

Date of issuance: December 18, 2017

Sanctions Board Decision No. 102¹
(Sanctions Case No. 345)

IDA Credit No. 3712-ET
IBRD GEF Trust Fund Grant No. 056092-ET
IDA Credit No. 4344-ET
Ethiopia

IDA Credit No. 4902-NP
IDA Grant No. H660-NP
Nepal

Decision of the World Bank Group² Sanctions Board imposing a sanction of debarment with conditional release on the Respondent, together with certain Affiliates,³ with a minimum period of ineligibility of four (4) years and six (6) months beginning from the date of this decision. This sanction is imposed on the Respondent for corrupt and fraudulent practices.

I. INTRODUCTION

1. The Sanctions Board met in panel sessions in March and August 2017 at the World Bank Group's headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of J. James Spinner (Chair), Teresa Cheng, and Catherine O'Regan.

¹ Note from the World Bank's Legal Vice Presidency: On January 7, 2016, the World Bank Sanctions Procedures as adopted April 15, 2012 (the "Sanctions Procedures") were re-adopted and retrofitted as "Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects" (the "2016 Sanctions Procedures"). On June 28, 2016, the 2016 Sanctions Procedures were issued on the Policy and Procedure Repository of the World Bank. At the time of the issuance of the Notice of Sanctions Proceedings (the "Notice") to the respondent entity in Sanctions Case No. 345 (the "Respondent") on April 26, 2016, the applicable procedures made available to the Respondent were the Sanctions Procedures. The so-called "retrofit" of the sanctions framework, initiated in 2014, aimed at codifying and reconstructing the normative architecture of the World Bank's sanctions system. The structure and numbering of the sections and paragraphs under the 2016 Sanctions Procedures was changed, without affecting the content of the rules of the Sanctions Procedures applicable to this case.

² In accordance with Section 1.02(a) of 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 the guarantee operations of IBRD and IDA, but does not include the International Centre for the 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 1.01(a), n.1.

³ Section 1.02(a) of the Sanctions Procedures defines "Affiliates" to include "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." The sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondent.

2. A hearing was held on March 16, 2017, at the request of the Respondent and in accordance with Article VI of the Sanctions Procedures. The World Bank Group's Integrity Vice Presidency ("INT") participated in the hearing through its representatives attending in person. The Respondent was represented by external counsel, its chairman, chief financial officer, and chief compliance officer, all attending in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

3. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following:

- i. Notice issued by the World Bank's Evaluation and Suspension Officer (the "EO")⁴ to the Respondent on April 26, 2016, appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated December 1, 2015;
- ii. Explanation submitted by the Respondent to the EO on June 27, 2016 (the "Explanation");
- iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on August 29, 2016 (the "Response");
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on October 27, 2016 (the "Reply");
- v. Supplemental submission submitted by the Respondent to the Secretary to the Sanctions Board on February 15, 2017 (the "Supplemental Submission"); and
- vi. INT's comments on the Supplemental Submission submitted by INT to the Secretary to the Sanctions Board on February 23, 2017 ("INT's Comments").

4. On April 26, 2016, pursuant to Sections 4.01 and 4.02 of the Sanctions Procedures, the EO issued the Notice and temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility⁵ with respect to Bank-Financed Projects,⁶ pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended in the Notice debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The EO initially

⁴ Effective March 31, 2013, the EO's title changed to "IBRD/IDA Suspension and Debarment Officer" ("SDO"). For consistency with the Sanctions Procedures, this decision refers to the former title.

⁵ The full scope of ineligibility effected by a temporary suspension is defined in the Sanctions Procedures at Section 4.02(a) and 9.01(c), read together.

⁶ 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. Sanctions Procedures at Section 1.01(c)(i), n.3.

recommended a minimum period of ineligibility of nine (9) years, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank. Upon review of the Respondent's Explanation, the EO revised the recommended minimum period of ineligibility to four (4) years.

II. GENERAL BACKGROUND

5. INT's allegations of misconduct in this case relates to the following energy sector projects (together, the "Projects"), three in the Federal Democratic Republic of Ethiopia and one in the Federal Democratic Republic of Nepal:

- i. the Ethiopia Energy Access Project (the "EA Project");
- ii. the Ethiopia Energy Access Global Environment Facility Project (the "EA-GEF Project");
- iii. the Ethiopia Electricity Access (Rural) Expansion Phase II Project (the "EA-EPII Project") (together with the EA Project and the EA-GEF Project, the "Ethiopia Projects"); and
- iv. the Nepal-India Electricity Transmission and Trade Project (the "Nepal Project").

6. The Respondent submitted three separate bids for contracts under the Ethiopia Projects – one bid for a contract under the EA Project (the "EA Contract"), one bid for a contract under the EA-GEF Project (the "EA-GEF Contract"), and one bid for three contracts under the EA-EPII Project (the "EA-EPII Contracts," together with the EA Contract and the EA-GEF Contract, the "Ethiopia Contracts"). The Respondent was not awarded any of the Ethiopia Contracts.

7. The Respondent formed a joint venture (the "JV") with another company (the "JV Partner") to jointly bid on a contract under the Nepal Project (the "Nepal Contract," together with the Ethiopia Contracts, the "Contracts"). On February 3, 2013, the implementation agency for the Nepal Project (the "Nepal Project Implementation Agency") and the JV signed the Nepal Contract.

8. With respect to the Ethiopia Projects, INT alleges that the Respondent engaged in corrupt practices by paying a bribe to a procurement specialist (the "Procurement Specialist") with the implementation agency for the Ethiopia Projects (the "Ethiopia Projects Implementation Agency") in order to influence the procurement processes for the Ethiopia Contracts. In the case that the Sanctions Board does not find sufficient evidence of corruption in relation to the Ethiopia Contracts, INT alleges in the alternative that the Respondent engaged in a fraudulent practice by knowingly or recklessly failing to disclose in its bids for the Ethiopia Contracts the payment it made to a public official as its agent in relation to those contracts.

