

Date of issuance: December 18, 2017

**Sanctions Board Decision No. 103<sup>1</sup>**  
**(Sanctions Case No. 374)**

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

**Decision of the World Bank Group<sup>2</sup> Sanctions Board imposing a sanction of debarment with conditional release on the Respondent, together with certain Affiliates,<sup>3</sup> for a minimum period of two (2) years and six (6) months beginning from the date of this decision. This sanction is imposed on the Respondent for a corrupt practice.**

**I. INTRODUCTION**

1. The Sanctions Board met in a panel session 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.

2. A hearing was held on March 17, 2017, following requests from the Respondent and the World Bank Group's Integrity Vice Presidency ("INT"), and in accordance with Article VI of the Sanctions Procedures. INT participated in the hearing through its representatives attending in person. The Respondent was represented by external counsel attending remotely via video

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<sup>1</sup> Note from the World Bank's Legal Vice-Presidency ("LEG"): 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" issued on the Policy and Procedure Repository of the World Bank on June 28, 2016 (the "2016 Sanctions Procedures"). At the time of the issuance of the Notice of Sanctions Proceedings (the "Notice") to the respondent entity in Sanctions Case No. 374 (the "Respondent") on March 31, 2016, the applicable procedures, as 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. With respect to the procedures, the structure and numbering of the sections and paragraphs under the 2016 Sanctions Procedures was changed, without affecting the content of the rules applicable to this case under the Sanctions Procedures.

<sup>2</sup> 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"). For the avoidance of doubt, 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.

<sup>3</sup> 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.

conference. The Sanctions Board deliberated and reached its decision based on the written record and 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")<sup>4</sup> to the Respondent on March 31, 2016, appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated November 6, 2015;
- ii. Explanation submitted by the Respondent to the EO on April 28, 2016 (the "Explanation");
- iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on July 7, 2016 (the "Response"); and
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on August 4, 2016 (the "Reply").

4. On March 31, 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 eligibility<sup>5</sup> with respect to any Bank-Financed Projects,<sup>6</sup> 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 debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The EO recommended a minimum period of ineligibility of three (3) 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.

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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. For the avoidance of doubt, the declaration of ineligibility also extends to 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.



## **II. GENERAL BACKGROUND**

5. This case arises in the context of the Nepal-India Electricity Transmission and Trade Project (the “Project”), which sought to facilitate electricity trade between the Republic of India and the Federal Democratic Republic of Nepal (the “Borrower”) and to increase the supply of electricity in the territory of the Borrower. On July 15, 2011, IDA and the Borrower entered into a financing agreement for the equivalent of US\$99 million to finance the Project. The Project became effective on September 29, 2011, and closed on December 31, 2016.

6. In July 2011, the project implementation unit (the “PIU”) issued bidding documents for a contract for the “Design, Supply, and Installation of Hetauda-Dhalkebar-Inaruwa 400 KV Transmission Line” (the “Contract”). On December 29, 2011, the joint venture (the “JV”) of two firms submitted its bid for the Contract. The bid expressly indicated that the JV had paid or will pay the Respondent “commissions, gratuities, or fees with respect to the bidding process or execution of the Contract.” The PIU recommended the award of the Contract to the JV. On February 3, 2013, the PIU and the JV signed the Contract, which lists the Respondent as the JV’s local agent.

7. INT alleges that the Respondent engaged in corrupt practices by soliciting from one of the JV partners (the “JV Partner”) an improper payment to pass along to government officials, in addition to an amount from the Respondent, to influence the award of the Contract.

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

8. *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.

9. *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.

10. *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.

11. *Applicable definition of corrupt practice:* The alleged sanctionable practice in this case has 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 the Project’s procurement, and whose definition of corrupt practice was replicated in the relevant bidding documents and the Contract. Paragraph 1.16(a)(i) of these Guidelines defines the term

“corrupt practice” as the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

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

##### **A. INT’s Principal Contentions in the SAE**

12. INT alleges that the Respondent engaged in corrupt practices by soliciting from the JV Partner an improper payment to pass along to public officials in order to influence the award of the Contract. According to INT, correspondence among employees of the JV Partner indicates that the Respondent, which acted as a “go-between” for the JV Partner and the PIU, informed the JV Partner of the need to pay PIU officials INR 10 million (approximately US\$190,000), half of which was to be paid by the JV Partner and the other half by the Respondent. INT asserts that the purpose of the solicited payment was most likely to influence the Contract’s approval process, which had been delayed but was at that time under the final stages before the PIU.

