influence, which is all that is required.[17] An advisory opinion issued by the World Bank's Legal Vice Presidency ("LEG") provides that a corrupt purpose "can be shown either by direct evidence or, more typically, by reference to a course of dealing, acts of the accused party or other circumstantial evidence from which purpose can reasonably be inferred."[18] INT contends that the Respondents solicited a payment for the Government Official to increase the volume of NID cards under the Contract and to secure the Contract for the Contractor. INT further contends that the Respondents solicited a separate bribe for the Government Official in connection with the hologram security feature for the NID cards – but INT does not clearly set out the intended purpose of this solicitation. The Respondents argue that any reference to "G" within communications between the Respondents or their associates was part of the overall strategy employed by the Respondents in dealing with the Contractor to recover monies consequent to the Contractor's failure to honor agreements between the parties. In this connection, the Respondents insist that "G" was a fabrication to assist the Respondent Firm in collecting additional sums from the Contractor for the Respondent Firm's and its affiliates' own benefit.

62. On a consideration of the evidence presented by INT, the Sanctions Board concludes that INT has met its initial burden to demonstrate "a course of dealing" between the Individual Respondent and the Contractor in which the Individual Respondent solicited bribes from the Contractor with the intent to influence improperly the actions of the individual referred to in the record as "G" or "the General" in relation to the Contract. As an initial matter, the record indicates that it is more likely than not that "G" was a government official with influence over the Contract, although the record is not clear as to his specific identity. The manager of the Contractor's identity business unit (the "Contractor's Identity Business Manager") stated during his interview with INT

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[17] See Sanctions Board Decision No. 50 (2012) at para. 45; Sanctions Board Decision No. 60 (2013) at para. 84.

[18] Advisory Opinion on Certain Issues Arising in Connection with Recent Sanctions Cases, No. 2010/1 (LEG, November 15, 2010) at p. 13, para. 53 (Quoting the Commentaries to the Anti-Corruption Guidelines), available at: http://go.worldbank.org/CVUUIS7HZ0.

that he had a meeting in London in September 2015 with the Individual Respondent, "G," and a marketing colleague. The Contractor's Identity Business Manager stated that he does not know "G's" name, but that "I can tell you what I know for me. First of all, 'G' for me is General . . . I always heard about 'G' as a General . . . very influential on this project . . . I met with him." The marketing colleague who attended that same meeting in London (the "Contractor's Head of Marketing") stated during his interview that the Individual Respondent introduced the official as "Mr. G," that he was presented as an advisor to the Prime Minister, and that "you can guess that this guy has some influence." This testimony is corroborated by contemporaneous email correspondence in which employees of the Contractor discuss an upcoming meeting with "G" in connection with the Contract.

63. Testimonial and documentary evidence indicates that the Individual Respondent solicited the Contractor for payments to "G" to secure "G's" support for increasing the scope of the Contract and to obtain his support for the Contractor's bid for the Contract. During his interview with INT, the Contractor's Sales Director confirmed that the Individual Respondent had communicated to him that the requested payment to "G" was consideration for "G" increasing the volume from 70 million to 90 million NID cards under the Contract. This testimony is corroborated by contemporaneous email evidence in which the Contractor's Sales Director discusses with a colleague "[t]he agreement for any extra volume" and states that "I think the logic behind this was that for G to increase 20M at the contract signature he has to get something out of this otherwise we will be awarded only 70M." In addition, the Individual Respondent and employees of the Contractor discussed "G's" influence over the Recipient's Cabinet Committee on Government Purchases ("CCGP"), a body tasked with reviewing the award of the Contract. For example, the Contractor's Sales Director advised a colleague by email that the award of the Contract "needs to be approved by [the Recipient's] government: CCGP . . . which is under the control of G so we don't expect any issue." In another email, the Individual Respondent stated to employees of the Contractor that "I met G in the afternoon and had a 2 hours long meeting with him. Explained everything including our new arrangement with [the Contractor] . . . . He called a few people and ensured that there will be a CCGP on Sunday . . . . He committed his full support to speed up things."