9. Regarding the Nepal Project, INT alleges that the Respondent engaged in corrupt practices by agreeing to make an improper payment to its local agent (the "Agent") to pass along to Nepalese

public officials in order to influence the award of the Nepal Contract. INT also alleges that the Respondent engaged in a fraudulent practice by knowingly or recklessly misrepresenting in its bid for the Nepal Contract the anticipated role of its JV Partner in the execution of that contract. Finally, INT alleges that the Respondent engaged in a fraudulent practice by knowingly or recklessly submitting a false soil test report to the Nepal Project Implementation Agency in connection with the Nepal Contract.

III. APPLICABLE STANDARDS OF REVIEW

10. *Standard of proof:* Pursuant to Section 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is “more likely than not” that the respondent engaged in a sanctionable practice. Section 8.02(b)(i) defines “more likely than not” to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice.

11. *Burden of proof:* Under Section 8.02(b)(ii) of the Sanctions Procedures, INT bears the initial burden of proof to present evidence sufficient to establish that it is more likely than not that a respondent engaged in a sanctionable practice. Upon such a showing by INT, the burden of proof shifts to the respondent to demonstrate that it is more likely than not that its conduct did not amount to a sanctionable practice.

12. *Evidence:* As set forth in Section 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

13. *Applicable definitions:* This case involves diverse allegations of sanctionable practices that INT submits occurred during the procurement and contract implementation processes. The Sanctions Board concludes that, for each of the Contracts, the alleged sanctionable practices are defined by the applicable version of the Bank’s Procurement Guidelines as set out below.

- i. For the EA Contract, the relevant development credit agreement provided that the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (January 1995, revised January and August 1996, September 1997, and January 1999) (the “January 1999 Procurement Guidelines”) would govern procurement under the EA Project. However, the relevant bidding documents defined corrupt and fraudulent practices in accordance with the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) (the “May 2004 Procurement Guidelines”). Consistent with the Bank’s legal framework applicable to sanctions, as well as considerations of equity, the standards applicable in the event of such a 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.⁷ Therefore, the alleged corrupt and fraudulent

⁷ See Sanctions Board Decision No. 59 (2013) at para. 11.

practices relating to the EA Contract have the meaning set forth in the May 2004 Procurement Guidelines.

- ii. For the EA-GEF Contract, the relevant trust fund grant agreement provided that the May 2004 Procurement Guidelines would govern procurement under the EA-GEF Project, and the relevant bidding documents defined corrupt and fraudulent practices consistent with these guidelines. Therefore, the alleged sanctionable practices relating to the EA-GEF Contract have the meaning set forth in the May 2004 Procurement Guidelines.
- iii. For the EA-EPII Contracts, the relevant financing agreement provided that World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 2006) (the "October 2006 Procurement Guidelines") would govern procurement under the EA-EPII Project. However, the relevant bidding documents defined corrupt and fraudulent practices in accordance with the May 2004 Procurement Guidelines. As discussed in Paragraph 13(i) above, the standards applicable in the event of such a conflict shall be those agreed between the borrowing or recipient country and the respondent as governing the particular contract at issue. Therefore, the alleged corrupt and fraudulent practices relating to EA-EPII Contracts have the meaning set forth in the May 2004 Procurement Guidelines.
- iv. For the Nepal Contract, the alleged sanctionable practices have the meaning set forth in the World Bank's Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the "January 2011 Procurement Guidelines"), which governed procurement under the relevant financing agreement, and whose definitions of sanctionable practices were repeated in the relevant bidding documents and the Nepal Contract.

14. The applicable definitions of corrupt and fraudulent practices are set out below in the analysis of each of INT's allegations.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

1. Allegations of sanctionable practices

15. *Corruption allegation 1:* INT alleges that the Respondent engaged in corrupt practices in relation to the Ethiopia Contracts by paying a bribe to the Procurement Specialist in exchange for confidential information about the procurement processes and to increase the Respondent's chances of winning the Ethiopia Contracts.

16. *Fraud allegation 1:* Alternatively, in the event that the Sanctions Board does not find sufficient evidence for corruption in connection with the Ethiopia Contracts, INT alleges that the

Respondent engaged in a fraudulent practice by knowingly or recklessly failing to disclose in each of the three bids for the Ethiopia Contracts the payment it made to the Procurement Specialist as its agent.

17. *Corruption allegation 2:* INT alleges that the Respondent engaged in corrupt practices in relation to the Nepal Contract by agreeing to make an improper payment to the Agent to pass along to public officials of the Nepal Project Implementation Agency to influence the award of the Nepal Contract.

18. *Fraud allegation 2:* INT further alleges that the Respondent engaged in a fraudulent practice during the procurement process for the Nepal Contract by knowingly or recklessly misrepresenting, in the bid and in the Nepal Contract, the anticipated role of its JV Partner in the execution of the Nepal Contract. According to INT, the Respondent attempted to mislead the Nepal Project Implementation Agency in order to receive a benefit.

19. *Fraud allegation 3:* Finally, INT alleges that the Respondent engaged in a fraudulent practice during the execution of the Nepal Contract by knowingly or recklessly submitting a false soil test report to the Nepal Project Implementation Agency. INT asserts that the completion of the test was required prior to the commencement of another phase in the execution of the Nepal Contract.

2. Sanctioning factors

20. INT asserts that aggravation is warranted for (i) a repeated pattern of conduct, (ii) the involvement of senior management in the misconduct, and (iii) the Respondent's obstruction of INT's investigation. INT submits as mitigating factors the Respondent's (i) voluntary corrective action, (ii) development of a compliance program, and (iii) cooperation with INT's investigation.

B. The Respondent's Principal Contentions in the Explanation and the Response, as amended by the Supplemental Submission

1. Contentions regarding procedural and evidentiary matters

21. The Respondent raises a number of procedural and evidentiary requests in its Response. The Respondent asserts (i) that INT failed to present exculpatory and mitigating evidence in the SAE; (ii) that INT had a greatly superior position due to its use of national authorities and other sources of evidence to which the Respondent has no access; and (iii) that INT acted in bad faith and engaged in retaliatory prosecution of the Respondent. As discussed in Paragraphs 32-33 below, the Sanctions Board resolved these issues on March 1, 2017.