13. INT submits that aggravation is warranted for (i) the involvement of high-level PIU officials as the intended recipients of the improper payments; and (ii) the scale of the improper payments, and the volume and importance of the Contract affected by the misconduct. INT submits that the agreement of the Respondent’s chairman to be interviewed and to provide documents, when considered in light of the Respondent’s denial of its involvement in the illicit payments, warrants limited mitigation.

##### **B. The Respondent’s Principal Contentions in the Explanation and the Response**

14. The Respondent argues that it cannot be implicated in the alleged misconduct based on correspondence between the JV partners, considering that the Respondent is not a party to, and was not even aware of, such communication. In addition, the Respondent asserts that it provided legitimate services as the JV’s authorized agent and did not solicit unethical favors from any public official as the purported “go-between” for the JV and the PIU. The Respondent further denies that it had improperly influenced PIU officials in order to obtain the Contract, which was awarded following independent bid evaluation, due diligence, rigorous scrutiny, and Bank approval.

15. The Respondent submits that mitigation is warranted for its cooperation; its “good reputation in terms of integrity, capability and proficiency”; and the absence of past misconduct.

##### **C. INT’s Principal Contentions in the Reply**

16. In the Reply, INT argues that the Respondent failed to present evidence that casts doubt on the authenticity and truthfulness of the correspondence among employees of the JV Partner, and on INT’s interpretation that the reference to “agent” in that correspondence pertains to the Respondent. INT further asserts that the Respondent’s argument that the tender evaluation involved a partially-independent evaluation committee and was approved by the Bank are irrelevant since the allegation in this case relates to payments made to advance or expedite the tender process, and not to any scoring alterations during bid evaluation.



17. With respect to sanctioning factors, INT submits that the Respondent does not deserve further mitigation, and that the Respondent's "detailed web of false claims and apparently fabricated documents" warrants aggravation.

**D. Presentations at the hearing**

18. At the hearing, INT argued that based on certain correspondence among employees of the JV Partner, the Respondent solicited INR 5 million (approximately US\$95,000) from the JV Partner in order "to move along the stalled tender process." INT asserted that an internal office memorandum attached to the correspondence shows that the Respondent was supposed to add another INR 5 million to the solicited amount and thereafter pass along the total amount of INR 10 million (approximately US\$190,000) to public officials in order to influence the evaluation process. According to INT, the Respondent received the solicited payment a week after the email, and the recommendation of the Contract's award to the JV was submitted to the PIU for approval five days after the Respondent's receipt of the payment. INT argued that the correspondence, the sequence of events, and the matching bank statements in the record show that the Respondent solicited and received a thing of value in order to influence public officials in the Contract award process. With respect to sanctioning factors, INT asserted that the Respondent's claim that the payment it had received from the JV Partner was for an entirely different contract constitutes "obstructive communications to INT" that warrants aggravation.

19. The Respondent asserted that INT, in support of its allegations, primarily relies on correspondence between the JV partners. The Respondent argues that the correspondence between the JV partners cannot implicate the Respondent because the Respondent was not privy to such communication. The Respondent also denied that it acted as a "go-between" for the JV Partner and the PIU officials, and that it solicited unethical favors from the PIU. Further, the Respondent argued that INT is unable to establish the "chain of causation" of the alleged solicitation and the Contract award. According to the Respondent, the funds that it had received from the JV Partner were for services that the Respondent rendered for a different project, and not for payment to public officials to influence the Contract award or obtain information from the PIU. With respect to sanctioning factors, the Respondent asserted that it cooperated with INT in its investigation and provided necessary information; that it is a reputable local contractor; and that it has never been implicated in any misconduct.

**V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS**

20. The Sanctions Board will first consider whether it is more likely than not that the alleged sanctionable practice occurred and whether the Respondent may be held liable for it. The Sanctions Board will then determine what sanction, if any, should be imposed on the Respondent.