64. The record also indicates that funds solicited by the Individual Respondent for "G" in connection with a hologram feature of the NID cards were intended to secure "G's" support throughout the execution of the Contract. During his interview with INT, a financial controller for the Contractor (the "Contractor's Financial Controller") stated that he understood from the Individual Respondent that part of the Contractor's payments for the holograms were set aside for "G." Similarly, the Contractor's Sales Director stated to INT that the Individual Respondent "was saying that the general was getting money from the hologram." Significantly, in a text message exchange between the Individual Respondent and the Contractor's Sales Director, the Contractor's Sales Director expressed concern that "G" "will not care anymore" after he receives his advance payment, stating that "we need to keep some leverage until the end." The Individual Respondent responded, "good thing is g will [g]et holo payment over the project duration."

65. In addition, the record reflects that at least some of the solicited funds were paid by the Contractor to a company affiliated with the Individual Respondent under the false pretense of providing training to the Contractor's staff that never took place. This attempt to hide the payment

suggests that the Individual Respondent and the Contractor's staff were aware of the impropriety of the payments, which further supports a finding of corrupt intent.

66. Because INT has met its evidentiary burden, the burden of proof shifts to the Respondents to demonstrate that it is not more likely than not that the Individual Respondent acted with the intent to influence improperly "G's" actions in relation to the Contract. The Respondents have failed to rebut INT's allegations. The Respondents argue that "G" was merely a fiction used by the Respondents to recover monies owed by the Contractor, and that the true recipients of the payments were the Respondent Firm and its affiliates. Testimonial evidence offers some support for this argument. For example, during his interview with INT, the Contractor's Sales Director discussed his suspicion that the Individual Respondent used "G" as a negotiation tactic to secure more funds for himself. The Respondents' argument and the evidence on this point is, however, contradicted by the overwhelming balance of the evidence, which reflects a "course of dealing" in which the Individual Respondent solicited bribes for a public official. As discussed above, two employees of the Contractor stated during their respective interviews with INT that each had met with a person that the Individual Respondent presented as "G" and as having influence over the Project. In fact, INT showed one of those employees a photograph of three individuals, and that employee stated that "I met this person with the mustache introduced by [the Individual Respondent] as G." The person with the mustache in that photograph was the Government Official. In addition, extensive documentary evidence – including the evidence discussed above – supports that the Individual Respondent presented "G" as an influential government official, and that the Contractor's employees acted to make payments based on the Individual Respondent's representations. Moreover, the Respondents have not put forward evidence to affirmatively support their alternate explanation for the solicitations. For example, the record does not contain any contemporaneous communications between the Individual Respondent and other staff of the Respondent Firm or its affiliates discussing monies owed by the Contractor and ways in which those monies might be recovered. Indeed, the overall scope and force of the contemporaneous evidence supports that the solicitations were made for the purpose of paying "G" to support the Contractor in securing and executing the Contract. The Sanctions Board further notes that the Respondent Firm has, as discussed below in Paragraphs 70-71, withheld emails and other correspondence of the Individual Respondent, which material might contain corroborating or exculpatory information.

67. For all of the reasons discussed above, and considering the totality of the evidence, the Sanctions Board finds that it is more likely than not that the solicitation under the first element was intended to influence improperly the actions of "G," a public official, in relation to the Contract.

D. Evidence of Obstruction

68. In accordance with the definition of obstructive practice under Paragraph 1.14(a)(v)(bb) of the May 2010 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent Firm engaged in "acts intended to materially impede the exercise of the Bank's inspection and audit rights."

69. As a preliminary matter, the Sanctions Board addresses the parties' dispute as to the applicable audit clause in this case. INT raises its obstruction allegation with reference to the audit

clause found in the bidding documents for the Contract, which provides that the Bank "will have the right to require that a provision be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers, and contractors and their sub-contractors to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank." (emphasis added). The Respondents argue that INT's reliance on this provision is misplaced, asserting that the applicable audit clause is found in the Contract, which provides that "[t]he Supplier shall permit the Bank and/or persons appointed by the Bank to inspect the Supplier's offices and/or the accounts and records of the Supplier and its sub-contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank." (emphasis added). Based on considerations of equity and basic principles of contracts law, and considering that the alleged obstruction occurred after Contract award, the Sanctions Board agrees with the Respondent Firm that, in this case, the standards set out in the Contract take precedence over the standards proposed in the bidding documents.