2. Contentions regarding INT's allegations of sanctionable practices

22. *Corruption allegation 1:* The Respondent acknowledges that one of its employees paid a bribe in connection with the EA-GEF Contract, but disputes that "this corrupt practice affected" or "reached" the other Ethiopia Contracts.

23. *Fraud allegation 1:* The Respondent contests INT's alternative fraud allegation, arguing that INT did not establish (i) that the Procurement Specialist was the Respondent's agent, (ii) that the Respondent acted with the required mens rea, and (iii) that the alleged misrepresentations were made with an intent to influence the award of the Ethiopia Contracts.

24. *Corruption allegation 2:* The Respondent contests INT's corruption allegation in relation to the Nepal Contract, arguing that INT did not establish (i) that any payments were made to public officials; (ii) that payments made to the Agent were "anything other than payments for actual, verifiable work"; and (iii) that the Respondent received anything in return for the purported bribes.

25. *Fraud allegation 2:* In the Explanation and the Response, the Respondent contests INT's allegation of fraud during the procurement process for the Nepal Contract. However, in the Supplemental Submission, the Respondent concedes this allegation.

26. *Fraud allegation 3:* The Respondent acknowledges that the soil test report it submitted was based on falsified laboratory test reports. The Respondent nevertheless argues that INT did not establish (i) that any of the Respondent's employees knew, or had any reason to suspect, that the soil test report was false and (ii) that the Respondent obtained any benefit or avoided any obligation as a consequence of the falsified soil test report.

3. Sanctioning factors

27. The Respondent disputes application of aggravating factors. The Respondent argues for mitigation based on (i) voluntary corrective action (cessation of misconduct, internal action against responsible individuals, compliance improvement measures, and restitution or financial remedy); (ii) cooperation with INT's investigation (assistance and ongoing cooperation, internal investigation, acceptance of responsibility, and voluntary restraint); (iii) passage of time; (iv) prior national debarment by the Government of Ethiopia; (v) proportionality; and (vi) the Respondent's "good corporate citizen[ship]."

C. INT's Principal Contentions in the Reply and Its Comments on the Supplemental Submission

28. In the Reply, INT argues that the Sanctions Board should deny the various procedural and evidentiary requests raised by the Respondent in the Response. With respect to the merits of the case, INT submits that the Respondent has not provided any substantive evidence that would support its denial of the alleged misconduct or rebut any of INT's evidence. In INT's Comments on the Supplemental Submission, INT states that it does not object to the Respondent's decision to concede the fraud allegation regarding the JV Partner's role in the execution of the Nepal Contract.

D. Presentations at the Hearing

29. In its presentation, INT reiterated its allegations that the Respondent engaged in corrupt and fraudulent practices in connection with projects in Ethiopia and Nepal. According to INT, following the parties' written submissions, the only two counts of misconduct that remain

contested are the allegation that the Respondent made a payment to the Agent to pass along to public officials in Nepal and the allegation that the Respondent submitted a false soil test report to the Nepal Project Implementation Agency. With respect to sanctions, INT acknowledged “significant mitigating factors,” but submitted that the EO overcompensated for mitigation in reducing the recommended debarment period from nine (9) years to four (4) years upon review of the Explanation.

30. The Respondent argued that international law requires that there be a level playing field and equality of arms, and that “equality of arms must be restored” in this case. With respect to INT’s allegations of sanctionable misconduct, the Respondent conceded that its employees in Ethiopia paid the Procurement Specialist for confidential information in connection with the EA-GEF Contract. The Respondent disputed INT’s allegation that it paid bribes and falsified a soil test report in connection with the Nepal Project. The Respondent also challenged the aggravating factors asserted by INT and set out numerous arguments in support of its request for mitigation. In his statement, the Respondent’s chairman expressed regret for lapses that led to misconduct and discussed the Respondent’s compliance measures, which the Respondent’s chief compliance officer described in more detail in his remarks.

V. THE SANCTIONS BOARD’S ANALYSIS AND CONCLUSIONS

31. The Sanctions Board will first address the procedural and evidentiary matters raised by the Respondent. The Sanctions Board will then consider whether it is more likely than not that the Respondent engaged in the sanctionable practices alleged. Finally, the Sanctions Board will determine what sanction, if any, should be imposed on the Respondent.

A. Procedural and Evidentiary Matters

32. As noted above, the Respondent raised a number of procedural and evidentiary requests. The Respondent asserted (i) that INT failed to present exculpatory and mitigating evidence in its SAE; (ii) that INT had a greatly superior position due to its use of national authorities and other sources of evidence to which the Respondent has no access; and (iii) that INT acted in bad faith and engaged in retaliatory prosecution of the Respondent. INT opposed each of the Respondent’s requests.

33. On March 1, 2017, the Sanctions Board issued a determination on the above matters. The Sanctions Board denied the Respondent’s requests with regard to INT’s alleged failure to present certain assertedly exculpatory and mitigating evidence. In reaching this determination, the Sanctions Board considered that the Respondent presented some evidence (in the context of confidential settlement discussions) that it argued INT should have disclosed in these sanctions proceedings, but that the record did not indicate that INT withheld any exculpatory or mitigating evidence of which the Respondent was not in possession. The Sanctions Board also considered that the Respondent may, as it did here, submit such assertedly exculpatory evidence into the record by attaching the evidence to the Response. In addition, the Sanctions Board denied the Respondent’s requests with regard to INT’s asserted access to, and use of, national law enforcement authorities and other sources of evidence to which the Respondent asserts it has no access. The Sanctions Board noted in its determination that Section 7.01 of the Sanctions

Procedures provides that any kind of evidence may form the basis of conclusions reached by the Sanctions Board, and that the Sanctions Board will weigh the evidence in the record in accordance with Section 7.01 of the Sanctions Procedures and Sanctions Board precedent. Moreover, there is no unfairness with INT presenting, as part of its case, evidence that it has obtained from law enforcement authorities where, as was the case here, the respondent is given an opportunity to review and rebut such evidence. Finally, the Sanctions Board denied the Respondent's requests with regard to INT's asserted bad faith and retaliatory prosecution of the Respondent. The Sanctions Board did not find sufficient evidence in the record to support a finding that INT acted in bad faith and/or with retaliatory intent during the investigation or these proceedings.