**A. Evidence of Corrupt Practice**

21. In accordance with the applicable definition of "corrupt practice" under the January 2011 Procurement Guidelines, INT bears the initial burden to prove that the Respondent (i) offered, gave, received, or solicited, directly or indirectly, anything of value

(ii) to influence improperly the actions of another party.<sup>7</sup> 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.”<sup>8</sup>

1. Receiving or soliciting, directly or indirectly, of anything of value

22. The first element of corrupt practice in this case requires a showing that the Respondent received or solicited a thing of value. The recipient of the thing of value under this first element of the definition need not be – though may be – the public official who is the intended target of influence under the second element of corrupt practice.<sup>9</sup> Moreover, one firm’s pressure on another firm to make improper payment to public officials may constitute “soliciting” under the applicable definition of corrupt practice,<sup>10</sup> as discussed below in Paragraph 24. In this case, INT alleges that the Respondent received or solicited from the JV Partner an improper payment to be passed on to government officials. The Respondent argues that it cannot be implicated in the alleged misconduct because the correspondence on which INT relies in support of its allegations does not indicate that the Respondent was a party to or acknowledged the correspondence.

23. *Receipt:* The record supports a finding that the Respondent received a thing of value from the JV Partner. On April 19, 2012, the JV Partner’s senior vice president (the “Vice President”) sent an email (the “April 19 Email”) to the JV Partner’s president (the “President”) with copy to the JV Partner’s general manager (the “General Manager”). In the April 19 Email, the Vice President informed the President of the need to pay INR 5 million (approximately US\$95,000) to “our agent” in order to “ensure that by this weekend the [C]ontract goes to WB for approval.” Attached to the April 19 Email was an internal office memorandum (the “Internal Memo”) prepared by the General Manager explaining the need to give “authorities involved in evaluation” of the Contract INR 10 million (approximately US\$190,000), half of which “will be shared by our agent.” The reference to “agent” in the April 19 Email and the Internal Memo more likely than not pertains to the Respondent, considering that the record shows, and the parties do not dispute, that the Respondent was the JV’s sole agent under the Contract. Further, the record contains a bank statement of the Respondent indicating that, on April 25, 2012, the JV Partner deposited NPR 16,431,200 (the approximate equivalent of INR 10,263,900 or US\$192,317) to the Respondent’s account (the “April 25 Payment”). Although the Respondent argues that the April 25 Payment relates to a different project, the Respondent does not deny receipt of this amount from the JV Partner.

24. *Solicitation:* The Sanctions Board has previously held that “corrupt practice” may include both the act of soliciting something for oneself in exchange for exerting improper

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<sup>7</sup> See January 2011 Procurement Guidelines at Paragraph 1.16(a)(i).

<sup>8</sup> *Id.* at n.20.

<sup>9</sup> See Sanctions Board Decision No. 60 (2013) at para. 65; Sanctions Board Decision No. 72 (2014) at para. 43; Sanctions Board Decision No. 78 (2015) at para. 53.

<sup>10</sup> See Sanctions Board Decision No. 50 (2012) at paras. 43-44.



influence, as well as the act of soliciting or enticing another to give something to a third party in exchange for the third party's improper influence.<sup>11</sup> In a past case, the Sanctions Board found insufficient evidence to support a finding of solicitation where the record failed to show that the respondent's employees intended, or were perceived, to pressure the joint venture partner to pay for the public official's recreational trip.<sup>12</sup> Similarly, the record in this case does not support a finding that the Respondent solicited an improper payment from the JV Partner. For instance, the April 19 Email and the Internal Memo were authored by, and sent to, employees of the JV Partner only, and do not appear to have had the Respondent's involvement. Moreover, nothing in the language of the April 19 Email and the Internal Memo suggests that the Respondent asked, enticed, or pressured the JV Partner to give a sum of money to pay PIU officials.

25. In these circumstances, the Sanctions Board finds that INT has not met its burden of proof to show that it is more likely than not that the Respondent solicited a thing of value from the JV Partner. The Sanctions Board therefore finds that the first element of corrupt practice is satisfied only with respect to INT's allegation of "receipt," not "solicitation."

2. To influence improperly the actions of another party

26. The second element of corrupt practice requires a showing that the respondent, in receiving or soliciting a thing of value from another party under the first element, acted with a purpose to influence improperly the actions of another party. INT alleges that the Respondent received or solicited an improper payment from the JV Partner and passed it on to public officials in order to influence the Contract award, including by expediting the tender process. The Respondent argues that the April 25 Payment it received from the JV Partner was for services that the Respondent rendered in relation to a different project, and not for corrupt purposes. The Respondent denies that it improperly influenced PIU officials in order to obtain the Contract, which the Respondent contends was awarded in accordance with the proper procedures for bid evaluation and after Bank approval.

