THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: February 25, 2019

Sanctions Board Decision No. 115
(Sanctions Case No. 482)

IDA Credit No. 4347-VN
GEF Grant No. TF058293-VN
Vietnam

Decision of the World Bank Group[1] Sanctions Board imposing (i) a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 482 (the "Respondent Firm"), together with certain Affiliates,[2] with a minimum period of ineligibility of nine (9) years and nine (9) months beginning from the date of this decision; and (ii) a sanction of debarment on the individual respondent in Sanctions Case No. 482 (the "Individual Respondent"), together with certain Affiliates, for a period of four (4) years and six (6) months beginning from the date of this decision. These sanctions are imposed on the Respondent Firm for collusive, fraudulent, and obstructive practices, and on the Individual Respondent for a collusive practice.

I. INTRODUCTION

1. The Sanctions Board convened as a panel composed of J. James Spinner (Chair), Olufunke Adekoya, and Ellen Gracie Northfleet to review this case. A hearing was held on October 2, 2018, at the World Bank Group's headquarters in Washington, D.C., following a determination of the Sanctions Board Chair to call a hearing in his discretion in accordance with Section III.A, sub-paragraph 6.01 of the Sanctions Procedures. The World Bank Group's Integrity Vice Presidency ("INT") participated in the hearing through its representatives attending in person. The Respondent Firm and the Individual Respondent (together, the "Respondents") participated via video conference from the World Bank Group's offices in Hanoi, Vietnam. The Respondent Firm was represented by its Chief Executive Officer (the "CEO"), another officer, and external counsel. The Individual Respondent was accompanied by counsel. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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

[2] Section II(a) of the Sanctions Procedures defines "Affiliate" as "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." The sanctions imposed by this decision apply only to those Affiliates that are directly or indirectly controlled by either of the Respondents. See infra Paragraph 72.

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

i. Notice of Sanctions Proceedings issued by the World Bank's Suspension and Debarment Officer (the "SDO") to the Respondents on February 27, 2018 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") submitted by INT to the SDO (undated);

ii. Explanations submitted by the Respondents to the SDO on March 28, 2018 (each, individually, an "Explanation");

iii. Responses submitted by the Respondent Firm on April 1, 2018, and by the Individual Respondent on April 2, 2018 (each, individually, a "Response") to the Secretary to the Sanctions Board;

iv. Reply submitted by INT to the Secretary to the Sanctions Board on June 28, 2018 (the "Reply");

v. Additional submission filed by INT with the Secretary to the Sanctions Board on July 20, 2018 ("INT's Additional Submission"); and

vi. Additional submission filed by the Individual Respondent with the Secretary to the Sanctions Board on July 30, 2018 (the "Individual Respondent's Additional Submission").

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

4. On February 27, 2018, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice naming the Respondents and temporarily suspended the Individual Respondent, together with any entity that is an Affiliate directly or

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

[4] Pursuant to the 2012 Sanctions Procedures, the term "Bank-Financed Projects" includes activities financed through trust funds administered by the Bank to the extent governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. See the 2012 Sanctions Procedures at Section 1.01 (c)(i), n.3.

indirectly controlled by the Individual Respondent, from eligibility[5] with respect to any Bank-Financed Projects,[6] pending the final outcome of these sanctions proceedings. The Notice specified that the Individual Respondent's temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notice debarment with conditional release for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents. For the Respondent Firm, the SDO recommended a minimum period of ineligibility of seven (7) years and three (3) months, after which period the Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer (the "ICO") that it has (i) taken appropriate remedial measures to address the sanctionable practice for which the Respondent Firm has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank. For the Individual Respondent, the SDO recommended a minimum period of ineligibility of four (4) years, after which period the Individual Respondent may be released from ineligibility only if he has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the ICO that he has (i) taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned, (ii) completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and (iii) adopted and implemented an effective integrity compliance program with respect to any entity that is an Affiliate directly or indirectly controlled by him in a manner satisfactory to the Bank.

II. GENERAL BACKGROUND

5. This case arises in the context of the Hanoi Urban Transport Development Project (the "Project") in the Socialist Republic of Vietnam (the "Recipient" or "Borrower"), which sought to (i) increase urban mobility in targeted areas by intensifying the use of public transport in certain corridors and reducing travel time between different sections of Hanoi, and (ii) promote more environmentally sustainable transport modes and urban development plans. On November 22, 2007, IDA and the Recipient entered into a financing agreement (the "Financing Agreement") to provide the equivalent of approximately US$155 million for the Project. On the same day, IBRD, acting as implementing agency of the Global Environment Facility ("GEF"), entered into a GEF trust fund grant agreement (the "GEF Grant Agreement") with the Recipient, to provide US$9.8 million for the Project. The Project became effective on April 22, 2008, and closed on December 31, 2016.

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

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

6. In October 2014, the Project's Management Unit (the "PMU") issued the bidding documents for a contract for the Supply and Installation of a Signal System on the Bus Rapid Transit Lang Ha-Giang Vo (the "CP06 Contract"). In November 2014, the Respondent Firm submitted a bid for the CP06 Contract (the "CP06 Bid"). In March 2015, the Respondent Firm and the PMU signed the CP06 Contract.

7. In March 2015, the PMU issued the bidding documents for a contract for the Supply and Installation of Fare Collection, Fleet Management, Passenger Information, and Communication System of Bus Rapid Transit Line 1 from Kim Ma to Yen Nghia (the "CP07 Contract"). In June 2015, a joint venture between the Respondent Firm and a partner entity (the "JV Partner") (together, the "JV") submitted a bid for the CP07 Contract (the "CP07 Bid"). In October 2015, the PMU issued a bid evaluation report recommending the award of the CP07 Contract to the JV. The Bank repeatedly refused to give its no-objection.

8. INT alleges that the Respondents engaged in a collusive practice by entering into an arrangement with the PMU and other specified agencies (collectively, the "Client") to help the JV secure the CP07 Contract. INT further alleges that the Respondent Firm engaged in two counts of fraudulent practice by making misrepresentations in the CP06 and CP07 Bids. Finally, INT alleges that the Respondent Firm engaged in an obstructive practice by impeding a Bank audit relating to the CP06 and CP07 Contracts.

