

Date of issuance: July 15, 2014

**Sanctions Board Decision No. 72
(Sanctions Case No. 211)**

**ITF Grant No. TF054404
ITF Grant No. TF054052
Republic of Iraq**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment on the two respondent entities (respectively, “Respondent Firm” and “Respondent Firm International”) and the two individual respondents (the director of the respondent entities, hereinafter referred to as the “Respondent Director”; and the commercial manager of Respondent Firm International, hereinafter referred to as the “Respondent Commercial Manager”) in Sanctions Case No. 211, together with any entity that is an Affiliate² directly or indirectly controlled by any of these Respondents, for a period of three (3) years for Respondent Firm, four (4) years for Respondent Firm International and the Respondent Director, and two (2) years for the Respondent Commercial Manager. These debarment periods shall be added to the minimum periods of debarment previously imposed on Respondent Firm, Respondent Firm International, and the Respondent Director in Sanctions Board Decision No. 60 (2013), and to the debarment period previously imposed on the Respondent Commercial Manager in Sanctions Board Decision No. 60 (2013). These sanctions are imposed on Respondent Firm for fraudulent practices, on Respondent Firm International for corrupt practices, on the Respondent Director for corrupt and fraudulent practices, and on the Respondent Commercial Manager for corrupt practices.

I. INTRODUCTION

1. The Sanctions Board held a plenary session on February 7, 2014, to review this case. The Sanctions Board was composed of L. Yves Fortier (Chair), Hassane Cissé, Ellen Gracie Northfleet, Catherine O'Regan, Denis Robitaille, and J. James Spinner.
2. A hearing was held on December 4, 2013, in accordance with Article VI of the Sanctions Procedures following requests from all respondents in Sanctions Case No. 211 (the

¹ In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (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.

² In accordance with Section 1.02(a) of the Sanctions Procedures, the term “Affiliate” means “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.”

“Respondents”) and the World Bank Group’s Integrity Vice Presidency (“INT”). INT participated in the hearing through its representatives attending in person. The individual Respondents participated in the hearing via videoconference. Respondent Firm, Respondent Firm International, and the Respondent Director (together, “Respondent Firm et al.”), jointly contested the allegations raised against them. The Respondent Commercial Manager separately contested the allegations raised against him. 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 of Sanctions Proceedings issued by the World Bank’s Evaluation and Suspension Officer (the “EO”)³ to the Respondents on February 15, 2013 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) presented to the EO by INT, dated August 22, 2012;
- ii. Explanation submitted by the Respondent Commercial Manager to the EO on March 14, 2013;
- iii. Response submitted by Respondent Firm et al. to the Secretary to the Sanctions Board on May 15, 2013;
- iv. Response submitted by the Respondent Commercial Manager to the Secretary to the Sanctions Board on May 15, 2013;
- v. Reply submitted by INT to the Secretary to the Sanctions Board on June 24, 2013 (the “Reply”);
- vi. Additional Evidence submitted by INT to the Secretary to the Sanctions Board on December 2, 2013 (the “Additional Evidence”);
- vii. The Respondent Commercial Manager’s Post-Hearing Comments on INT’s Additional Evidence, as submitted to the Secretary to the Sanctions Board on December 10, 2013; and
- viii. Respondent Firm et al.’s Post-Hearing Comments on INT’s Additional Evidence, as submitted to the Secretary to the Sanctions Board on December 12, 2013.

4. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarments with conditional release for the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by any of the Respondents, with conditions for release specific to each of the Respondents, and minimum periods of ineligibility of one (1) year and one (1) day for Respondent Firm, Respondent Firm

³ Effective March 31, 2013, the EO’s title changed to “IBRD/IDA Suspension and Debarment Officer” (“SDO”). For consistency with the Sanctions Procedures and the pleadings in this case, this decision refers to the former title.

International, and the Respondent Director, and two (2) years for the Respondent Commercial Manager, to run consecutively with any sanction imposed on the Respondents in connection with another case that was pending before the Sanctions Board at the time of the EO's recommendation, i.e., Sanctions Case No. 170.⁴

5. Effective February 15, 2013, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondents, together with any entity that is an Affiliate under the direct or indirect control of any of the Respondents, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;⁵ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁶ 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 project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as "Bank-Financed Projects")⁷ pending the final outcome of the sanctions proceedings.

II. GENERAL BACKGROUND

6. At the time of the alleged misconduct, Respondent Firm was co-owned by the Respondent Director and another individual. As the Respondent Director and the co-owner had agreed to wind down Respondent Firm and divide the business between them, each established his own new firm. Pursuant to this agreement, the Respondent Director became the sole owner and director of Respondent Firm International. The Respondent Commercial Manager was employed originally by Respondent Firm and subsequently by Respondent Firm International. INT's allegations of misconduct in this case relate to two health-sector projects in Iraq financed by a trust fund administered by the World Bank, as further discussed below.