27. The totality of the evidence supports a finding that the Respondent acted with the requisite corrupt intent. As discussed in Paragraph 23 above, the April 19 Email and the Internal Memo indicate that the payment received by the Respondent from the JV Partner was intended to influence public officials to take action on the Contract for the benefit of the JV. In the April 19 Email, the Vice President explicitly stated that the payment to the Respondent, as the JV's agent, was for purposes of ensuring that the "[C]ontract goes to WB for approval" by that weekend. In the Internal Memo, the General Manager expressly stated that it was necessary to give "authorities involved in [the] evaluation of [the Contract]" a payment, half of which was to be shared by the Respondent as the JV's agent.

28. In addition, the timing of the April 19 Email and the April 25 Payment further supports a finding that the Respondent acted with corrupt intent. The record indicates that, in February 2012, the bid evaluation committee for the Contract found the JV's bid to be substantially responsive and the lowest evaluated, but declined to take further action pending

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<sup>11</sup> See Sanctions Board Decision No. 50 (2012) at para. 44; Sanctions Board Decision No. 85 (2016) at para. 26.

<sup>12</sup> Sanctions Board Decision No. 85 (2016) at paras. 26-28.

clarifications from the JV on some aspects of its bid. In the Internal Memo shared among the JV Partner's employees on April 19, 2012, the General Manager stated that the "[b]alance amount [should] be transferred immediately as evaluation process is on hold." Six days later, the JV Partner made the April 25 Payment to the Respondent's bank account. Another six days after, on May 1, 2012, a bid evaluation review committee was formed likewise recommending award of the Contract to the JV pending certain clarifications. Consistent with the alleged corrupt arrangement to influence the procurement process, the PIU requested the Bank's no-objection to the award of the Contract to the JV, and the JV ultimately won the Contract. As the Sanctions Board has previously observed, 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.<sup>13</sup>

29. The Sanctions Board finds no merit in the Respondent's argument that the April 25 Payment was not made with corrupt intent as it was for services that the Respondent rendered in relation to a different project. When viewed in the context of the April 19 Email and the timing of the payment, the April 25 Payment constitutes sufficient evidence that it is more likely than not that the Respondent received it in order to influence public officials in the selection process for the Contract. INT therefore satisfied its burden of proof to present sufficient evidence of the corrupt practice. In these circumstances, the Respondent bore an evidential burden to demonstrate that its conduct did not amount to a corrupt practice. However, the Respondent failed to substantiate its claim with sufficient evidence that the April 25 Payment was for legitimate services it had rendered in connection with a different project. Accordingly, the Respondent did not meet its evidential burden to show that the April 25 Payment was for purposes other than influencing the Contract award, including by expediting the stalled tender process.

30. In light of the above, and the record as a whole, the Sanctions Board determines that it is more likely than not that the payment the Respondent received from the JV Partner was intended to influence the actions of public officials in the procurement process for the Contract.

## **B. Sanctioning Analysis**

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

31. 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.

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<sup>13</sup> See, e.g., Sanctions Board Decision No. 78 (2015) at para. 56; Sanctions Board Decision No. 87 (2016) at para. 104.



32. 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.<sup>14</sup> 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.<sup>15</sup>

33. 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.

34. 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.

## 2. Factors considered in the present case

### a. Severity of the misconduct

35. 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.5 of the Sanctioning Guidelines identifies the involvement of a public official or World Bank Staff as an example of severity.

36. *Involvement of public official or World Bank Staff:* In past cases, the Sanctions Board has declined to apply aggravation where the record did not establish that the respondent specifically conspired with or involved a public official in the respondent’s corrupt scheme<sup>16</sup> or initiated the corrupt arrangement.<sup>17</sup> In this case, INT asserts that the involvement of high level PIU officials as the intended recipients of the improper payments warrants aggravation. While the record reflects that the Respondent received payments from the JV Partner to give to PIU officials, the record does not support a finding that the Respondent specifically conspired with PIU officials or initiated the corrupt scheme so as to justify aggravation.

### b. Interference in the Bank’s investigation

37. 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. Section IV.C.1 of the

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<sup>14</sup> See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

<sup>15</sup> Sanctions Board Decision No. 44 (2011) at para. 56.