B. Evidence of Sanctionable Practices

1. Corruption allegation 1: Alleged bribe in connection with the Ethiopia Contracts

34. In accordance with the applicable definition of "corrupt practice" under the May 2004 Procurement Guidelines, INT bears the initial burden to prove that it is more likely than not that the Respondent (i) offered, gave, received, or solicited, directly or indirectly, any thing of value (ii) to influence the action of a public official in the procurement process or in contract execution.⁸

a. Offering or giving, directly or indirectly, any thing of value

35. INT alleges that the Respondent paid a bribe of ETB 440,000 (the equivalent of approximately US\$26,258) to the Procurement Specialist. The Respondent admits that one of its employees paid a bribe in connection with the EA-GEF Contract, but denies that any such "wrongdoing" occurred with respect to the EA Contract or the EA-EPII Contract.

36. Consistent with the Respondent's admission, documentary evidence supports a finding that an employee of the Respondent made a payment to the Procurement Specialist. The record includes copies of financial records, bank statements, a check, and a withdrawal receipt, which reveal that on November 30, 2010, an employee of the Respondent withdrew ETB 440,000 in cash from the Respondent's bank account in Ethiopia. The record reflects that upon the Procurement Specialist's arrest by the Ethiopian Federal Ethics and Anti-Corruption Commission (the "FEACC") at or around the time of the withdrawal, the FEACC found ETB 420,000 in cash hidden in the Procurement Specialist's car. The cash bundles bore the seal of the Respondent's bank in Ethiopia.

37. In light of the above, and considering in particular the Respondent's admission, the Sanctions Board finds that it is more likely than not that an employee of the Respondent gave the Procurement Specialist a thing of value.

⁸ See May 2004 Procurement Guidelines at para. 1.14(a)(i).

b. To influence the action of a public official in the procurement process or in contract execution

38. INT alleges that the Respondent paid the Procurement Specialist in exchange for confidential information about the procurement processes for the Ethiopia Contracts and in order to influence the awarding of the Ethiopia Contracts in the Respondent's favor.

39. Consistent with the Respondent's admission discussed in Paragraph 35 above, contemporaneous evidence supports a finding that an employee of the Respondent gave a thing of value to the Procurement Specialist with the requisite intent. The record reveals, and the parties do not dispute, that during the relevant period, the Procurement Specialist was a public official who reviewed bids and participated in the selection processes for all of the Ethiopia Contracts. The record also indicates that employees of the Respondent should have been aware of the Procurement Specialist's position, given that the bidding documents for each of the Ethiopia Contracts listed him as an officer with the Ethiopia Projects Implementation Agency and provided his email address for bid submission purposes. In addition, emails exchanged between an employee of the Respondent and the Procurement Specialist reveal that the employee sent the Procurement Specialist a draft copy of the Respondent's bid for the EA-GEF Contract prior to the bid submission deadline. The Procurement Specialist responded by suggesting various revisions, which were later reflected in the submitted bid. The Procurement Specialist also indicated that he was to meet with personnel of the Respondent at a meeting of the Ethiopia Projects Implementation Agency the following week to further discuss the procurement process for the EA-GEF Contract and a "pending disbursement."

40. Considering the above, and the record as a whole, the Sanctions Board finds that it is more likely than not that an employee of the Respondent gave a thing of value to the Procurement Specialist with an intent to influence the Procurement Specialist's actions in connection with the procurement process for at least the EA-GEF Contract.

2. Fraud allegation 1: Alleged misrepresentations of commissions or gratuities in connection with the Ethiopia Contracts

41. INT states that, if the Sanctions Board does not find sufficient evidence for corruption in connection with the Ethiopia Contracts, then it alleges in the alternative that the Respondent engaged in a fraudulent practice by knowingly or recklessly failing to disclose in each of the three bids for the Ethiopia Contracts the payment that the Respondent made to the Procurement Specialist as its agent. As the Sanctions Board has found sufficient evidence of corrupt practices in connection with the Ethiopia Contracts as discussed above, the Sanctions Board need not consider INT's alternative fraud allegation, which INT presents in a footnote in the SAE.

3. Corruption allegation 2: Alleged bribe in connection with the Nepal Contract

42. In accordance with the applicable definition of "corrupt practice" under the January 2011 Procurement Guidelines, INT bears the initial burden to prove that it is more likely than not that the Respondent (i) offered, gave, received, or solicited – directly or indirectly – anything of value

(ii) to influence improperly the actions of another party.⁹ An explanatory footnote clarifies that “another party” refers to “a public official acting in relation to the procurement process or contract execution” and that the term “public official” includes “World Bank staff and employees of other organizations taking or reviewing procurement decisions.”¹⁰

a. Offering, giving, receiving or soliciting, directly or indirectly, of anything of value

43. The first element of corrupt practice requires a showing that a respondent offered or gave a thing of value. The recipient of the thing of value under this first element need not be – though may be – the public official who is the intended target of influence under the second element of corrupt practice.¹¹ INT asserts that the Respondent agreed to make a payment of INR 5 million (approximately US\$95,000) to the Agent to pass along to public officials of the Nepal Project Implementation Agency. The Respondent does not contest that payments were made to the Agent at the time of the alleged misconduct.

44. Email correspondence indicates that employees of the Respondent agreed to pay the Agent in connection with the Nepal Contract. On April 19, 2012, the Respondent’s senior vice president sent an email to the Respondent’s president and managing director, copying the Respondent’s general manager for business development. In that email, the senior vice president informed the recipients of the need to pay INR 5 million to the Agent in relation to the Nepal Contract. The email attached an internal office memorandum written by the Respondent’s general manager for business development that provided additional detail regarding the payment, as discussed further in Paragraph 47 below.

45. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the Respondent made a payment to the Agent.

b. To influence improperly the actions of another party

46. INT alleges that the Respondent agreed to make an improper payment to the Agent to influence public officials in the selection process for the Nepal Contract in the JV’s favor. The Respondent argues that INT’s allegations are speculative and unsupported.