Emergency Health Rehabilitation Project

7. On December 4, 2004, IDA, acting as administrator of the World Bank Iraq Trust Fund, and Iraq entered into a trust fund grant agreement for US\$25 million to finance the

⁴ The Sanctions Board issued its final decision in Sanctions Case No. 170 on September 9, 2013. See Sanctions Board Decision No. 60 (2013).

⁵ For the avoidance of doubt, the scope of ineligibility to be awarded a contract will include, without limitation, (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated 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.

⁶ 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.

⁷ For the avoidance of doubt, 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.

Emergency Health Rehabilitation Project (“EHRP”). EHRP closed on February 28, 2010. Its objective was to improve access to quality emergency services in selected health facilities to serve the urgent needs of the Iraqi population.

8. On February 20, 2006, Iraq’s implementing agency for the two relevant projects in this case (the “Implementing Agency”) issued bidding documents for a contract under EHRP for the procurement of emergency medical equipment to be used in hospital emergency units. On April 10, 2006, Respondent Firm submitted its bid for the contract. In May 2006, Respondent Firm entered into an agency agreement with a local company (the “Agent”), whereby the Agent agreed to serve as Respondent Firm’s agent should it win the bid. Respondent Firm was the successful bidder and, on September 18, 2006, entered into a contract with the Implementing Agency valued at approximately US\$1.56 million (the “EHRP 1 Contract”).

9. In or around July 2009, Respondent Firm International entered into a second contract with the Implementing Agency under EHRP through direct contracting, i.e., single-source contracting without competition, for the procurement of auto analyzer reagents and kits valued at the equivalent of approximately US\$201,000 (the “EHRP 2 Contract”). On November 20, 2009, Respondent Firm International entered into a third contract with the Implementing Agency under EHRP, again through direct contracting, for the supply of medical equipment, spare parts, and consumables valued at approximately US\$1.04 million (the “EHRP 3 Contract”).

Emergency Disabilities Project

10. On November 23, 2005, IDA, acting as administrator of the World Bank Iraq Trust Fund, and Iraq entered into a trust fund grant agreement for US\$19.5 million to finance the Emergency Disabilities Project (“EDP”). EDP closed on December 31, 2010. Its objective was to support the delivery of improved rehabilitation and prosthetic services that reduce the burden of physical disability in Iraq.

11. On April 30, 2006, the Implementing Agency issued bidding documents for a contract under EDP for the procurement of medical aids to be used in the Iraqi Governmental Health Directorate (together with the bidding documents for the EHRP 1 Contract, the “Bidding Documents”). On or around June 15, 2006, Respondent Firm submitted its bid for the contract. In July 2006, Respondent Firm entered into a second agency agreement with the Agent, whereby the Agent agreed to serve as Respondent Firm’s local agent “for Iraq.” Respondent Firm was the successful bidder and, on January 30, 2007, entered into a contract with the Implementing Agency valued at approximately US\$1.91 million (the “EDP Contract”).

12. INT alleges that Respondent Firm and the Respondent Director engaged in fraudulent practices by knowingly misrepresenting the commissions to be paid to the Agent in Respondent Firm’s bids for the EHRP 1 and EDP Contracts. INT further alleges that Respondent Firm International, the Respondent Director, and the Respondent Commercial Manager engaged in corrupt practices by offering and/or paying commissions to the Agent in order to influence project officials in the procurement processes for the EHRP 2 and EHRP 3 Contracts.

III. APPLICABLE STANDARDS OF REVIEW

13. 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. 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.

14. 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.

15. The alleged sanctionable practices in this case have the meaning set forth in the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) (the “May 2004 Procurement Guidelines”), which governed procurement for EHRP and EDP under the relevant trust fund grant agreements, and whose definitions of sanctionable practices were repeated in the Bidding Documents. Paragraph 1.14(a)(i) of these guidelines defines the term “corrupt practice” as “the offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in contract execution” (footnote omitted). Paragraph 1.14(a)(ii) of these guidelines defines the term “fraudulent practice” as “a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract.” This definition of fraudulent practice does not include an explicit mens rea requirement such as the “knowing or reckless” standard adopted by the Bank from October 2006 onward.⁸ However, the legislative history of the Bank’s various definitions of “fraudulent practice” reflects that the October 2006 incorporation of the “knowing or reckless” standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.⁹ Accordingly, the Sanctions Board has held that the “knowing or reckless” standard may be implied under the pre-October 2006 definitions.¹⁰

⁸ See, e.g., Guidelines: Procurement Under IBRD Loans And IDA Credits (May 2004, rev. October 2006) at para. 1.14(a)(ii) (defining a “fraudulent practice” as “any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation”) (emphasis added).

⁹ See Sanctions Board Decision No. 41 (2010) at para. 75.

¹⁰ Id.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES**A. INT's Principal Contentions in the SAE**

16. INT submits that it is more likely than not that Respondent Firm and the Respondent Director engaged in fraudulent practices by stating in Respondent Firm's bids for the EHRP 1 and EDP Contracts that the commission to be paid to the Agent equaled 2.5% of the value of the contracts, where Respondent Firm had in fact entered into an agreement with the Agent for a 13% commission. According to INT, the Respondent Director concealed the agreed commission because he knew that disclosing the true amount in the bids would have endangered the Respondent Firm's ability to win the contracts.