III. APPLICABLE STANDARDS OF REVIEW

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

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

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

12. *Applicable definitions of collusive, fraudulent, and obstructive practices*: Both the Financing Agreement and the GEF Grant Agreement provided that the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) would apply. However, the bidding documents for the CP06 and the CP07 Contracts provided that 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") would apply, and included definitions of collusive, fraudulent, and obstructive practices in accordance with the same version of the Guidelines. Pursuant to the Bank's legal framework applicable to sanctions, as well as considerations of equity, the applicable standards in the event of such a conflict shall be those agreed between the borrowing or recipient country and the respondent as governing the contract at issue, rather than the standards agreed between the borrowing or recipient country and the Bank.[7] Therefore, the alleged sanctionable practices in this case have the meaning set forth in the January 2011 Procurement Guidelines. The applicable definitions of collusive, fraudulent, and obstructive practices are set out below in the Sanctions Board's analysis of each of INT's allegations (Section V).

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

13. *Collusion allegation*: INT alleges that the Respondents entered into a collusive arrangement with the Client to ensure that the JV would win the CP07 Contract. According to INT, among other conduct: (i) the Individual Respondent had access to non-public information relating to the CP07 Contract, which he shared with the Respondent Firm; (ii) the Respondent Firm used this information to prepare the CP07 Bid; (iii) the Client unduly favored the JV in this tender, including by lowering the post-qualification requirements and repeatedly recommending the award of the CP07 Contract to the JV, despite the Bank's continuous refusal to give its no-objection.

14. *Fraud allegation 1*: INT alleges that the Respondent Firm falsely stated in the CP07 Bid that the Respondent Firm had no conflicts of interest relating to this tender. According to INT, the Individual Respondent was a department director within a public agency (the "Public Agency") and, in this capacity, assisted the Client with the preparation and technical design of the bidding documents for the CP07 Contract. INT submits that this situation created conflicts of interest for the Respondent Firm because, at the time of the submission of the CP07 Bid, the Individual Respondent was also the de facto principal of the Respondent Firm and the brother-in-law of its CEO.

15. *Fraud allegation 2*: INT alleges that, as part of the CP06 Bid, the Respondent Firm submitted a falsified manufacturer's authorization letter ("MAL"), which was later repudiated by the purported issuer and signatory.

16. *Obstruction allegation*: INT alleges that the Respondent Firm materially impeded the exercise of the Bank's inspection and audit rights by refusing to provide INT with any of the Respondent Firm's financial records or relevant emails.

17. *Sanctioning factors*: INT submits that aggravation is warranted for (i) central role in the misconduct, involvement of public officials, and harm to the Project, with respect to both of the Respondents, and (ii) interference with the investigation, with respect to the Respondent Firm only. INT asserts that no mitigating factors apply.

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

B. The Respondent Firm's Principal Contentions in its Explanation and Response

18. The Respondent Firm contends that the allegations against it are based on incomplete and unfair evidence, as well as "unjustifiable presumptions." The Respondent Firm concedes that the Individual Respondent simultaneously acted as a government official and an "affiliate" of the Respondent Firm when the JV submitted the CP07 Bid. Specifically, the Respondent Firm states that the Individual Respondent – a former shareholder of the company – relinquished all of his equity in 2013, but remained overtly involved in the business as a "technology consultant" and committee Chairman. Nevertheless, the Respondent Firm maintains that its relationship with the Individual Respondent did not pose conflicts of interest as asserted by INT, because he had no role in the technical design of the CP07 Contract.

C. The Individual Respondent's Principal Contentions in his Explanation and Response

19. The Individual Respondent presents a general challenge to "all allegations and evidence" submitted by INT. In addition, the Individual Respondent appears to deny that the Client unduly favored the JV in the bidding process for the CP07 Contract, arguing that the JV "submitted the highest quality proposal at the lowest price."

D. INT's Principal Contentions in the Reply

20. INT argues that the Respondents failed to address the allegations in detail and offer any evidence in support of their claims. In addition, INT reiterates the allegations set out in the SAE.

E. INT's Additional Submission

21. Pursuant to Section III.A, sub-paragraph 5.01(c) of the Sanctions Procedures, the Sanctions Board Chair requested that INT file an additional written submission to clarify the grounds for exercising jurisdiction over the Individual Respondent, particularly in light of INT's assertion that the Individual Respondent used his public position to further the alleged collusive scheme. In its Additional Submission, INT argues that the Individual Respondent is not exempt from sanctions in this case because he was acting in his private capacity as a representative of the Respondent Firm when he engaged in the alleged misconduct.

F. The Individual Respondent's Additional Submission

22. Upon the Sanctions Board Chair's invitation to comment on INT's Additional Submission, the Individual Respondent filed his Additional Submission. The Individual Respondent does not directly dispute INT's arguments on jurisdiction or otherwise question the Bank's authority to sanction him. Instead, the Individual Respondent again addresses the substance of the collusion

allegation, denying any involvement in the technical design of the CP07 Contract, as well as any improper arrangements with the Respondent Firm and the PMU.

G. Presentations at the Hearing

23. *Jurisdiction*: INT contended that the Bank may exercise jurisdiction over the Individual Respondent, based on two different arguments. Initially, INT submitted that the Individual Respondent was acting entirely outside of his mandate as a government official, and therefore his conduct must be considered private and subject to sanction. Separately, INT asserted that some of the Individual Respondent's acts were performed through his public position, but this conduct is nevertheless sanctionable because his department was operating in a commercial capacity. For his part, the Individual Respondent stated that he was a government official but did not directly address INT's arguments on jurisdiction or otherwise present any challenges in this regard.

24. *Collusion allegation*: INT maintained that the Respondents colluded with the Client to ensure that the JV would secure the CP07 Contract, including by lowering the post-qualification requirements. The Respondent Firm stated that the bidding conditions for the CP07 Contract were unfairly established to favor not the Respondent Firm, but one of its competitors. The Individual Respondent argued that he was not involved in the tender for the CP07 Contract.

25. *Fraud allegation 1*: INT asserted that the Respondent Firm engaged in a fraudulent practice by falsely affirming in the CP07 Bid that it had no conflict of interest in this tender. The Respondent Firm acknowledged that its CEO and the Individual Respondent have a widely known familial relationship. Nevertheless, the Respondent Firm argued that it had no conflicts of interest to disclose because the Individual Respondent was not involved in the tender for the CP07 Contract.

26. *Fraud allegation 2*: INT contended that the record supports an inference that the Respondent Firm's employees acted knowingly in submitting a falsified MAL as part of the CP06 Bid. The Respondent Firm conceded that the MAL in question was false but denied that its employees acted knowingly. The Respondent Firm stated that its employees failed to verify the MAL's authenticity and origin, and expressly took responsibility for such acts.