47. The totality of the evidence supports a finding that employees of the Respondent acted with the requisite corrupt intent. In particular, the email of April 19, 2012, discussed above, indicates that the payment in question was intended to influence public officials to take action on the Nepal Contract for the Respondent’s benefit. In that email, the Respondent’s senior vice president discussed the need to pay INR 5 million to the Agent to “ensure that by this weekend the [Nepal Contract] goes to [the World Bank] for approval.” In the internal office memorandum attached to

⁹ See January 2011 Procurement Guidelines at para. 1.16(a)(i).

¹⁰ See *id.* at para. 1.16(a)(i), n.20.

¹¹ See, e.g., Sanctions Board Decision No. 60 (2013) at para. 65.

the email, the Respondent's general manager for business development discussed the need to pay Nepalese authorities involved in the evaluation of the Nepal Contract, stating that the Respondent would cover half of the payment while the other half would be "shared by" the Agent. Consistent with the alleged corrupt arrangement to influence the procurement process, the JV won the Nepal Contract. As the Sanctions Board has previously observed,¹² evidence that the desired influence actually materialized may bolster a showing of the respondent's intent to influence, even though it is not necessary for a finding of corrupt practices.

48. The Sanctions Board is not persuaded by the Respondent's defense that INT's allegation fails because INT did not establish that any payments were made to public officials or that payments made to the Agent were for "anything other than payments for actual, verifiable work." The email of April 19, 2012, along with the appended memorandum, constitutes sufficient evidence that it is more likely than not that the payment in question was made and intended to influence public officials in the selection process for the Nepal Contract. INT therefore satisfied its burden of proof to present sufficient evidence of the corrupt practice. Thus, the burden shifted to the Respondent to demonstrate that its conduct did not amount to a corrupt practice. The Respondent failed to meet its burden, as it did not rebut the evidence put forward by INT – in particular the email of April 19, 2012.

49. The Sanctions Board notes that the record contains a statement from one of the Agent's bank accounts indicating that, on April 25, 2012, the Respondent made a payment of NPR 16,431,200 (the approximate equivalent of INR 10,263,900 or US\$192,317) to the Agent. The Respondent's own financial records appear to reflect this payment. INT argues that the bank statement corroborates the email of April 19, 2012, but the Respondent disputes that argument and asserts that the payment relates to another matter. As the Sanctions Board could not resolve this dispute of fact on the record in this case, the Sanctions Board did not take the payment into account in its analysis. Instead, the Sanctions Board primarily based its finding regarding corrupt intent on the email of April 19, 2012, as discussed in Paragraph 47 above.

50. Considering the above, and the record as a whole, the Sanctions Board determines that it is more likely than not that employees of the Respondent made a payment to the Agent to pass along to public officials with an intent to influence the actions of the public officials in the procurement process for the Nepal Contract.

4. Fraud allegation 2: Alleged misrepresentation of the JV Partner's role in the execution of the Nepal Contract

51. The succeeding sections relating to the Nepal Contract analyze INT's fraud allegations in accordance with the definition of "fraudulent practice" under the January 2011 Procurement Guidelines. In accordance with this definition, INT bears the initial burden to prove that it is more likely than not that the Respondent (i) engaged in an act or omission, including a

¹² See, e.g., Sanctions Board Decision No. 50 (2012) at para. 45; Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 78 (2015) at para. 56.

misrepresentation, (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.¹³

52. INT alleges that the Respondent engaged in a fraudulent practice by knowingly or recklessly misrepresenting, in the bid and in the Nepal Contract, the anticipated role of its JV Partner in the execution of the Nepal Contract. According to INT, the Respondent represented that the JV Partner would perform certain tasks and approximately 25% of the work under the Nepal Contract when it had, in fact, agreed with the JV Partner in a separate undisclosed agreement that the Respondent would perform all of the work under the Nepal Contract. In the Supplemental Submission, the Respondent concedes this allegation, stating that its conduct constitutes fraud within the meaning of the January 2011 Procurement Guidelines. The Respondent reiterated its concession at the hearing. Considering the Respondent's concession, and the totality of the evidence, the Sanctions Board determines that it is more likely than not that employees of the Respondent knowingly misrepresented, in the relevant bid and in the Nepal Contract, the JV Partner's anticipated role in the execution of the Nepal Contract to enable the Respondent to benefit from the award of the Nepal Contract.

5. Fraud allegation 3: Alleged submission of a false soil test report in connection with the Nepal Contract

a. Act or omission, including a misrepresentation

53. INT alleges that the Respondent misrepresented facts by submitting a false soil test report to the Nepal Project Implementation Agency during the execution of the Nepal Contract. The Respondent acknowledges in the Response that the soil test report was false, but denies that any of its employees knew, or had any reason to suspect, that the soil test report was false at the time of submission to the Nepal Project Implementation Agency. In light of this acknowledgment, as well as documentary evidence in the record indicating that the soil test report was false, the Sanctions Board finds that it is more likely than not that employees of the Respondent misrepresented facts to the Nepal Project Implementation Agency by submitting a false soil test report.

b. That knowingly or recklessly misleads or attempts to mislead a party

54. INT asserts that the Respondent knowingly or recklessly submitted the false soil test report to the Nepal Project Implementation Agency. As noted above, the Respondent denies that any of its employees knew, or had any reason to suspect, that the soil test report was false at the time of submission.

55. Contemporaneous email correspondence indicates that employees of the Respondent were aware that the soil test report was false prior to submitting the report to the Nepal Project Implementation Agency. For instance, in August 2013, the Respondent's project director wrote to the Respondent's senior vice president that the laboratory tasked with producing the report was "not at all serious regarding the soil investigation work." In October 2013, the project director

¹³ See January 2011 Procurement Guidelines at para. 1.16(a)(ii).

informed the senior vice president by email (with copy to other employees) that “there is no laboratory report received so far to substantiate the bearing capacity of the soil,” and that the “field data reports” did not bear any signatures of the Respondent’s personnel. The project director concluded in that email that “we cannot consider it authentic,” and suggested a “proper soil investigation and correct field / laboratory reports.” Despite these statements, on the following day, the project director submitted the false soil test report to the Nepal Project Implementation Agency.