17. INT additionally submits that it is more likely than not that Respondent Firm International, the Respondent Director, and the Respondent Commercial Manager engaged in corrupt practices by offering and/or paying 15% commissions to the Agent with an expectation that part of these funds would be used to influence government officials in the procurement of the EHRP 2 and EHRP 3 Contracts. INT asserts that the Respondent Director and the Respondent Commercial Manager admitted during their interviews with INT that the commissions had been paid with the assumption that the Agent would use these funds to make payments to third parties, including bribes to project officials. According to INT, the Respondent Director additionally admitted that he thought that the Agent had in fact influenced project officials to award the EHRP 2 and EHRP 3 Contracts to Respondent Firm International through direct contracting.

18. INT submits that aggravation is warranted for the repetitive nature of the Respondents' misconduct and that mitigation is warranted for the Respondents' cooperation with INT's investigation.

B. Principal Contentions of Respondent Firm et al. in Their Response

19. Respondent Firm et al. argue that INT used improper methods during its investigation. In particular, Respondent Firm et al. assert that, during the Respondent Director's interview, INT investigators referred to his family in a threatening manner, discouraged him from consulting a lawyer, and claimed to provide him with legal advice.

20. Regarding INT's allegations of fraudulent practices, Respondent Firm et al. respond that the amount stated in the bids was lower than the agreed commission because it represented payment for the Agent's commercial activities only, whereas the agreed commission also encompassed other activities performed by the Agent, "such as installation of the equipment or arranging local transport." With respect to INT's allegations of corrupt practices, Respondent Firm et al. assert that none of the Respondents were involved in offering or making corrupt payments, and that INT has presented no evidence to show that payments were made to government officials. In addition, Respondent Firm et al. argue that, contrary to INT's assertions, neither of the individual Respondents admitted during their interviews that bribes were paid.

21. Although Respondent Firm et al. do not directly address any sanctioning factors, they appear to seek mitigation on the grounds that they have had a long working relationship with

the World Bank and have always delivered good value and completed projects, even in challenging environments.

C. The Respondent Commercial Manager's Principal Contentions in His Explanation and Response

22. The Respondent Commercial Manager argues that his interview with INT was an "interrogation" and refers the Sanctions Board to related arguments made in a previous case, in which he asserted that INT had violated its due process obligations during its investigation and failed to give him sufficient notice that he might be personally subject to sanctions. In addition, the Respondent Commercial Manager asserts that he does not have access to legal representation and that, having been terminated as an employee of Respondent Firm International at the end of 2012, he no longer has access to evidence to effectively defend himself against INT's allegations.

23. Regarding INT's allegations of corrupt practices, the Respondent Commercial Manager also argues that, contrary to INT's assertion in the SAE, he did not admit to participating in a corrupt practice. The Respondent Commercial Manager confirms that he offered and agreed to pay the Agent commissions and that Respondent Firm International's financial calculation included a 15% commission for the Agent. However, the Respondent Commercial Manager asserts that, in exchange for the commission, the Agent had to perform services as indicated under the agency agreements, which did not include paying bribes.

24. The Respondent Commercial Manager does not directly address any sanctioning factors.

D. INT's Principal Contentions in the Reply

25. INT disputes the Respondents' contentions regarding the conduct of its investigation, arguing that the record of its investigative activity in this case shows that it did not threaten, intimidate, or interrogate any of the Respondents.

26. INT asserts that the Respondents have failed to put forward any arguments that would detract from a finding of fraudulent and corrupt practices. Regarding its allegations of corrupt practices, INT asserts that proof of actual payments to a government official is not required in order to prove a corrupt practice under the May 2004 Procurement Guidelines. According to INT, it is sufficient for a finding of corrupt practice that the Respondents offered funds to an agent with the expectation that these funds would be passed on to a public official in order to secure further contracts. INT reiterates its earlier argument that the individual Respondents admitted having had such an expectation when commissions were paid to the Agent.

E. INT's Additional Evidence

27. On December 2, 2013, two days before the hearing scheduled in this case, INT submitted a memorandum appending the Additional Evidence to the Secretary to the Sanctions Board. According to INT's memorandum, the Additional Evidence had been referred to INT by national authorities a week earlier and INT had no prior knowledge of this

evidence. INT requested that the Sanctions Board accept the Additional Evidence into the record pursuant to Section 5.01(c) of the Sanctions Procedures.

28. The Additional Evidence submitted by INT consists of email correspondence between the Respondent Director and the Agent's managing director, which attaches multiple versions of a spreadsheet. INT notes that the spreadsheet relates to the EHRP 1 and EDP Contracts, and asserts that comments inserted by the Agent's managing director in the margins of the spreadsheet indicate that the Agent would use part of its commission to make payments to a project manager. INT argues that the Additional Evidence demonstrates that the Respondent Director had direct knowledge of bribes that the Agent would pay to government officials and that, despite this knowledge, the Respondent Director did not object to these corrupt payments.