27. *Obstruction allegation*: INT submitted that the Respondent Firm refused to provide relevant documents and e-mails or make key staff available to the investigators, with the intent to obstruct the Bank's audit. The Respondent Firm denied having refused to cooperate.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

28. The Sanctions Board will first address the question of jurisdiction in this case. The Sanctions Board will next consider whether it is more likely than not that the alleged sanctionable practices occurred, and if so, whether either 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. Jurisdiction

29. The parties did not initially raise jurisdictional issues in their pleadings. However, the Sanctions Board considered it useful to clarify the Bank's authority to sanction the Individual Respondent, given INT's assertion that he participated in a collusive arrangement leveraging a dual role as a representative of the Respondent Firm and as a government official. Accordingly, the Sanctions Board requested that INT and the Individual Respondent address this matter in their Additional Submissions and at the hearing.

30. Under the applicable Procurement Guidelines, the Bank has prima facie jurisdiction over the Individual Respondent because he allegedly acted as a representative of an entity that competed for a Bank-financed contract.[8] However, because he is accused of simultaneously using his position as a government official to further the same collusive scheme, the question arises as to whether his conduct remains subject to sanction. Pursuant to longstanding policy, government officials are exempted from the Bank's sanctions regime, unless they engage in a sanctionable practice in their private capacity.[9] This exception to jurisdiction is not granted for the personal benefit of any individuals; it is functional in nature and serves to protect the legitimate exercise of state authority.[10] In these circumstances, in order to ascertain jurisdiction in this case, the Sanctions Board must examine the Individual Respondent's purported dual role, and consider whether his alleged conduct comprised any sanctionable, private acts.

31. *Dual role*: The record supports a finding that the Individual Respondent held two concurrent positions at the time of the alleged misconduct – i.e., during the period when the Client prepared and conducted the bidding process for the CP07 Contract. Firstly, the parties do not dispute that the Individual Respondent was serving as a director within the Public Agency at that time. Secondly, the totality of the evidence indicates that the Individual Respondent also had a private role as a representative and de facto principal of the Respondent Firm, despite having relinquished his shares in the company prior to the alleged misconduct. The Respondent Firm itself concedes that the Individual Respondent remained serving as a committee Chairman, and refers to him as an "affiliate" in this context. In addition, the Individual Respondent acknowledges that he was regularly introduced as a "technical advisor" of the Respondent Firm at that time. While the Respondents deny that the Individual Respondent also had a management role and effectively controlled the company's operations, such denials are contradicted by the record. For example, contemporaneous emails reveal that the Individual Respondent made strategic decisions on behalf of the Respondent Firm relating to the CP07 Bid, including by seeking prospective partners, determining the CP07 Bid price, and resolving disagreements with the JV Partner. Furthermore, significant documentary evidence – including numerous emails, official letters from the Recipient

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[8] January 2011 Procurement Guidelines at para. 1.16(a)(iii).

[9] Advisory Opinion on Certain Issues Arising in Connection with Recent Sanctions Cases, No. 2010/1 (November 15, 2010) ("Advisory Opinion") at paras. 128-130; The World Bank Group's Sanctions Regime: Information Note (November 2011) ("Information Note") at pp. 16-20. See also Sanctions Board Decision No. 66 (2014) at para. 18; Sanctions Board Decision No. 78 (2015) at para. 45; Sanctions Board Decision No. 88 (2016) at para. 21.

[10] This policy is primarily grounded in the Bank's general duties, as a multilateral institution, to respect the sovereignty of its members, cooperate with national agencies, and refrain from interfering in political affairs. See Advisory Opinion at paras. 128-130; Information Note at pp. 16-20.

to the Respondent Firm, and a consultancy agreement – shows that the Individual Respondent presented himself and was identified to external parties as the "Chairman," "Director," or "CEO" of the Respondent Firm, and also held the authority to sign contracts on behalf of the Respondent Firm during that period.

32. *Alleged conduct*: Considering the parties' arguments and the totality of the record in this case, the Sanctions Board concludes that the allegations against the Individual Respondent relate to actions undertaken in his private capacity as a representative of the Respondent Firm. As discussed in detail at Paragraphs 35-39 below, INT asserts that the Individual Respondent, together with the Respondent Firm's staff, (i) used non-public information relating to the CP07 Contract (including the relevant technical specifications, bidding requirements, and the Client's budget) to prepare the CP07 Bid, and (ii) influenced the Client to secure other unfair advantages in this tender. The Sanctions Board recognizes that some of this alleged conduct was enabled by the Individual Respondent's public role. According to INT, the Individual Respondent obtained the aforementioned non-public information through his involvement, as a government official, in the preparation of the design, cost estimation, and bidding documents for the CP07 Contract. It is true that these activities, at least to a degree, involve the use of state authority, and thereby arguably comprise official acts. However, accessing restricted data is not, in itself, the conduct at issue in this case. What INT seeks to sanction, as part of a collusive scheme, is the Individual Respondent's improper use of this information in the tender for the CP07 Contract – specifically, to procure a partner in advance of the Respondent Firm's competitors, begin preparing the CP07 Bid before the bidding documents were issued, and compose the JV's bid price based on the Client's confidential budget. These alleged acts are clearly private, as they bear no connection to the Individual Respondent's public functions or governmental powers. Accordingly, consistent with the Bank's policy,[11] the Individual Respondent's conduct is subject to sanction in the present case.

33. For the reasons above, the Sanctions Board finds that the Bank may exercise jurisdiction over the Individual Respondent with respect to conduct allegedly performed in his private capacity as a representative of the Respondent Firm.

B. Evidence of Collusive Practice

34. Pursuant to the definition of "collusive practice" under Paragraph 1.16(a)(iii) of the January 2011 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) participated in an arrangement between two or more parties, (ii) designed to achieve an improper purpose, including to influence improperly the actions of another party. A footnote to this clause provides that the term "parties" refers to participants in the procurement process (including public officials) attempting either themselves or through another person or entity not participating in the procurement process, to simulate competition or to

[11] The Advisory Opinion explicitly notes, as an example, that "a government official that controls a firm that bids on Bank financed contracts should be liable to sanction for any Sanctionable Practice that he or she engages in as head of the bidding firm." See Advisory Opinion at para. 129.

establish bid prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions.[12]

1. Arrangement between two or more parties

35. INT asserts that the Respondents entered into an arrangement with the Client in connection with the bidding process for the CP07 Contract. According to INT, among other conduct: (i) the Individual Respondent, through his government position, accessed the technical specifications, cost estimation, and bidding requirements for the CP07 Contract, and shared this information with the Respondent Firm before it was public; (ii) based on this non-public information, the Respondents prepared the CP07 Bid ahead of the competition and artificially set the JV's bid price; and (iii) the Client, influenced by the Respondents, reduced the post-qualification requirements and recommended the award of the CP07 Contract to the JV. The Respondents challenge INT's evidence and generally deny any wrongdoing.