70. The record reflects that INT issued an audit and inspection letter (the "Audit Letter") to the Respondent Firm on September 20, 2015, in relation to the Project. In response to the Audit Letter, the Respondent Firm permitted INT to visit its office on October 1 and 4, 2015. In addition, the Respondent Firm produced documents to INT on each of those dates. These productions only included a very limited number of the Individual Respondent's emails – and not the full scope of emails and correspondence requested in the Audit Letter. Throughout October 2015, INT and the Respondent Firm exchanged correspondence regarding further document productions and arrangements for interviewing the Individual Respondent. On November 3, 2015, the Respondent Firm informed INT that it would produce an additional tranche of documents by November 9, 2015, and that it determined "not to produce additional documents or interviews that are beyond the scope of the World Bank's audit rights, including the correspondence and interview of [the Individual Respondent]." Following this communication, the Respondent Firm produced additional documents on November 9 and 19, 2015, and February 10, 2016. INT contends that the Respondent Firm's refusal to produce the Project-related emails and other correspondence of the Individual Respondent constitutes obstruction. The Respondents contest this allegation, arguing, inter alia, that the Individual Respondent's correspondence does not constitute "accounts and records" within the meaning of the Contract's audit clause and that materials relating to the "bid submission" process fall outside of the scope of the Bank's audit rights, which are limited to materials related to the performance of the Contract.

71. Considering the totality of the evidence, and for the reasons set out below, the Sanctions Board finds that it is more likely than not that employees of the Respondent Firm engaged in obstruction by refusing to produce the Individual Respondent's correspondence in relation to the Contract. First, the Sanctions Board concludes that the term "records" as found in the Contract's audit clause may be read to include emails and other correspondence. To conclude otherwise would mean, for example, that an audit under the Contract could include a review of the text of a fraudulent accounting entry but would not include a review of the underlying material showing that the entry was fraudulent. The Sanctions Board further concludes that the variety of the allegations in the SAE relates to the performance of the Contract. The Sanctions Board is satisfied that there are numerous types of materials identified in the SAE that relate to Contract performance as contemplated by the audit clause, even though some of the materials may have been developed

in connection with (and during) the bidding process. Examples of these materials include those relating to (i) the increase in the volume of the Contract, (ii) the procurement of polycarbonate for the Contract, (iii) the deeds of variation to relevant agreements, and (iv) the submission of Contract-related invoices. The Sanctions Board considers that the Respondent Firm's determination of November 3, 2015 – i.e., that it would not produce correspondence of the Individual Respondent or make him available for an interview – was an overbroad and unreasonable position to take, considering, inter alia, that the Individual Respondent and his actions were the focus of INT's investigation and allegations. The Sanctions Board also considers that the Respondent Firm had from November 2015 until at least March 2016 (when INT filed its request for a temporary suspension against the Respondent Firm for obstruction) to cure that failure to cooperate with the audit – but it did not do so. That timeframe would have been more than sufficient for the Respondent Firm to undertake a review of the Individual Respondent's emails and other correspondence to determine whether or not any of the materials was in the scope of the audit clause (including the four examples of relevant materials discussed above) and/or privileged. The Respondent Firm acknowledged during the hearing that no such review was undertaken, and the record indicates that the Respondent Firm did not engage in any discussions with INT for the purpose of trying to develop a production on that basis.

72. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the Respondent Firm deliberately acted to materially impede a Bank investigation so as to constitute an obstructive practice.

E. Liability of the Respondent Firm for the Acts of Its Employees

73. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.[19] Where a respondent entity denies responsibility for the acts of its employees based on a rogue employee defense, the Sanctions Board has assessed any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.[20]

74. In the present case, the record supports a finding that the Individual Respondent engaged in collusion and corruption in accordance with the scope of his duties and with the purpose of serving the interests of the Respondent Firm. For instance, the record indicates that the Individual Respondent played an active role in coordinating the Contractor's bid for the Contract, including by working with the Contractor and the Supplier to fix the technical specifications of the Contract in favor of these companies. The record also reflects that the Individual Respondent solicited the Contractor for payments to a public official to obtain that official's support for the Contractor's bid for the Contract. Notably, the Respondent Firm stood to benefit from these actions as the Contractor's only named subcontractor for the Contract. In addition, the record shows that the

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[19] See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30.