56. Considering the above, and the record as a whole, the Sanctions Board finds that it is more likely than not that employees of the Respondent knowingly attempted to mislead representatives of the Nepal Project Implementation Agency.

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

57. The Sanctions Board has previously found sufficient evidence of intent to obtain a financial or other benefit or to avoid an obligation where the record showed that a misrepresentation was material to a respondent’s remuneration under the contract.¹⁴ In the present case, the record indicates that completion of the soil test report was required before the Respondent could commence another phase in the execution of the Nepal Contract. Accordingly, the Sanctions Board finds that it is more likely than not that the false soil test report was submitted to the Nepal Project Implementation Agency to enable the Respondent to benefit financially from execution of the Nepal Contract.

C. The Respondent’s Liability for the Acts of Its Employees

58. 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.¹⁵ 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.¹⁶

59. In the present case, the record supports a finding that employees of the Respondent engaged in the corrupt and fraudulent practices in accordance with the scope of their duties and with the purpose of serving the interests of the Respondent. For instance, with respect to the corrupt

¹⁴ See Sanctions Board Decision No. 83 (2015) at para. 63 (finding a misrepresentation to have been made in order to influence contract execution where the director of one of the respondents’ predecessors submitted a falsified receipt to support the predecessor’s reimbursement for expenses incurred during contract execution); Sanctions Board Decision No. 86 (2016) at para. 39 (finding a misrepresentation to have been made in order to obtain a financial benefit where the respondent provided false information in monthly reports and advance certificates to obtain remuneration under the contract for work purportedly done, but in fact not rendered, by consultants).

¹⁵ See, e.g., Sanctions Board Decision No. 61 (2013) at para. 30; Sanctions Board Decision No. 68 (2014) at para. 30.

¹⁶ See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at paras. 53-54.

payment in connection with the EA-GEF Contract, the record indicates that employees of the Respondent acted within the scope of their duties in making a payment to the Procurement Specialist, and that this action was undertaken with the purpose of serving the Respondent's interests (e.g., obtaining the EA-GEF Contract). Similarly, in regard to the corrupt payment in connection with the Nepal Contract, the record indicates that the Respondent's employees acted within the scope of their duties in making a payment to the Agent, and that this action was undertaken with the purpose of serving the Respondent's interests (e.g., obtaining the Nepal Contract). Moreover, the Respondent does not present, and the record does not provide any basis for, a rogue employee defense. Thus, the Sanctions Board finds the Respondent liable for the corrupt and fraudulent practices as carried out by its employees.

D. Sanctioning Analysis

1. General framework for determination of sanctions

60. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section 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 9.01. The range of sanctions set out in Section 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 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.

61. 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.¹⁷ 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.¹⁸

62. The Sanctions Board is required to consider the types of factors set forth in Section 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide 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.

63. Should the Sanctions Board impose a sanction on a respondent, it may also, pursuant to Section 9.04(b) of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of such respondent.

¹⁷ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

¹⁸ Sanctions Board Decision No. 44 (2011) at para. 56.

2. Plurality of sanctionable practices

64. As the Sanctions Board finds that the Respondent engaged in multiple counts of corrupt and fraudulent practices, 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)

65. The Sanctions Board has previously applied separate cumulative sanctions where the different counts of misconduct arose out of factually unrelated cases,¹⁹ and where a respondent’s fraudulent conduct was distinct from, and not merely a means of concealing or furthering, the respondent’s corrupt practices in the same case.²⁰ By contrast, the Sanctions Board applied aggravation rather than a separate sanction for multiple sanctionable practices in a case where the counts of misconduct were closely interrelated, with the fraud intended to prevent the discovery of the corrupt practices, the investigation into which was later obstructed.²¹ In that case, the Sanctions Board concluded that the plurality of sanctionable practices warranted aggravation, rather than multiplication, of the base sanction for each respondent.²²

66. In the present case, the record reflects that the Respondent engaged in two counts of corruption in relation to different projects in different countries. These counts of corruption were distinct from, and not merely a means of furthering, the other counts of misconduct. In addition, the Respondent engaged in fraudulent practices that are distinct from the corrupt practices. Accordingly, the Sanctions Board concludes that the plurality of the sanctionable practices engaged by the Respondent warrants multiplication, rather than aggravation, of the base sanction for the Respondent.

3. Factors considered in the present case

a. Severity of the misconduct

67. Section 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

¹⁹ Sanctions Board Decision No. 87 (2016) at para. 150.

²⁰ Sanctions Board Decision No. 63 (2014) at paras. 118-119; Sanctions Board Decision No. 87 (2016) at para. 151.

²¹ Sanctions Board Decision No. 60 (2013) at para. 143.

²² Id.

Sanctioning Guidelines identifies a repeated pattern of conduct and management's role in the misconduct as examples of severity.

68. *Repeated pattern of conduct:* INT asserts that emails relating to a Bank-Financed Project in the Islamic Republic of Afghanistan and “the facts laid out” in the SAE show a repeated pattern of conduct. However, any misconduct in connection with the Bank-Financed Project in Afghanistan is not the subject of these sanctions proceedings, and INT has not put forward sufficient evidence in support of allegations in this regard. Accordingly, and consistent with past precedent,²³ the Sanctions Board declines to apply aggravation for repetition as INT requests. The Sanctions Board does, however, apply aggravation for repetition based on the Respondent's fraudulent practices in relation to the Nepal Contract, which involved fraud in procurement and contract execution, on different subject matters (the JV Partner's anticipated role in contract execution and soil testing), and extended over the course of approximately one year.

69. *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.²⁴ Here, the record reveals that senior management of the Respondent – including the president and managing director, senior vice president, and general manager for business development – were involved in the misconduct. Accordingly, the Sanctions Board finds aggravation warranted under this factor.

b. Interference with investigation

70. Section 9.02(c) of the Sanctions Procedures requires the Sanctions Board to consider any interference by the sanctioned party in the Bank's investigation. Under Section IV.C.1 of the Sanctioning Guidelines, interference with the investigative process includes “making false statements to investigators in order to materially impede a Bank investigation” and “acts intended to materially impede the exercise of the Bank's contractual rights of audit or access to information.” INT asserts that the Respondent obstructed INT's investigation by providing fabricated invoices to INT to prevent INT from discovering that the Respondent had paid a bribe to the Procurement Specialist. However, INT has not established that the asserted fabricated invoices were intended to impede its investigation. Moreover, the Respondent admits that one of its employees paid a bribe to the Procurement Specialist. The Sanctions Board finds that aggravation is not warranted in these circumstances.