36. For the reasons set out below, the Sanctions Board concludes that the Respondents participated in the alleged collusive scheme with at least some representatives of the Client, including by using non-public information to prepare the CP07 Bid and by influencing the tender requirements and bid evaluation process.

37. *Use of non-public information*: The record shows that the Respondents used non-public information to prepare the CP07 Bid. In particular, the sales manager of the JV Partner (the "Sales Manager") stated to INT that the Respondent Firm provided the technical specifications for the CP07 Contract to the JV Partner before this information was public, and that the Individual Respondent obtained and used the Client's confidential budget to set the JV's bid price. This account is corroborated by extensive documentary evidence. For example, numerous communications reveal that the Respondent Firm's staff shared the technical specifications and financial conditions for the CP07 Contract with prospective partners as early as October 2014 – several months before the bidding documents were officially issued. In addition, in emails exchanged in May 2015 – two weeks before bid submission – employees of the Respondent Firm and the JV Partner circulated two spreadsheets containing a detailed cost breakdown, which the senders described as "the draft of BID PRICE," the "file of ceiling price," or "the prices already set in advance by the customer." A comparison between these spreadsheets and the PMU's official cost estimation for the CP07 Contract reveals over 100 line items in common, as well as identical total prices, before tax. Furthermore, in emails exchanged after bid submission, the Individual Respondent and the Sales Manager openly discussed that the price offered by the JV was "equal [to] the ceiling price of bid cost estimation." The Sanctions Board finds that the Respondents did not credibly rebut this evidence. While the Respondent Firm presented general denials, the Individual Respondent provided implausible explanations for these records, suggesting that the technical specifications of the CP07 Contract were not confidential before the bidding documents were issued, and that the Client's "ceiling price" could be easily calculated based on the bid bond amount. Considering the totality of the evidence, the Sanctions Board is not persuaded by these arguments.

[12] January 2011 Procurement Guidelines at para. 1.16(a)(iii), n.22.

38. *Influence over the tender requirements*: The record supports a conclusion that the Respondents influenced representatives of the Client to alter the tender requirements in favor of the JV. For example, in several emails exchanged between December 2014 and February 2015, representatives of the Respondent Firm and the JV Partner discussed the post-qualification requirements included in the draft bidding documents for the CP07 Contract. In this context, representatives of the Respondent Firm stated that the JV Partner did not meet all technical requirements as currently drafted, but there was a possibility to modify them based on the JV Partner's qualifications. Concurrent communications make clear that the JV Partner would be unable to demonstrate direct experience in significant part of the CP07 Contract's scope of work (namely, implementation of fleet management and passenger information systems), which was consistently required in all working versions of the bidding documents. The record shows that, in February 2015, representatives of the Client revised the draft language to exclude this specific experience from the post-qualification requirements, without justification, and that this modification was maintained in the final version of the bidding documents issued in March 2015. As a whole, these records indicate that the tender requirements were, more likely than not, altered to favor the JV. The Respondents did not satisfactorily rebut this conclusion. While the Individual Respondent did not directly address this evidence, the Respondent Firm made uncorroborated assertions that the Client unfairly established the bidding conditions to favor not the JV, but one of its competitors. Considering the totality of the record, the Sanctions Board finds this defense unpersuasive.

39. *Influence over the bid evaluation process*: The record indicates that the Respondents influenced the bid evaluation process in favor of the JV. After the PMU recommended the award of the CP07 Contract to the JV, the Bank's task team observed that the JV fell short of the post-qualification requirements. In at least four instances, the Bank issued official letters requesting that the PMU revisit its evaluation of the bids and revise the corresponding conclusions. At each turn, the PMU's staff expressed its disagreement with the Bank's findings and reiterated the recommendation to award the CP07 Contract to the JV. In addition, according to a Bank procurement officer, after the Respondent Firm was placed on early temporary suspension, the Bank requested that the PMU award the contract to the second lowest qualified bidder or recommend no winning bidder for this process, but the PMU's staff refused to do so. The procurement officer also stated to INT that, in this context, a representative of the PMU asserted that he would continue to recommend the Respondent Firm as the winner even if this resulted in a misprocurement and caused him to lose his job. These circumstances suggest that the Respondents influenced at least some representatives of the Client in the evaluation of the bids. In their written and oral submissions, the Respondents indirectly disputed this conclusion, asserting that the Bank unduly interfered in this tender in order to exclude domestic companies or effectively force the bid evaluation team to select the second ranked bidder. The Sanctions Board is not persuaded by these arguments, which lack any corroboration.

40. In light of the above, the Sanctions Board finds that it is more likely than not that the Individual Respondent and other staff of the Respondent Firm participated in an arrangement with at least some representatives of the Client.

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

41. INT argues that the arrangement at issue was designed to secure unfair competitive advantages for the JV in the tender for the CP07 Contract. The Individual Respondent indirectly denies any improper purposes, submitting that he has never used his public position for private gain and that the Client selected the JV for this contract on legitimate grounds. The Respondent Firm does not specifically address this element of the collusion allegation.

42. The evidence supports a finding that the arrangement between the Respondents and representatives of the Client was designed to favor the JV in the bidding process for the CP07 Contract. The conduct described at Paragraphs 37-39 – i.e., using non-public information to prepare the CP07 Bid and influencing the post-qualification requirements and bid evaluation for this tender – displayed a manifest purpose to ensure that the JV would meet all bidding conditions, present the lowest price, and secure the CP07 Contract, unfairly prevailing over other qualified bidders. Consistent with this purpose, the JV was eventually recommended as the winner. While the Bank refused to give its no-objection and the Respondents ultimately fell short of their objective, this bears no impact on their culpability. As the Sanctions Board has previously observed, a finding of collusive practice does not require a showing that the desired outcome actually materialized.[13]

43. In light of the above, the Sanctions Board finds that it is more likely than not that the aforementioned arrangement was designed to achieve an improper purpose, i.e. to stifle open competition and influence the award of the CP07 Contract in favor of the JV.

C. Evidence of Fraudulent Practices

44. The fraud allegations in this case are analyzed in accordance with the definition of "fraudulent practice" under Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines. Pursuant to this definition, INT bears the initial burden to prove that it is more likely than not that the Respondent Firm (i) engaged in an act or omission, including a misrepresentation, (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation. A footnote to this definition clarifies that the term "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.[14]

1. Fraud allegation 1: Alleged misrepresentation regarding conflicts of interest

a. Act or omission, including a misrepresentation

45. INT alleges that the Respondent Firm falsely stated that the JV had no conflicts of interest in connection with its bid for the CP07 Contract. According to INT, the Individual Respondent

[13] See, e.g., Sanctions Board Decision No. 87 (2016) at paras. 81, 87.