<sup>16</sup> See Sanctions Board Decision No. 50 (2012) at para. 62.

<sup>17</sup> See Sanctions Board Decision No. 60 (2013) at para. 126.

Sanctioning Guidelines states that this factor may include “[d]eliberately destroying, falsifying, altering, or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation.” In this case, INT asserts that aggravation is warranted because the Respondent “took active steps to mislead INT” and provided “a detailed web of false claims and apparently fabricated documents.” However, the evidence in the record is insufficient to show that the Respondent deliberately falsified documents or made false statements to materially impede INT’s investigation. Consistent with past precedent,<sup>18</sup> the Sanctions Board declines to apply aggravation in these circumstances.

c. Cooperation

38. 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.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 assistance in an investigation,” with consideration of 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 declined to apply mitigation where the respondents promptly provided detailed responses to INT’s queries, but made statements that revealed substantial internal inconsistencies.<sup>19</sup> In this case, INT asserts that while the Respondent’s chairman agreed to be interviewed and provided documents, the Respondent denied its involvement in the illicit payments. The Respondent submits that it had fully cooperated with the investigation without concealing material facts. The record shows that the Respondent failed to produce key documents and instead made unsubstantiated assertions. The Sanctions Board finds that the Respondent failed to make a full and frank disclosure to INT so as to warrant mitigation for cooperation.

d. Period of temporary suspension

39. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent’s temporary suspension since the EO’s issuance of the Notice on March 31, 2016.

3. Other considerations

40. 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.”

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<sup>18</sup> See, e.g., Sanctions Board Decision No. 100 (2017) at para. 48.

<sup>19</sup> See, e.g., Sanctions Board Decision No. 61 (2013) at para. 44 (declining to apply mitigation where the record did not support a finding that the respondents substantially assisted the investigation and where the respondents’ statements revealed substantial internal inconsistencies, particularly in their varying accounts of basic aspects of the bid preparation process).



41. *Scale of payments; volume and importance of contract:* INT asserts that “the scale of the improper payments” in the amount of approximately US\$190,000, and “the volume and importance” of the Contract warrant aggravation. However, INT does not assert, and the record does not show, how the scale of the payments and the “volume and importance” of the Contract are relevant to the Respondent’s culpability or responsibility that would then warrant aggravation. Accordingly, the Sanctions Board declines to apply aggravation on this basis.

42. *Record of general performance:* The Respondent requests the Sanctions Board to take into account its “good standing,” particularly the Respondent’s asserted “good reputation in terms of integrity, capability and proficiency for successfully implementing multidimensional donor funded projects.” The Sanctions Board has previously declined to grant mitigation on the basis of a respondent’s claimed record of general performance and satisfaction of contract obligations.<sup>20</sup> Consistent with past precedent, the Sanctions Board declines to apply any mitigation on this ground.

43. *Absence of past misconduct:* The Respondent asserts that this is the first time that it has been accused of any misconduct. The Sanctions Board has previously held that the absence of past misconduct does not warrant mitigation, but is a neutral fact.<sup>21</sup> The Sanctions Board, therefore, finds no mitigation justified on this basis.

### **C. Determination of Liability and Appropriate Sanction**

44. 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;<sup>22</sup> (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider<sup>23</sup> 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 two (2) years and six (6) months, the Respondent may be released from ineligibility

<sup>20</sup> See, e.g., Sanctions Board Decision No. 54 (2012) para. 44; Sanctions Board Decision No. 72 (2014) at para. 68; Sanctions Board Decision No. 79 (2015) at para. 55.

<sup>21</sup> See, e.g., Sanctions Board Decision No. 56 (2013) at para. 85; Sanctions Board Decision No. 90 (2016) at para. 49.

<sup>22</sup> 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.

<sup>23</sup> 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.

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 sanction is imposed on the Respondent for a corrupt practice as defined in Paragraph 1.16(a)(i) of the January 2011 Procurement Guidelines.

45. The ineligibility of the Respondent shall extend across the operations of the World Bank Group. 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.<sup>24</sup>



J. James Spinner (Chair)

On behalf of the  
World Bank Group Sanctions Board

J. James Spinner  
Teresa Cheng  
Catherine O'Regan

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<sup>24</sup> At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for 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>).