F. Presentations at the Hearing

29. At the hearing, the Sanctions Board Chair first invited the parties' views regarding the admissibility of the Additional Evidence. Having considered the parties' statements and the potential materiality of the evidence, the Sanctions Board Chair determined, in his discretion under Section 5.01(c) of the Sanctions Procedures, that the Additional Evidence would be admitted into the record; that the parties would be permitted to address the contents of the Additional Evidence at the hearing; and that the Respondents would be permitted to submit written arguments in response to the Additional Evidence after the hearing.

30. In its presentation, INT reiterated its allegations that the Respondents had engaged in fraudulent and corrupt practices. In response to the argument of Respondent Firm et al. that the commission indicated in Respondent Firm's bids represented only the Agent's commercial activities, INT argued that the Bidding Documents required disclosure of all commissions, and that Respondent Firm's failure to disclose the total amount of commissions to be paid to the Agent therefore constitutes fraudulent practices. Regarding the alleged corrupt practices, INT asserted that the individual Respondents' interview statements demonstrate that they were aware of, or willfully blind to, the fact that the Agent would use its commissions to make payments to public officials in order to obtain contracts for the Respondents. INT asserted that the spreadsheet submitted as part of the Additional Evidence provides further support for its allegation that the Respondent Director knew that the Agent would pay bribes.

31. Respondent Firm et al. disputed INT's allegations of fraudulent practices, arguing that the Bidding Documents were not clear as to the scope of required disclosures and did not provide a clear definition of "commission," which Respondent Firm et al. claimed to have understood to refer exclusively to commissions for commercial activities as opposed to other services, such as after-sales services. The Respondents also disputed INT's allegations of corrupt practices, arguing that INT had mischaracterized the interview statements of the Respondent Director and the Respondent Commercial Manager, which, according to the Respondents, were general statements regarding corruption in Iraq that did not reveal any specific knowledge of bribe payments relating to the contracts at issue. Respondent Firm et al. also asserted that, while the spreadsheet submitted as part of the Additional Evidence reveals that the Agent requested the Respondent Director's agreement to make corrupt payments, the Respondent Director refused that request and the payments were never made.

G. The Respondents' Principal Contentions in Their Respective Post-Hearing Comments on the Additional Evidence

32. Pursuant to the Sanctions Board Chair's determination at the hearing, Respondent Firm et al. and the Respondent Commercial Manager submitted separate post-hearing comments on the Additional Evidence. Respondent Firm et al. reassert the arguments that they made at the hearing with respect to the Additional Evidence, as discussed above at Paragraph 31. The Respondent Commercial Manager states that he cannot comment on the submission because the Additional Evidence consists of correspondence solely between the Respondent Director and the Agent.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

33. The Sanctions Board will first address the Respondents' procedural challenge with respect to the conduct of INT's investigation, and the Respondent Commercial Manager's assertions regarding access to legal representation and evidence. The Sanctions Board will then consider whether the record supports a finding of sanctionable practices, and if so, which of the Respondents may be held liable for each of the sanctionable practices. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on each of the Respondents.

A. Procedural Determinations

34. As noted above, the Respondents argue that INT used improper methods during its investigation, in particular with respect to its interviews of the individual Respondents, including alleged threats to the Respondent Director's family and alleged statements discouraging him from consulting a lawyer. These allegations were raised by the same Respondents in a previous case, Sanctions Case No. 170.¹¹ In Sanctions Board Decision No. 60, the decision in that case, the Sanctions Board cautioned that "[t]he use of intimidation is impermissible" and that "[a]ny suggestion that an interviewee's request to consult a lawyer in itself demonstrates non-cooperation . . . may also raise concern as to the fairness of the investigation," but, after having reviewed the record, found insufficient evidence to conclude that INT had, in fact, acted improperly as alleged by the Respondents.¹² The Sanctions Board finds that the Respondents have presented no evidence in the present case that would justify departing from its previous determination on the same allegations.

35. The Respondent Commercial Manager also asserts that he does not have access to legal representation and that, having been terminated by Respondent Firm International at the end of 2012, he no longer has access to evidence to effectively defend himself. On the first point, the Sanctions Board notes that, under the sanctions system's governing legal framework, respondents may elect to be represented at their own expense by legal counsel, but are not entitled to be provided with such counsel.¹³ In terms of evidence relating to the

¹¹ See Sanctions Board Decision No. 60 (2013) at para. 60.