[14] January 2011 Procurement Guidelines at para. 1.16(a)(ii), n.21.

was directly involved in the Client's preparation of the bidding documents for the CP07 Contract, which created conflicts of interest for the Respondent Firm because the Individual Respondent was also the company's principal and the CEO's brother-in-law. The Respondent Firm argues, inter alia, that its connections to the Individual Respondent were a matter of public knowledge and did not pose any conflicts, because the Individual Respondent did not assist the Client in this tender.

46. The record supports a finding that the Respondent Firm's staff engaged in an affirmative misrepresentation.[15] As part of its bid for the CP07 Contract, the JV submitted a letter signed by the Respondent Firm's CEO, expressly stating that "[w]e meet the eligibility requirements and have no conflict of interest as defined in Article 4 [of the Instruction to Bidders]." Under the cited provision, bidders may be found to have a conflict of interest where they maintain a close business or family relationship with a "professional staff of the Borrower" who was directly or indirectly involved in the preparation of the bidding documents or specifications of the contract. The Respondent Firm does not dispute that the Individual Respondent was a "professional staff of the Borrower," or that the Respondent Firm's connections to him constituted close business or family relationships when the CP07 Bid was submitted. The Sanctions Board observes that the asserted public nature of such relationships has no bearing on whether they posed conflicts for the Respondent Firm.[16] The issue is, then, whether the Individual Respondent was involved in this tender on behalf of the Client. Considering the totality of the evidence, the Sanctions Board concludes that he was. In particular, an international expert who oversaw this tender for the Client stated to INT that the Individual Respondent, through his role as a director within the Public Agency, personally reviewed the technical design and bidding documents for the CP07 Contract for approval. Consistent with this testimony, documentary evidence reveals that the Individual Respondent revised an early draft of these bidding documents in October 2014, and that his proposed edits were ultimately implemented by the Client. Presented with this evidence, the Respondents provided general denials and made uncorroborated claims that these records were fabricated. The Sanctions Board is not persuaded by these arguments. As previously observed, an assertion must have an evidentiary basis in the record, or it remains a mere assertion and not a substantiated fact.[17]

47. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent Firm's staff engaged in a misrepresentation by stating that the JV met the eligibility requirements and had no conflicts of interest as defined in the bidding documents for the CP07 Contract.

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[15] In previous cases where a respondent allegedly engaged in a misrepresentation relating to conflicts of interest, the Sanctions Board considered: (i) whether the respondent had an actual or potential conflict of interest (ii) that was subject to a disclosure obligation, and, if so, (iii) whether the respondent disclosed such conflict of interest. See, e.g., Sanctions Board Decision No. 65 (2014) at para. 40; Sanctions Board Decision No. 83 (2015) at para. 53. In this case, the factual record obviates this analysis, since the Respondent Firm directly represented that it had no conflicts of interest as defined in the bidding documents.

[16] Cf. Sanctions Board Decision No. 65 (2014) at para. 48.

[17] See Sanctions Board Decision No. 61 (2013) at para. 41; Sanctions Board Decision No. 63 (2014) at para. 50.

b. That knowingly or recklessly misled, or attempted to mislead, a party

48. 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.[18] In the past, the Sanctions Board found sufficient evidence that a respondent firm knowingly failed to disclose a conflict of interest where the record revealed that management was aware that the conflicted individual had a dual role.[19] In this case, similarly, the record supports a conclusion that the Respondent Firm's management knew of the Individual Respondent's involvement in this tender simultaneously as a government official and as a representative of the company. Logically, the Individual Respondent himself was aware of his own dual role. Furthermore, documentary evidence shows that, prior to bid submission, several representatives of the Respondent Firm – including high-level personnel – received a draft of the bidding documents for the CP07 Contract with edits proposed by the Individual Respondent in his capacity as a government official. These elements are sufficient to conclude that the Respondent Firm's employees were aware of the Individual Respondent's conflicts, and thereby knowingly made a misrepresentation to mislead public officials involved in this tender. The Sanctions Board observes that this conclusion is consistent with the above finding of collusion. While the Respondent Firm's staff may have expected at least some representatives of the Client to know that the statement in question was false, the intent to mislead may still be inferred with respect to public officials not involved in the improper arrangement.

49. For these reasons, the Sanctions Board finds that it is more likely than not that the representatives of the Respondent Firm knowingly attempted to mislead a party in making a false statement in the CP07 Bid.

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

50. The Sanctions Board has consistently held that, where the record demonstrates that a misrepresentation was made in response to a tender requirement, the intent to obtain a benefit or avoid an obligation may be inferred.[20] Here, the bidding documents for the CP07 Contract instructed bidders to submit a declaration of absence of conflict of interest as evidence of eligibility, and specified that bidders found to have a conflict of interest would be disqualified. The Respondent Firm's misrepresentation that the JV had no conflicts to disclose was directly related to these stipulations. In these circumstances, the Sanctions Board finds that it is more likely than

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[18] Sanctions Procedures at Section III.A, sub-paragraph 7.01.

[19] Sanctions Board Decision No. 65 (2014) at para. 54 (finding that a respondent firm had knowledge that its relationship with a certain individual created a conflict of interest, where the record showed that: (i) it was publicly known that this individual was an officer of the respondent firm's parent company and (ii) the respondent firm's general director was aware that this individual had a role in the selection process for the contract at issue).

[20] See, e.g., Sanctions Board Decision No. 61 (2013) at para. 28; Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 83 (2015) at para. 52; Sanctions Board Decision No. 88 (2016) at para. 37; Sanctions Board Decision No. 92 (2017) at para 72; Sanctions Board Decision No. 99 (2017) at paras. 23-25; Sanctions Board Decision No. 106 (2017) at paras. 25-27.

not that the Respondent Firm's staff made the false statement in question in order to establish the JV's eligibility, with the intent to obtain the CP07 Contract.