[20] See, e.g., Sanctions Board Decision No. 68 (2014) at paras. 29-30; Sanctions Board Decision No. 92 (2017) at paras. 101-102; Sanctions Board Decision No. 95 (2017) at paras. 31, 33.

Respondent Firm's employees refused to produce the Individual Respondent's correspondence in the course of INT's audit or make the Individual Respondent available for an interview. There is no indication in the record that the Individual Respondent and other relevant employees acted for any purpose other than serving the Respondent Firm. Moreover, the Respondents do not present, and the record does not provide any basis for, a rogue employee defense. Thus, the Sanctions Board finds the Respondent Firm liable for the collusive, corrupt, and obstructive practices carried out by its employees, particularly the Individual Respondent.

F. Sanctioning Analysis

1. General framework for determination of sanctions

75. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section III.A, sub-paragraph 8.01(b) of the Sanctions Procedures requires the Sanctions Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section III.A, sub-paragraph 9.01. The range of sanctions set out in Section III.A, sub-paragraph 9.01 includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) restitution or remedy. As stated in Section III.A, sub-paragraph 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the Acting SDO's recommendations.

76. 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.[21] 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.[22]

77. The Sanctions Board is required to consider the types of factors set forth in Section III.A, sub-paragraph 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. The Sanctioning Guidelines further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after a minimum period of three years.

78. Where the Sanctions Board imposes a sanction on a respondent, it may also, pursuant to Section III.A, sub-paragraph 9.04(b) of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of the respondent.

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[21] See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

[22] Sanctions Board Decision No. 44 (2011) at para. 56.

2. Plurality of sanctionable practices

79. As the Sanctions Board finds that each of the Respondents engaged in multiple counts of misconduct, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding "Cumulative Misconduct." The Sanctioning Guidelines provide in relevant part:

> Where the respondent has been found to have engaged [in] factually distinct[] incidences of misconduct (*e.g.*, corrupt practices and collusion in connection with the same tender) or in misconduct in different cases (*e.g.*, in different projects or in contracts under the same project but for which the misconduct occurred at significantly different . . . times), each separate incidence of misconduct may be considered separately and sanctioned on a cumulative basis. In the alternative, the fact that the respondent engaged in multiple incidences of misconduct may be considered an aggravating factor under Section IV.A.1 ["Repeated Pattern of Conduct"] below. (emphasis in original)

80. Where respondents engaged in unrelated sanctionable practices, the Sanctions Board has considered the gravity of each allegation separately and determined that a distinct base sanction should be applied to each distinct count,[23] even where all misconduct related to the same project or contract.[24] The record in this case reflects that the Respondent Firm engaged in collusion, corruption, and obstruction; and that the Individual Respondent engaged in collusion and corruption. Each count of misconduct was factually distinct from, and not merely a means of furthering, the other counts of misconduct. Accordingly, the Sanctions Board concludes that the plurality of sanctionable practices warrants multiplication, rather than aggravation, of the base sanction for each of the Respondents.

3. Factors considered in the present case

a. Severity of the misconduct

81. Section III.A, sub-paragraph 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct, sophisticated means, central role in the misconduct, and management's role in the misconduct, as examples of severity.

82. *Repeated pattern of conduct*: At the hearing, INT asserted for the first time in these proceedings that aggravation applies for the Respondents under this factor. As discussed in Paragraph 80 above, the Sanctions Board has found that the Respondents engaged in factually

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[23] See, e.g., Sanctions Board Decision No. 102 (2017) at para. 66 (applying cumulative sanctions where the respondent engaged in distinct corrupt and fraudulent practices).

[24] See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151 (applying cumulative sanctions where the respondents engaged in multiple distinct counts of misconduct, all relating to the same project); Sanctions Board Decision No. 97 (2017) at para. 66 (applying cumulative sanctions where the respondents engaged in fraudulent and corrupt practices relating to the same project and contract).

distinct types of sanctionable practices. Thus, the Respondents' plurality of sanctionable practices warrants multiplication, rather than aggravation, of the base sanction.