¹² *Id.*

¹³ See Sanctions Procedures at Section 6.02 ("A Respondent may be self-represented or represented by an attorney or any other individual authorized by the Respondent, at the Respondent's own expense.").

corruption allegations against the Respondent Commercial Manager, the record includes verbatim transcripts of interview with the individual Respondents and the Agent, contemporaneous emails and invoices, and accounting records provided by the Respondents and the Agent. The Respondent Commercial Manager does not identify any other types of evidence that he would have used to respond to INT's allegations were he still employed by Respondent Firm International; nor does he provide any indication that Respondent Firm et al. withheld any additional evidence in their possession that might have assisted with his defense. In these circumstances, the Sanctions Board finds that the Respondent Commercial Manager fails to present a valid procedural challenge to the proceedings.

B. Evidence of Fraudulent Practices

36. In accordance with the definition of "fraudulent practice" under the May 2004 Procurement Guidelines, INT bears the initial burden to show that, in connection with the EHRP 1 and EDP Contracts, it is more likely than not that Respondent Firm and the Respondent Director (i) made a misrepresentation or omission of facts (ii) that was knowing or reckless (iii) in order to influence a procurement process or the execution of a contract.

1. Misrepresentation of facts

37. The Bidding Documents required bidders to disclose in their bids the commissions that "have been paid or are to be paid with respect to the bidding process or execution of the Contract." Respondent Firm stated in its bids for the EHRP 1 and EDP Contracts that the amount of the commission paid or to be paid to the Agent was "2.5% of contract price." Approximately one month after submitting its bid for each of these contracts, Respondent Firm entered into separate agency agreements with the Agent, whereby the Agent agreed to serve as Respondent Firm's agent in exchange for a commission amounting to 13% of contract value. Although Respondent Firm and the Agent entered into each of the agency agreements after Respondent Firm had submitted its bid for the related contract, evidence in the record, including interview statements and contemporaneous email correspondence, reveals that Respondent Firm and the Agent had agreed to a 13% commission before Respondent Firm submitted its bids. For instance, the Respondent Director stated to INT during his interview that "discussions about the 13 percent" began prior to Respondent Firm's submission of its bid for the EHRP 1 Contract. Most significantly, in response to a question from INT as to why Respondent Firm wrote 2.5% rather than 13% in its bids, the Respondent Director responded that the Agent did not want the "real amount" to be mentioned in the bids and had therefore asked the Respondents to disclose the lower commission.

38. The Respondent Director's implicit admission that 13% was the "real amount" and that 2.5% was a misrepresentation contradicts the assertion of Respondent Firm et al. in their Response that the commission mentioned in the bids was lower than the agreed commission because the amount mentioned in the bids only represented payments for the Agent's "commercial activities." The asserted breakdown between "commercial" and other services is also inconsistent with the details set out in the agency agreements, which indicate that the 13% commission was entirely for commercial activities; and that additional services, such as after-sales services, would be compensated above the 13%. In any event, the Bidding Documents explicitly required bidders to disclose the commissions that "have been paid or are

to be paid with respect to the bidding process or execution of the Contract,” without limitation or exceptions for different types of commissions.

39. In light of the above, the Sanctions Board finds that it is more likely than not that Respondent Firm’s bids for the EHRP 1 and EDP Contracts misrepresented the commissions to be paid to the Agent.

2. Made knowingly or recklessly

40. INT alleges that Respondent Firm and the Respondent Director knowingly misrepresented the commissions to be paid to the Agent. The Sanctions Procedures recognize the Sanctions Board’s discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.¹⁴ In the present case, the record reveals that the Respondent Director signed Respondent Firm’s bids for the EHRP 1 and EDP Contracts, which mentioned that the Agent was to be paid a commission equal to 2.5% of the value of the contracts, as well as the agency agreements, which established a commission of 13% for the Agent. Importantly, the Respondent Director stated to INT that he was the person who negotiated the 13% commission with the Agent, which, as discussed above in Paragraph 37, was more likely than not agreed upon before Respondent Firm submitted its bids. As also discussed above, the Respondent Director implicitly admitted to INT that he knew that the commission stated in the bids was not the “real amount” that would be paid to the Agent. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent Director knew that the 2.5% commission mentioned in the bids was inconsistent with the commission agreed upon between Respondent Firm and the Agent.

3. In order to influence a procurement process or the execution of a contract

41. The record reveals that the Respondent Commercial Manager, who was a project manager for Respondent Firm at the time of the bid submissions, explained to INT during his interview that the 13% commission was not disclosed in the bids in order to avoid attracting “the people evaluating the bid”; and stated that Respondent Firm had a general practice of indicating low commission percentages in its bids, whether or not the percentages are accurate, in order to avoid raising questions. These statements support a finding that it is more likely than not that the misrepresentations were made in order to avoid the scrutiny of the bid evaluation committee and/or disqualification, and therefore to influence the procurement processes for the EHRP 1 and EDP Contracts.

C. Evidence of Corrupt Practices

42. In accordance with the definition of “corrupt practice” under the May 2004 Procurement Guidelines, INT bears the initial burden to show that, in connection with the EHRP 2 and EHRP 3 Contracts, it is more likely than not that Respondent Firm International, the Respondent Director, and the Respondent Commercial Manager (i) offered, gave,

¹⁴ Sanctions Procedures at Section 7.01.

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.