2. Fraud allegation 2: Alleged submission of a falsified manufacturer authorization letter

a. Act or omission, including a misrepresentation

51. INT alleges that, as part of the CP06 Bid, the Respondent Firm submitted a falsified MAL. The Respondent Firm acknowledges that the MAL in question was not authentic. In past decisions finding that respondents submitted forged documents, the Sanctions Board has relied primarily on written statements from the parties named in or supposedly issuing these documents, various indicia of falsity on the face of the documents, and the respondents' own admissions.[21] In this case, the record contains emails from employees of the manufacturer at issue, including the purported signatory, denying issuance of the MAL. These emails also identify signs of falsity on the face of the document, such as an odd signature and a reference number that does not exist in the manufacturer's records. Considering the totality of the record, including the Respondent Firm's own statements, the Sanctions Board finds that it is more likely than not that the MAL was forged and thereby constituted a misrepresentation in the CP06 Bid.

b. That knowingly or recklessly misled, or attempted to mislead, a party

52. INT argues that the record supports an inference that the Respondent Firm's employees acted knowingly. The Respondent Firm asserts that its staff was not aware that the MAL was false, and wrongly assumed that it had been properly issued. In addition, the Respondent Firm admits that its employees failed to assess whether this document was authentic or had been received from a legitimate source. In the past, the Sanctions Board has found sufficient evidence of knowledge in cases of alleged fraud where the respondents directly admitted to have acted knowingly,[22] or where the record supported an inference of knowledge based on the respondents' statements or

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[21] See, e.g., Sanctions Board Decision No. 61 (2013) at para. 21 (finding misrepresentation on the basis of written denials of authenticity by the purported issuers and signatories of the documents at issue, the additional indicia of falsity on the face of the documents, and the respondents' tacit acknowledgement that the documents are inauthentic); Sanctions Board Decision No. 69 (2014) at paras. 19-20 (finding that experience documents were forged where the record contained written statements from the purported issuers of the experience documents denying their authenticity and asserting various indicia of falsity therein); Sanctions Board Decision No. 79 (2015) at para. 21 (finding misrepresentation based on written denials of authenticity by the purported issuer as well as a statement by the respondent's counsel, during the Sanctions Board hearing, that the document in question was false); Sanctions Board Decision No. 98 (2017) at paras. 33-36 (finding misrepresentation on the basis of detailed correspondence from two banks denying having issued the security documents at issue).

[22] See, e.g., Sanctions Board Decision No. 46 (2012) at para. 24 (finding that the misrepresentation was made knowingly, where the respondent's employee who forged the signature on the bid document admitted that he knew he was not authorized to sign on behalf of the purported signatory); Sanctions Board Decision No. 49 (2012) at paras. 22, 24-25 (finding that the misrepresentation was carried out knowingly where the respondent and its affiliate admitted to creating and using forged documents).

indicia of falsity apparent to them.[23] By contrast, in assessing recklessness, the Sanctions Board has considered whether the circumstances indicated that a respondent was, or should have been, aware of the risk of submitting false or misleading bid documents, but nevertheless failed to act to mitigate that risk.[24] Under this standard, the Sanctions Board has found respondents to have acted recklessly where the documents at issue contained visible signs of forgery,[25] where a responsible individual made no effort to supervise the bid preparation process,[26] and/or where the respondents did not employ any process of due diligence with respect to the forged records.[27] In the present case, the evidence is insufficient to support INT's contention of knowledge. In particular, it remains unclear whether the MAL in question bore indicia of falsity that were, or should have been, readily apparent to the Respondent Firm's employees. Nevertheless, the Respondent Firm admits that its employees took no steps to confirm the MAL's authenticity, and the record does not include any evidence that the Respondent Firm's bid preparation process included controls or other mechanisms to prevent the use of forged records. On balance, these circumstances indicate that the Respondent Firm's staff at least should have been aware of a substantial risk of falsity and failed to take any precautions to address it. Accordingly, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees acted at least recklessly in submitting the forged MAL to the PMU.

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

53. As noted above, the Sanctions Board has consistently decided that, where the record demonstrates that a misrepresentation was made in response to a tender requirement, the intent to obtain a benefit or avoid an obligation may be inferred.[28] Here, the bidding documents for the CP06 Contract explicitly stated that, where a bidder does not produce or manufacture the goods it offers to supply, the bidder must establish eligibility by submitting a corresponding MAL. Therefore, it is clear that the MAL in question was submitted in response to the tender eligibility

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[23] See, e.g., Sanctions Board Decision No. 55 (2013) at para. 46 (finding that misrepresentations were made knowingly where the falsity of the forged documents would have been readily apparent to the respondent firm's representative).

[24] See, e.g., Sanctions Board Decision No. 51 (2012) at paras. 33-39; Sanctions Board Decision No. 79 (2015) at paras. 25-30; Sanctions Board Decision No. 98 (2017) at paras. 41-47.

[25] See, e.g., Sanctions Board Decision No. 47 (2012) at para. 27 (noting physical indicia of falsification apparent on the face of some of the documents in question, such as identical language, similar signatures and lack of stamps); Sanctions Board Decision No. 52 (2012) at para. 27 (noting that the forged bid security submitted by the respondent lacked a bid security number, as would have been standard).

[26] See Sanctions Board Decision No. 73 (2014) at para. 30 (finding that the respondent director was or should have been aware of a substantial risk of falsity, either because of potential red flags in the document or because he made no effort to supervise or direct the bid preparation process).

[27] See Sanctions Board Decision No. 98 (2017) at paras. 43-47 (finding that the respondent was or should have been aware of a substantial risk of falsity, because the documents at issue contained clear indicia of falsity and were procured through an agent of questionable qualifications, and the respondent's employees failed to supervise the agent or verify the document's authenticity).

[28] See, e.g., Sanctions Board Decision No. 61 (2013) at para. 28; Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 83 (2015) at para. 52; Sanctions Board Decision No. 88 (2016) at para. 37; Sanctions Board Decision No. 92 (2017) at para 72; Sanctions Board Decision No. 99 (2017) at paras. 23-25; Sanctions Board Decision No. 106 (2017) at paras. 25-27.

requirements. In these circumstances, and consistent with precedent, the Sanction Board finds that it is more likely than not that the misrepresentation at issue was made to secure the CP06 Contract for the Respondent Firm.

D. Evidence of Obstructive Practice

54. In accordance with the definition of "obstructive practice" under Paragraph 1.16(a)(v)(bb) of the January 2011 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent Firm engaged in acts "intended to materially impede the exercise of the Bank's inspection and audit rights." INT alleges that the Respondent Firm intentionally and materially impeded the Bank's inspection and audit by refusing to provide any of the requested financial records and relevant emails, and failing to make key staff available for interviews. The Respondent Firm argues that it made concerted efforts to submit detailed materials to INT.