83. *Sophisticated means*: Section IV.A.2 of the Sanctioning Guidelines states that this factor may include "the complexity of the misconduct (*e.g.*, degree of planning, diversity of techniques applied, level of concealment); the number and type of people or organizations involved; whether the scheme was developed or lasted over a long period of time; [and] if more than one jurisdiction was involved." INT submits that the calculated and protracted pattern of conduct exhibited by the Respondents is an aggravating factor in this case. The Respondents contend that the alleged misconduct was limited and unsophisticated. The record indicates that the collusive and corrupt schemes were intended to manipulate the procurement process for the Contract; and used a variety of tactics, including the manipulation of technical specifications for the Contract, formulation of the PIU's responses to competitor inquiries, solicitation of bribe payments for a public official, and use of a company affiliated with the Individual Respondent to receive solicited funds under the false pretense of providing a training program that never took place. The Respondent Firm later obstructed INT's investigation of these schemes. In addition, the record indicates that the misconduct was carried out with the active involvement of multiple companies and their staff. The Sanctions Board finds that aggravation is warranted for the Respondents in these circumstances.

84. *Central role in the misconduct*: Section IV.A.3 of the Sanctioning Guidelines states that this factor may apply to a respondent who acted as the "organizer, leader, planner, or prime mover in a group of 2 or more." INT raises central role as an aggravating factor, asserting that the Respondents initiated the misconduct, which took sustained and significant coordination to maintain. The Respondents argue that this factor does not apply in this case. With respect to the collusive arrangement, the record supports a finding that the Respondents were the prime movers in the group. The Respondents shared confidential draft technical specifications with the Contractor and the Supplier, and subsequently worked with the companies to fix those specifications. Similarly, the Respondents shared bidder queries with the Contractor and the Supplier, and subsequently orchestrated the PIU's responses to the queries using information that the Respondents obtained from the Contractor and the Supplier. In these circumstances, the Sanctions Board applies aggravation for both Respondents under this factor.

85. *Management's role in misconduct*: Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board has previously applied aggravation on this basis where high-level members of a respondent entity's management personally participated in the misconduct.[25] INT asserts that aggravation should apply for management's role in the misconduct. The Respondents dispute application of this factor. The Sanctions Board finds aggravation warranted under this factor for the Respondent Firm based on the Individual Respondent's active involvement in the misconduct – as the record reflects that he was the Respondent Firm's chairman and CEO.

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[25] See, e.g., Sanctions Board Decision No. 102 (2017) at para. 69.

b. Cooperation

86. *Assistance and/or ongoing cooperation*: Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance to INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance in an investigation," as well as "the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." The Sanctions Board has previously granted mitigation where, for example, a respondent's managers met with INT on several occasions and provided relevant information,[26] or corresponded with INT and made relevant personnel available for interviews.[27] The Sanctions Board has declined any mitigation where an interviewee corresponded with INT but did not substantially assist INT's investigation;[28] or where interviewees refused to be recorded and/or look at evidence during the interview, and the record did not otherwise demonstrate the respondent's cooperation with INT.[29] The Respondents seek mitigation under this factor.

87. The record contains transcripts of INT's interviews with employees of the Respondent Firm, documents produced by the Respondent Firm, and the Respondents' response to INT's show-cause letter. However, the Respondent Firm's document production contained significant gaps, as the Respondent Firm declined to comply with specific document requests from INT, while providing unreasonable justifications for doing so. Significantly, among materials that the Respondent Firm refused to produce were emails and other correspondence of the Individual Respondent, who was central to INT's investigation and acted as the Respondent Firm's main participant in the collusive and corrupt schemes. INT's case against the Respondents was therefore based largely on evidence obtained from other sources. In these circumstances, and considering the record as a whole, the Sanctions Board declines to apply mitigation under this factor for either of the Respondents.

c. Periods of temporary suspension

88. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the Respondents' respective periods of temporary suspension. The Respondent Firm has been suspended since May 12, 2016, pursuant to Article II of the 2012 Sanctions Procedures, which provides for early temporary suspension prior to sanctions proceedings. The Individual Respondent has been suspended since the issuance of the Notice on March 8, 2018.

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[26] Sanctions Board Decision No. 53 (2012) at para. 58.

[27] See Sanctions Board Decision No. 56 (2013) at para. 73; Sanctions Board Decision No. 79 (2015) at para. 48.