1. Offering or giving, directly or indirectly, any thing 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 of the definition need not be – though he may be – the public official who is the intended target of influence under the second element of corrupt practice,¹⁵ as discussed below in Paragraphs 45-47. INT alleges, and the Respondents do not contest, that the Respondent Director and the Respondent Commercial Manager offered a 15% commission, and that Respondent Firm International offered and paid a 15% commission, to the Agent in connection with the EHRP 2 and EHRP 3 Contracts. Contemporaneous email correspondence reveals that the individual Respondents personally negotiated the 15% commission with the Agent's managing director, and the transcripts of INT's interview with the individual Respondents reflect that they each confirmed the 15% agreement, which is consistent with the Respondent Commercial Manager's confirmation in his Explanation that he offered and agreed to such payments. With respect to actual payments, the accounting records of Respondent Firm International, as well as the Agent's records of commission payments received, show that Respondent Firm International paid the Agent approximately 15% of the total value of the EHRP 2 and EHRP 3 Contracts for its services under those contracts.

44. On the basis of this record, the Sanctions Board finds that it is more likely than not that Respondent Firm International, the Respondent Director, and the Respondent Commercial Manager offered and/or gave a thing of value to the Agent in connection with the EHRP 2 and EHRP 3 Contracts.

2. To influence the action of a public official in the procurement process

45. The second element of corrupt practice requires a showing that a respondent, in offering or giving a thing of value to another party under the first element, acted with an intent to influence the action of a public official in the procurement process or in contract execution. Proof of actual payment to, or influence over, public officials is not necessary for a finding of corrupt practices.¹⁶ The applicable definition in this case encompasses situations where, as is alleged here, a respondent pays a private party with the intent to exert influence over a public official acting in the procurement process.¹⁷

46. The verbatim transcript of INT's interview with the Respondent Director makes clear that he expected that the Agent would use part of its commissions to pay bribes. In response to a series of questions posed by INT, the Respondent Director confirmed his "reasonable conclusion" that some of the Agent's payments to third parties included bribes to project officials with influence over the bidding process. The Respondent Director also confirmed his

¹⁵ See Sanctions Board Decision No. 60 (2013) at para. 65.

¹⁶ See Sanctions Board Decision No. 50 (2012) at para. 45; Sanctions Board Decision No. 60 (2013) at para. 84.

¹⁷ See Sanctions Board Decision No. 60 (2013) at para. 65.

assumption that the Agent may specifically have influenced the decision of project officials to award direct contracts to Respondent Firm International.¹⁸ Moreover, the contemporaneous email correspondence between the Respondent Director and the Agent's managing director that INT presented in the Additional Evidence indicates that the Respondent Director was aware that the Agent had used, or intended to use, its commissions in relation to the earlier EHRP 1 and EDP Contracts to pay bribes to public officials. As for the Respondent Commercial Manager, he stated during his interview that he and the Respondent Director believed that the Agent's managing director would give a certain percentage of the commission "to his friends." The Respondent Commercial Manager also stated that he believed from the start of the procurement process under EHRP that "there must have been some sort of link" between the Agent and project officials, as the Respondent Commercial Manager inferred that it must have been project officials who originally alerted the Agent to Respondent Firm's interest in the tender for the EHRP 1 Contract.

47. Considering the above evidence, the Sanctions Board finds that it is more likely than not that the individual Respondents agreed to pay commissions to the Agent expecting that the Agent would use a part of those funds to influence public officials in the procurement process for the EHRP 2 and EHRP 3 Contracts. Accordingly, the Sanctions Board concludes that the Respondent Director and the Respondent Commercial Manager sought to influence a public official through corrupt practices within the meaning of the May 2004 Procurement Guidelines.

D. Liability of Respondent Firm and Respondent Firm International for the Acts of the Individual Respondents

48. In past cases, the Sanctions Board has concluded that a respondent entity could be held directly and/or vicariously liable for the acts performed by its president, owner, and sole shareholder or its chief executive officer and authorized representative, acting in the course and scope of that individual's duties.¹⁹ The Sanctions Board has also 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.²⁰ Where a respondent entity has denied responsibility for the acts of its employees based on a rogue employee defense, the Sanctions Board has considered any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.²¹

¹⁸ See Sanctions Board Decision No. 60 (2013) at para. 84 ("As the Sanctions Board has previously held, evidence that the desired influence actually materialized is not necessary for a finding of corrupt practices, even though it may bolster a showing of the respondent's intent to influence.").

¹⁹ See Sanctions Board Decision No. 41 (2010) at para. 85; Sanctions Board Decision No. 52 (2012) at para. 32.

²⁰ See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-55; Sanctions Board Decision No. 61 (2013) at para. 30.

²¹ See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at para. 53.