55. The bidding documents for the CP06 and CP07 Contracts specifically required the Respondent Firm to permit the Bank to inspect all accounts and records relating to the submission of the bids and performance of these contracts, and to have such documents reviewed by auditors appointed by the Bank. The record reveals that INT sent a letter to the Respondent Firm on June 24, 2016, stating that the Bank would be conducting an inspection relating to these contracts, and instructing the Respondent Firm to provide a detailed set of materials and make certain specific personnel available for in-person interviews. Subsequent correspondence shows that the Respondent Firm agreed to submit a subset of preliminary records electronically by July 6, 2016, and meet with INT at the Respondent Firm's offices on July 25, 2016. On July 6, 2016, the Respondent Firm sent INT a limited number of documents. In response, INT reiterated its initial request. The record includes no reply from the Respondent Firm. On July 25, 2016, INT visited the Respondent Firm's premises for an on-site inspection. The following day, INT emailed the CEO describing the visit in detail. Pursuant to this contemporaneous account, the Respondent Firm's staff: (i) presented a limited amount of documents relating to the company's operations and the contracts at issue, without allowing INT to make any copies; (ii) refused to provide any accounting records; (iii) refused to provide any electronic correspondence, citing that the company had been hacked and that its policies did not allow it to require its employees to produce any emails; and (iv) stated that none of the relevant employees – including the CEO herself – were available for interviews as requested. In the same email to the CEO, INT emphasized that this conduct could constitute obstruction under the sanctions framework, and advised the Respondent Firm to submit all requested records immediately. On August 10, 2016, INT contacted the CEO once more, proposing to interview her by telephone at a mutually convenient time, and reiterating the request for documents. The record indicates that the CEO did not respond to this email and that the Respondent Firm did not provide any further documents. At the hearing, the Respondent Firm stated that its staff requested that INT sign a confidentiality agreement as a condition for the audit, and that INT declined to accommodate this demand. However, the Respondent Firm failed to substantiate its assertions, and INT denied that such a request was made. As a whole, the evidence shows that INT made repeated efforts to exercise the Bank's audit rights, and that the Respondent Firm's staff refused to comply without any credible justification.

56. For these reasons, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees engaged in conduct intended to impede the Bank's exercise of its inspection and audit rights.

E. The Respondent Firm's Liability for the Acts of Its Employees

57. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.[29] In the present case, the record supports a finding that the Respondent Firm's staff engaged in sanctionable practices in accordance with the scope of their respective duties and with the purpose of serving the interests of the company. For instance, evidence shows that representatives of the Respondent Firm obtained and used confidential information to secure unfair advantages for the JV in the bidding process for the CP07 Contract; prepared and submitted the bids for the CP06 and CP07 Contracts containing misrepresentations; and impeded INT from conducting an audit of the Respondent Firm's records, including during a scheduled on-site inspection. There is no indication in the record that the employees acted for any purpose other than serving the Respondent Firm. Moreover, the Respondent Firm does not present, and the record does not provide any basis for, a rogue-employee defense. Thus, the Sanctions Board finds the Respondent Firm liable for the sanctionable practices carried out by its employees.

F. Sanctioning Analysis

1. General framework for determination of sanctions

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

59. 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.[30] 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.[31]

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

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

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

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

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

2. Plurality of sanctionable practices

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

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

63. Where respondents engaged in unrelated sanctionable practices, the Sanctions Board has considered the gravity of each allegation separately and determined that a distinct base sanction should be applied to each distinct count,[32] even where all misconduct related to the same project or contract.[33] By contrast, the Sanctions Board applied aggravation rather than a separate sanction for multiple sanctionable practices in a case where the counts of misconduct were closely interrelated, with the fraud intended to prevent the discovery of the corrupt practices, the investigation into which was later obstructed.[34] The record in this case reflects that the Respondent Firm engaged in collusive and fraudulent practices relating to the CP07 Contract, a fraudulent

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

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

[34] Sanctions Board Decision No. 60 (2013) at para. 143.

practice relating to the CP06 Contract, and an obstructive practice in connection with a Bank audit relating to the CP06 and CP07 Contracts. The Sanctions Board concludes that the collusive and fraudulent practices relating to the CP07 Contract are interconnected, because the misrepresentation regarding the Respondent Firm's relationship with the Individual Respondent was intended to conceal and further the Respondents' collusive arrangement. This notwithstanding, the two other counts of misconduct were factually distinct and must be considered separately. Accordingly, the Sanctions Board finds that the plurality of the Respondent Firm's sanctionable practices warrants multiplication of the base sanction with respect to the collusion, second count of fraud, and obstruction; and aggravation of the base sanction with respect to the first count of fraud.

3. Factors considered in the present case

a. Severity of the misconduct

64. Section III.A, sub-paragraph 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies central role in the misconduct, management's role in the misconduct, and involvement of a public official as examples of severity.

65. *Central role in the misconduct*: Section IV.A.3 of the Sanctioning Guidelines states that this factor may apply to a respondent who acted as the "organizer, leader, planner, or prime mover in a group of 2 or more." The Sanctions Board has applied aggravation where the respondent led or initiated a misconduct executed by two or more people.[35] The Sanctions Board has declined aggravation where the record does not suggest that any other party apart from the respondent participate in the misconduct,[36] or where the record does not demonstrate that the respondent was the leader or prime mover in the misconduct.[37] In this case, INT submits that both Respondents played a central role in the collusion with the Client, and that the Respondent Firm played a central role in the other three sanctionable practices. The Sanctions Board observes that, by definition, the Respondent Firm cannot have played a central role in the fraudulent and obstructive practices, as no other parties were involved in that misconduct. Nevertheless, with respect to the collusive

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[35] See, e.g., Sanctions Board Decision No. 72 (2014) at para. 57 (applying aggravation for an individual respondent's central role in the misconduct where the record reveals that he served as the respondents' main interlocutor with the agent, took the lead in negotiating the commissions to be paid, signed the agency agreements on behalf of one of the respondent entities, and signed the fraudulent bids); Sanctions Board Decision No. 78 (2015) at para. 76 (applying aggravation with respect to the individual respondent, who initiated the corrupt scheme by soliciting employment for her daughter).

[36] See, e.g., Sanctions Board Decision No. 67 (2014) at paras. 36-37 (declining aggravation where the record did not indicate, and INT did not assert, that the respondent's joint venture partner was involved in the misconduct); Sanctions Board Decision No. 86 (2016) at para. 48 (declining aggravation where INT did not address, and the record did not show, the involvement and potential culpability or responsibility of other actors for the misconduct).

[37] See, e.g., Sanctions Board Decision No. 85 (2016) at para. 40 (declining aggravation where INT failed to carry its burden to prove that the respondent solicited its joint venture partner to pay for the trip offered to a public official, and that the record showed that the employees of both the respondent and the joint venture partner actively coordinated with each other to plan the trip).

arrangement, the record supports a finding that the Respondents were the prime movers in the group. In effect, the scheme was clearly designed to benefit the Respondents, who obtained and used confidential information, sought a suitable partner ahead of competitors, led the JV, and influenced the Client's actions to serve their own interests. In these circumstances, the Sanctions Board applies aggravation for both Respondents under this factor.