[28] Sanctions Board Decision No. 61 (2013) at para. 44.

[29] Sanctions Board Decision No. 71 (2014) at para. 97.

d. Other considerations

89. Under Section III.A, sub-paragraph 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider "any other factor" that it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice."

90. *Passage of time*: The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.[30] This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents.[31] In this case, at the time of the Acting SDO's issuance of the Notice in March 2018, approximately four years and six months had elapsed since the collusive arrangement was commenced in August 2013 (when the Individual Respondent forwarded to the Supplier confidential draft technical specifications for the Contract). The Sanctions Board finds that mitigation is warranted for the Respondents in these circumstances.

91. *Absence of aggravating factors*: In discussing potential sanctions, the Respondents contend that there was no involvement of World Bank staff in the alleged misconduct, that there is no suggestion of any harm to public safety or welfare, that there has been no interference by the Respondents in the Bank's investigation, and that there is no past history of misconduct by the Respondents. Consistent with past precedent,[32] the Sanctions Board finds that the absence of potential aggravating factors is a neutral fact rather than grounds for mitigation.

92. *Proportionality*: The Respondents submit that the Contractor was the dominant partner in the conduct as alleged, and that it would be inappropriate to sanction the Respondents more heavily than the sanction imposed on the Contractor pursuant to its settlement agreement with INT. In past cases, the Sanctions Board declined to consider the sanctions agreed between settling parties to bear upon its own determination of contested sanctions for respondents, noting that the final sanctions in settlements may be shaped by considerations extrinsic to the sanctioned party's relative culpability or responsibility for misconduct.[33] Consistent with this precedent, the Sanctions Board declines to consider the outcome of INT's settlement with the Contractor to bear upon its determination of sanctions for the Respondents.

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[30] See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where sanctions proceedings were initiated more than five (and up to nine) years after the misconduct, and more than five (and up to eight) years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 68 (2014) at para. 47 (applying mitigation where sanctions proceedings were initiated more than four and a half years after the sanctionable practices had occurred and more than four years after the Bank had become aware of the potential misconduct).

[31] See Sanctions Board Decision No. 50 (2012) at para. 71.

[32] See, e.g., Sanctions Board Decision No. 73 (2014) at para. 45; Sanctions Board Decision No. 100 (2017) at para. 61.

[33] See, e.g., Sanctions Board Decision No. 56 (2013) at para. 82; Sanctions Board Decision No. 92 (2017) at para. 132; Sanctions Board Decision No. 109 (2018) at para. 55.

G. Determination of Appropriate Sanctions

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

i. the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm,[34] shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[35] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[36] 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 participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of nine (9) years and six (6) months beginning from the date of this decision, the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, may be released from ineligibility only if the Respondent Firm has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent Firm for collusive, corrupt, and obstructive practices as defined in Paragraph 1.14(a)(iii), Paragraph 1.14(a)(i), and Paragraph 1.14(a)(v)(bb), respectively, of the May 2010 Procurement Guidelines; and

ii. the Individual Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Individual Respondent,[37] shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[38] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[39] 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 participate further in the preparation or

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[34] The Sanctions Board did not make any findings as to which entities, if any, are controlled Affiliates.

[35] A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, consultant, manufacturer or supplier, or service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(i), n.14.

[36] A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(ii), n.15.

[37] The Sanctions Board did not make any findings as to which entities, if any, are controlled Affiliates.

[38] See supra n.35.

[39] See supra n.36.

implementation of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of six (6) years and six (6) months beginning from the date of this decision, the Individual Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Individual Respondent, may be released from ineligibility only if the Individual Respondent has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics in a manner satisfactory to the World Bank Group. This sanction is imposed on the Individual Respondent for collusive and corrupt practices as defined in Paragraph 1.14(a)(iii) and Paragraph 1.14(a)(i), respectively, of the May 2010 Procurement Guidelines.

94. The Respondents' ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of these declarations of ineligibility to the other multilateral development banks ("MDBs") 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.[40]

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
Mark Kantor

[40] 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 Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The Cross-Debarment Agreement 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. More information about the Cross-Debarment Agreement is available on the Bank's external website (http://go.worldbank.org/B699B73Q00).