²³ See Sanctions Board Decision No. 73 (2014) at para. 43.

²⁴ See, e.g., Sanctions Board Decision No. 66 (2014) at para. 36 (applying aggravation for the direct involvement of the director of the respondent's predecessor where the record reflected that the director received and subsequently acceded to a Bank staff member's solicitation of employment for his son); Sanctions Board Decision No. 78 (2015) at para. 77 (applying aggravation for the involvement of the respondent firm's chief executive officer in the corrupt arrangement).

c. Voluntary corrective action

71. Section 9.02(e) of the Sanctions Procedures provides for mitigation where the sanctioned party took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies several examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of those actions to be considered as potential indicia of the respondent's genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.²⁵

72. *Cessation of misconduct*: Section V.B.1 of the Sanctioning Guidelines provides that mitigation may be appropriate where a respondent ceases to engage in misconduct. The Sanctions Board has previously granted mitigation on this ground upon a finding that a respondent took action to stop the misconduct soon after becoming aware of it.²⁶ Here, the Respondent argues that mitigation is warranted under this factor because there is no evidence demonstrating any continuing misconduct. However, there is no indication in the record that the sanctionable practices were terminated based on any initiative taken by the Respondent upon learning of the misconduct. The Sanctions Board finds that mitigation is not justified in these circumstances.

73. *Internal action against responsible individual(s)*: Section V.B.2 of the Sanctioning Guidelines states that mitigation may be appropriate where "[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative." The Sanctions Board has previously declined to apply mitigation based on internal action against responsible staff where the respondent failed to substantiate its stated measures.²⁷ In the present case, the Respondent asserts that mitigation is warranted for disciplinary measures taken. According to the Respondent, it terminated a certain employee. However, the terminated employee is not implicated in the misconduct at issue in this case, but rather appears to have played a role in the Bank-Financed Project in Afghanistan. In addition, the Respondent asserts that it has plans to terminate several culpable employees after the close of the case. Yet, mere plans or intentions to terminate employees do not justify mitigation under this factor. Finally, the Respondent asserts that it stripped an employee of his "Ethiopian market responsibilities" and relegated him to "a back office role" as a consequence of his conduct in Ethiopia. However, the Respondent does not present any evidence in support of this assertion and the record does not otherwise provide a basis for determining whether any such action was in response to the misconduct concerned. The Sanctions Board declines to apply mitigation in these circumstances.

74. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent's "[e]stablishment or

²⁵ Sanctions Board Decision No. 45 (2011) at para. 72.

²⁶ See, e.g., Sanctions Board Decision No. 63 (2014) at para. 105 (granting mitigating credit where a respondent, immediately after becoming aware of the misconduct, took action to ensure that the corrupt payments would stop).

²⁷ See Sanctions Board Decision No. 44 (2011) at paras. 71-72.

improvement, and implementation of a corporate compliance program.” The Sanctions Board has previously granted mitigation on this ground upon a finding that a respondent’s asserted compliance measures appeared to address the type of misconduct at issue²⁸ and/or at least some of the elements set out in the World Bank Group’s Integrity Compliance Guidelines (the “Integrity Guidelines”).²⁹ The Respondent requests, and INT supports, mitigation on this ground. The record indicates that in July 2014, the Respondent hired a compliance officer. The record also contains copies of a “Code of Business Ethics & Conduct” and a “Compliance Handbook,” which together appear to address the misconduct at issue in this case and at least some elements set out in the Integrity Guidelines. In addition, the record contains documentary evidence indicating that senior executives and other employees of the Respondent underwent compliance training. The Sanctions Board finds that mitigation is warranted for the Respondent in these circumstances. This finding is made based on the written record before the Sanctions Board, and therefore without prejudice to any future assessment that the World Bank Group’s Integrity Compliance Officer may conduct to more fully evaluate the adequacy and implementation of integrity compliance measures taken by the Respondent.

75. *Restitution or financial remedy:* Section V.B.4 of the Sanctioning Guidelines provides that mitigation may be appropriate “[w]hen the respondent voluntarily addresses any inadequacies in contract implementation or returns funds obtained through the misconduct.” The Sanctions Board has previously found that a respondent’s offer of restitution may justify mitigation.³⁰ Here, the Respondent asserts that it has repeatedly offered to pay restitution or to find an alternate financial remedy, that INT rejected every offer without discussion based on lack of requisite institutional approval, and that the Respondent remains willing to pay a financial penalty. INT does not dispute that the Respondent offered to pay restitution, but instead asserted at the hearing that INT assessed the offer and determined that the offer “did not meet appropriate parameters and was the Respondent’s attempt to pay for a lesser debarment.” Considering the written record and the parties’ submissions at the hearing, the Sanctions Board finds that the Respondent’s offer of restitution justifies mitigating treatment.

d. Cooperation

76. Section 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 of the Sanctioning Guidelines identifies a respondent’s assistance with INT’s investigation, a respondent’s internal investigation, admission/acceptance of guilt/responsibility, and voluntary restraint as examples of cooperation.

77. *Assistance and/or ongoing cooperation:* Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance with INT’s investigation or ongoing cooperation, with consideration of “INT’s representation that the respondent has provided substantial

²⁸ See, e.g., Sanctions Board Decision No. 71 (2014) at para. 94.

²⁹ See, e.g., Sanctions Board Decision No. 56 (2013) at para. 69.