49. In the present case, the parties raise no arguments as to the potential direct or vicarious liability of Respondent Firm and Respondent Firm International for acts performed by the individual Respondents. Additionally, the Respondents do not present, and the record does not provide any basis for, a rogue employee defense. As noted above, the Respondent Director is a co-owner of Respondent Firm and the sole owner of Respondent Firm International. The record reveals that the Respondent Director acted in his capacity as director and authorized representative of both Respondent Firm and Respondent Firm International, including in signing the bids for the EHRP 1 and EDP Contracts, the agency agreements with the Agent, and the EHRP 1, EHRP 3, and EDP Contracts. With respect to the Respondent Commercial Manager, the record reveals that he was first employed by Respondent Firm as a project manager; then served as the commercial manager and representative of Respondent Firm International, including in signing the EHRP 2 Contract and in agreeing to pay the Agent a 15% commission under the EHRP 2 and EHRP 3 Contracts. The record thus supports a finding that the individual Respondents engaged in the fraudulent and corrupt practices alleged within the course and scope of their duties and with the purpose of serving the interests of the Respondent entities.

50. In light of the above, the Sanctions Board finds Respondent Firm liable for the fraudulent practices of the Respondent Director; and Respondent Firm International liable for the corrupt practices of the Respondent Director and the Respondent Commercial Manager in agreeing to pay a commission to the Agent, as well as for Respondent Firm International's actual payment pursuant to that agreement. The Sanctions Board must therefore determine an appropriate sanction for each of the Respondents.

E. Sanctioning Analysis

1. General framework for determination of sanctions

51. 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.

52. 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.²² 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.²³

53. The Sanctions Board is required to consider the 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

²² See Sanctions Board Decision No. 40 (2010) at para. 28.

²³ Sanctions Board Decision No. 44 (2011) at para. 56.

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. They further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after three years.

54. 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 the respondent.

2. Factors applicable in the present case

a. Severity of the misconduct

55. 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 Sanctioning Guidelines identifies a repeated pattern of conduct, central role in the misconduct, and management’s role in the misconduct as examples of severity.

56. *Repeated pattern of conduct:* INT submits that aggravation is warranted because the Respondents’ misconduct was repeated. The Sanctions Board finds that aggravation is warranted for the repeated fraudulent practices of Respondent Firm and the Respondent Director, as these Respondents misrepresented the amount of the commissions provided under two separate agency agreements in two bids, submitted more than two months apart, for contracts under different projects. The Sanctions Board also finds that aggravation is warranted for the repeated corrupt practices of Respondent Firm International, the Respondent Director, and the Respondent Commercial Manager, which involved payments in relation to two contracts awarded on a single-source basis, four months apart, under one of those projects.²⁴

57. *Central role in misconduct:* Section IV.A.3 of the Sanctioning Guidelines states that this factor may apply to a respondent who acted as the “[o]rganizer, leader, planner, or prime mover in a group of 2 or more.” The Sanctions Board finds that aggravation is warranted for the Respondent Director’s central role in the corrupt and fraudulent practices, as the record reveals that he served as the Respondents’ main interlocutor with the Agent, took the lead in negotiating the commission to be paid to the Agent under the agency agreements, signed the agency agreements on behalf of Respondent Firm, and signed both fraudulent bids as well as three of the four contracts at issue.²⁵

58. *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

²⁴ See Sanctions Board Decision No. 68 (2014) at para. 37 (applying some aggravation where the respondent submitted forged bid securities with two separate bids for two Bank-financed contracts).

²⁵ See Sanctions Board Decision No. 60 (2013) at para. 124 (applying aggravation where a respondent signed a corrupt agreement with a public official, instructed an employee to delete emails relevant to INT’s investigation, and actively sought his co-owner’s approval to make payments to the public official).

participated in, condoned, or was willfully ignorant of the misconduct.” The record reveals that, at the time of the corrupt and fraudulent practices in this case, the Respondent Director was a co-owner and director of Respondent Firm and the sole owner and director of Respondent Firm International. The Sanctions Board finds that aggravation is warranted for the involvement of the Respondent Director with respect to Respondent Firm and Respondent Firm International.

b. Minor role in misconduct

59. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a sanctioned party played a minor role in the misconduct. Section V.A of the Sanctioning Guidelines proposes that this factor be applied to a “minor, minimal, or peripheral participant.” The Sanctions Board finds that mitigation is warranted on this ground with respect to the Respondent Commercial Manager. The record indicates that the Respondent Commercial Manager’s role in the corrupt practices was relatively limited, considering in particular that the Respondent Director was the Respondents’ main interlocutor with the Agent and that Respondent Firm et al. stated that the Respondent Commercial Manager was only “executing his dut[ies]” as an employee of Respondent Firm International.

c. Cooperation

60. 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 as an example of cooperation.