³⁰ See Sanctions Board Decision No. 53 (2012) at para. 62.

assistance,” as well as “the truthfulness, completeness, 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,³¹ or corresponded with INT and made relevant personnel available for interviews.³² In the present case, the Respondent requests mitigation for its timely cooperation, and INT supports mitigation for the Respondent’s late cooperation. The record reveals that the Respondent replied in a detailed manner to INT’s show-cause letter, and made relevant personnel – including employees implicated in the misconduct – available for recorded interviews. The record also reveals that the Respondent provided INT with internal documents, including accounting records and relevant email correspondence. The interviews and documents provided by the Respondent include inculpatory evidence as relied upon by INT in the SAE. The Sanctions Board finds that mitigation is warranted for the Respondent in these circumstances.

78. *Internal investigation:* Section V.C.2 of the Sanctioning Guidelines provides that mitigation may be appropriate where a respondent has “conducted its own, effective internal investigation of the misconduct and relevant facts relating to the misconduct for which it is to be sanctioned and shared results with INT.” The Respondent requests mitigation on this ground, asserting that it retained outside counsel to conduct an extensive internal investigation and that the Respondent shared the findings of this investigation with INT in June 2015. The Respondent did not attach evidence of its internal investigation for “confidentiality reasons,” but offered to provide relevant documentation to the Sanctions Board if INT does not object. INT acknowledges that it accepted this factor during settlement discussions, and that it applied mitigating treatment on this basis in making its settlement offer to the Respondent. The Sanctions Board accords mitigation to the Respondent in these circumstances.

79. *Admission/acceptance of guilt/responsibility:* Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent’s admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance should be given more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. In the Explanation and Response, the Respondent admits that one of its employees paid a bribe in relation to the EA-GEF Contract. In the Supplemental Submission, the Respondent conceded INT’s fraud allegation with regard to the alleged misrepresentation of the JV Partner’s role in the execution of the Nepal Contract. At the hearing, the Respondent reiterated its admissions on these counts of misconduct. The Sanctions Board finds that mitigation is warranted for the Respondent under this factor.

80. *Voluntary restraint:* Section V.C.4 of the Sanctioning Guidelines provides for mitigation where a sanctioned party has voluntarily refrained from bidding on Bank-financed tenders pending the outcome of an investigation. The Respondent requests mitigation on this ground, asserting that it voluntarily withdrew nine bids for Bank-financed contracts that consequently resulted in the Respondent’s loss of approximately US\$500 million. The Respondent provided contemporaneous

³¹ Sanctions Board Decision No. 53 (2012) at para. 58.

³² See Sanctions Board Decision No. 56 (2013) at para. 73; Sanctions Board Decision No. 79 (2015) at para. 48.

evidence in support of this request, and INT acknowledges that it applied mitigating treatment on this basis in making its settlement offer to the Respondent. The Sanctions Board finds that mitigation is justified in these circumstances.

e. Period of temporary suspension

81. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the Respondent has been temporarily suspended since the EO's issuance of the Notice on April 26, 2016.

f. Other considerations

82. Under Section 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."

83. *Passage of time:* The Respondent seeks mitigation under this factor. 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.³³ 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.³⁴ At the time of the EO's issuance of the Notice in April 2016, more than five years had elapsed since the misconduct in Ethiopia occurred (and more than five years since the Bank first became aware of the potential misconduct in Ethiopia); and approximately four years had elapsed since the misconduct in Nepal occurred (and more than three and a half years since the Bank first became aware of the potential misconduct in Nepal). The Sanctions Board finds that mitigation is warranted based on this passage of time.

84. *National debarment:* The Sanctions Board has previously considered as a mitigating factor the sanctions imposed on a respondent by the national agency implementing Bank-Financed Projects in that country.³⁵ Here, the Sanctions Board takes into account that the Public Procurement and Property Administration Agency of Ethiopia debarred the Respondent from participating in any of its tenders for approximately two years and four months.

³³ 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).

³⁴ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71; Sanctions Board Decision No. 83 (2015) at para. 102.

³⁵ See Sanctions Board Decision No. 2 (2008) at para. 7; Sanctions Board Decision No. 54 (2012) at para. 43.

85. *Record of general performance:* The Respondent submits that it is a “good corporate citizen” and that it has achieved high customer satisfaction and remains committed to development work, despite operating in “remote and/or dangerous” parts of the world. Consistent with past precedent declining to apply mitigation on the basis of a respondent’s claimed record of general performance and contributions to development work,³⁶ the Sanctions Board finds no mitigation justified on this basis under the sanctions framework.

86. *Adverse consequences of debarment:* The Respondent asserts that it faces the loss of 92% of its revenue stream should it be debarred as recommended by the EO, describing the consequences of a lengthy debarment as a “corporate death penalty” for the Respondent. Consistent with past precedent,³⁷ the Sanctions Board does not find mitigation to be justified for the negative effects of debarment on the Respondent.

87. *Proportionality with past sanctions cases:* The Respondent asserts that, in past sanctions cases, “large companies from the developed world” have received a greater opportunity to negotiate settlement agreements with INT than smaller companies from the developing world, such as the Respondent. Section 9.02(i) of the Sanctions Procedures expressly limits the Sanctions Board’s sanctioning analysis to considerations reasonably relevant to a respondent’s own culpability or responsibility for the sanctionable practice. The Respondent fails to establish the relevance of its argument under this framework. Accordingly, the Sanctions Board declines to apply mitigation on this basis.

E. Determination of Liability and Appropriate Sanction

88. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, 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;³⁸ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider³⁹ 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 Project, provided, however, that after a minimum period of ineligibility of four (4) years and six (6) months beginning from the date of this decision, the Respondent may be

³⁶ See, e.g., Sanctions Board Decision No. 72 (2014) at para. 68.

³⁷ See, e.g., Sanctions Board Decision No. 79 (2015) at para. 56; Sanctions Board Decision No. 92 (2017) at para. 131.

³⁸ 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 9.01(c)(i), n.16.

³⁹ A nominated sub-contractor, consultant, manufacturer or supplier, or 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 9.01(c)(ii), n.17.

released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for corrupt practices as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines and Paragraph 1.16(a)(i) of the January 2011 Procurement Guidelines; and for fraudulent practices as defined in Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines.

89. The Bank will also provide notice of this declaration 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 declaration 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
Teresa Cheng
Catherine O'Regan

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>).