61. *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 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.” INT submits that mitigation is warranted under this factor because the Respondents cooperated with INT’s investigation. The record reveals that the Respondent Director and the Respondent Commercial Manager met with INT and agreed to participate in recorded interviews. The record also reveals that the Respondents provided internal email correspondence and documents to INT, including financial spreadsheets relating to the contracts at issue, although not the correspondence and annotated spreadsheet that INT submitted as the Additional Evidence. The Sanctions Board finds that the Respondents’ assistance with INT’s investigation justifies mitigation.

d. Period of temporary suspension

62. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondents’ temporary suspension since the EO’s issuance of the Notice on February 15, 2013. However, the Sanctions Board notes that the entire period of the Respondents’ temporary suspension in this case is subsumed under the same Respondents’ periods of temporary suspension and debarment in an earlier case, Sanctions Case No. 170,

and that the Sanctions Board has previously credited the Respondents for their periods of temporary suspension in determining the appropriate terms of debarment in the earlier case.²⁶ Accordingly, the Sanctions Board declines to apply additional mitigation for the same period of ineligibility in the present case.

e. Other considerations

63. 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.”

64. *Passage of time:* The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank’s awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.²⁷ 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.²⁸ At the time of the EO’s issuance of the Notice in February 2013, more than six and a half years had elapsed since the fraudulent bids were submitted in April and June 2006. Accordingly, the Sanctions Board finds that mitigation is justified on this ground for Respondent Firm and the Respondent Director. No mitigation is warranted under this factor with respect to the corrupt practices, which the record reveals to have continued into mid-2010.

65. *Plurality of sanctionable practices:* As the Respondents were found to have engaged in sanctionable practices in a previous case,²⁹ and the Sanctions Board finds that the Respondent Director engaged in both corrupt and fraudulent practices in the present case, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding “Cumulative Misconduct” (emphasis in original):

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.

²⁶ See Sanctions Board Decision No. 60 (2013) at para. 136.

²⁷ See, e.g., 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 the Notice of Sanctions Proceedings was issued 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).

²⁸ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71.

²⁹ See Sanctions Board Decision No. 60 (2013).

66. In an earlier decision finding that the respondents had engaged in sanctionable practices in two factually unrelated cases, the Sanctions Board considered the gravity of each case on its own and determined that the sanctions in the two cases should run on a cumulative basis.³⁰ Consistent with this precedent, and considering that the projects, the contracts, and the country in which the projects were implemented in this case, as well as the specific allegations of corruption and fraud presented here, are all different from those in the previous case, the Sanctions Board determines that the sanctions in this case and the previous case should run on a cumulative basis.

67. The Sanctions Board also considers that the Respondent Director engaged in both corrupt and fraudulent practices in this case. The record reflects that the corrupt and fraudulent practices for which the Respondent Director is found liable were interrelated. More specifically, the Respondent Director engaged in corrupt practices in relation to one of the projects under which he had previously engaged in fraudulent practices, and the commissions to the Agent were central to each case of misconduct. Accordingly, the Sanctions Board concludes that the plurality of sanctionable practices engaged in by the Respondent Director in this case warrants aggravation, rather than multiplication, of the base sanction for the Respondent Director.

68. *General performance under development projects:* Respondent Firm et al. submit that that they have had a long working relationship with the World Bank and have always delivered good value and completed projects, even in challenging environments. Consistent with past precedent regarding respondents' claimed record of general performance and contributions to development work, the Sanctions Board finds no mitigation warranted on these grounds.³¹

F. Determination of Liability and Appropriate Sanctions for the Respondents

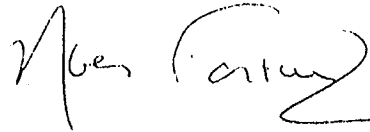
69. Considering the full record and all the factors discussed above, the Sanctions Board determines that Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Commercial Manager, together with any entity that is an Affiliate directly or indirectly controlled by any of these Respondents, shall be, and hereby declares that they are, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider 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, for a period of three (3) years for Respondent Firm, four (4) years for Respondent Firm International and the Respondent Director, and two (2) years for the Respondent Commercial Manager. These sanctions are imposed on Respondent Firm for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines; on Respondent Firm International for corrupt practices as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines; on the Respondent Director for corrupt practices as

³⁰ Sanctions Board Decision No. 41 (2010) at para. 89.

³¹ See e.g., Sanctions Board Decision No. 47 (2012) at para. 57; Sanctions Board Decision No. 48 (2012) at para. 50; Sanctions Board Decision No. 60 (2013) at para. 139.

defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines and fraudulent practices as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines; and on the Respondent Commercial Manager for corrupt practices as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines.

70. The ineligibility of the entities and individuals debarred pursuant to the present decision shall extend across the operations of the World Bank Group. The Bank will also provide notice of these declarations of ineligibility to the other multilateral development banks (“MDBs”) that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the “Cross-Debarment Agreement”) so that they may determine whether to enforce the declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.³² The debarment periods shall be added to the minimum periods of debarment previously imposed on Respondent Firm, Respondent Firm International, and the Respondent Director in Sanctions Board Decision No. 60 (2013), and to the debarment period previously imposed on the Respondent Commercial Manager in Sanctions Board Decision No. 60 (2013).



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

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Hassane Cissé
Ellen Gracie Northfleet
Catherine O'Regan
Denis Robitaille
J. James Spinner

³² 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>).