66. *Management's role in the misconduct*: Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board has previously applied aggravation on this basis where high-level members of a respondent entity's management personally participated in the misconduct.[38] In this case, the evidence shows that the Respondent Firm's high-level personnel participated in the sanctionable practices. For example, as discussed above, the CEO personally participated in the Respondent Firm's obstruction of the Bank's audit. Accordingly, the Sanctions Board finds that aggravation is warranted for the Respondent Firm.

67. *Involvement of a public official*: Section IV.A.5 of the Sanctioning Guidelines states that this factor may apply "[i]f the respondent conspired with or involved a public official or World Bank staff in the misconduct." In the past, the Sanctions Board has found that aggravation was warranted where the respondents conspired with public officials to secure contracts.[39] Here, the record shows that the collusive arrangement involved certain representatives of the Client, all of whom were public officials who conspired with the Respondents to award the CP07 Contract to the JV. On this basis, and consistent with precedent, the Sanctions Board applies aggravation for both Respondents.

b. Magnitude of harm

68. *Degree of harm to Project*: Section III.A, sub-paragraph 9.02(b) of the Sanctions Procedures requires the Sanctions Board to consider the magnitude of the harm caused by the misconduct. Section IV.B.2 of the Sanctioning Guidelines identifies the degree of harm to the project through poor contract implementation or delay as an example of such harm. The Sanctions Board has previously applied aggravation, for example, where the misconduct ultimately led to the cancellation of the tender,[40] or the termination of the contract.[41] Conversely, the Sanctions Board has declined to apply aggravation where the misconduct at issue was not found to have caused the asserted problems and delays in the contract.[42] In the present case, INT argues that the CP07 Contract was ultimately cancelled because, as part of the Respondents' collusive arrangement, the Client's staff refused to accept the Bank's recommendation to award this contract to a different

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

[39] See Sanctions Board Decision No. 87 (2016) at para. 130.

[40] Sanctions Board Decision No. 55 (2013) at para. 68.

[41] Sanctions Board Decision No. 83 (2015) at para. 86; Sanctions Board Decision No. 86 (2016) at para. 49.

[42] Sanctions Board Decision No. 78 (2015) at para. 78 (declining to apply aggravation where the problems and delays in the contract were not caused by the misconduct, but by other reasons such as issues relating to project supervision and the initial design of the system).

bidder or launch a re-bid. While the record does show that the Respondents' collusive arrangement affected the bid evaluation process, the Sanctions Board observes that INT has failed to provide any documentary evidence in support of its assertion that the CP07 Contract was eventually cancelled, or demonstrate that the misconduct in question caused other comparable harms to the Project. Accordingly, the Sanctions Board declines to apply aggravation on this basis.

c. Interference in the Bank's investigation

69. *Interference with investigative process*: Section III.A, sub-paragraph 9.02(c) of the Sanctions Procedures requires that "interference by the sanctioned party in the Bank's investigation" be considered in determining a sanction. Section IV.C.1 of the Sanctioning Guidelines describes this factor as including "acts intended to materially impede the exercise of the Bank's contractual rights of audit or access to information." In the past, the Sanctions Board has applied aggravation where respondents specifically instructed an employee not to cooperate with INT or imposed non-cooperation as a condition for the payment of an employee's salary.[43] By contrast, the Sanctions Board has declined to apply aggravation where the respondents' refusal to provide information did not amount to overt acts that impeded INT's investigation;[44] or where INT did not establish that the respondents acted with the intent to interfere.[45] Here, INT alleges that the Respondent Firm effectively prevented INT from interviewing the Respondent Firm's former general manager (the "Former General Manager") by (i) belatedly informing INT that the Former General Manager had ended her employment with the company, and (ii) offering the Respondent Firm's counsel to accompany the Former General Manager during her interview. Contemporaneous records indicate that the Former General Manager initially agreed to meet with INT, but later refused to be interviewed without the Respondent Firm's attorney. Considering that this posed an irreconcilable conflict of interest, INT did not conduct the interview. The Sanctions Board finds that INT has not established that the asserted conduct was intended to materially impede the Bank's audit. In particular, there is no indication that the Respondent Firm had the ability to control the Former General Manager or otherwise direct her not to cooperate, as she was no longer an employee. In addition, the Former General Manager did not categorically refuse to be interviewed, and there is no evidence that her request to be accompanied by the Respondent

[43] Sanctions Board Decision No. 92 (2017) at para. 115.

[44] See, e.g., Sanctions Board Decision No. 63 (2014) at para. 103 (declining aggravation where INT failed to show that the respondents' restrictive interpretation of the Bank's audit rights constituted deliberate interference); Sanctions Board Decision No. 69 (2014) at para. 37 (declining aggravation where INT did not allege that the respondent engaged in any overt acts that interfered with INT's investigation, and asserted only that the respondent refused to respond to INT's questions and failed to follow up with information); Sanctions Board Decision No. 86 (2016) at para. 50 (declining aggravation where the respondent, while not producing the promised documents and signature sample, did not engage in overt acts that interfered with INT's investigation).

[45] See, e.g., Sanctions Board Decision No. 100 (2017) at para. 48 (declining aggravation where INT failed to establish that the respondent's conduct was intended to impede INT's investigation); Sanctions Board Decision No. 102 (2017) at para. 70 (declining aggravation where INT failed to establish that the respondent's submission of allegedly fabricated invoices was intended to impede INT's investigation); Sanctions Board Decision No. 103 (2017) at para. 37 (declining aggravation where the record is insufficient to show that the Respondent deliberately falsified documents or made false statements to materially impede INT's investigation).

Firm's counsel was made with the intent to interfere. On this basis, the Sanctions Board declines to apply aggravation under this factor.

d. Periods of temporary suspension

70. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the Respondents' respective periods of temporary suspension. The Respondent Firm has been suspended since May 12, 2016, pursuant to Article II of the 2012 Sanctions Procedures, which provides for early temporary suspension prior to sanctions proceedings. The Individual Respondent has been suspended since the issuance of the Notice on February 27, 2018.

e. Other considerations

71. *Conduct of INT's investigation*: Under Section III.A, sub-paragraph 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider "any other factor" that it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the [s]anctionable [p]ractice." Without expressly requesting mitigation, the Respondent Firm presents complaints related to the conduct of INT's investigation. Specifically, the Respondent Firm asserts that: (i) INT failed to pursue certain investigative leads and interview specific relevant witnesses; (ii) INT relied or may have relied on evidence including fabricated documents, a memorandum of interview that was not reviewed or signed by the witness, and records that were illegally obtained by a competitor of the Respondent Firm; and (iii) an INT investigator displayed aggressive behavior. INT argues that its investigation was conducted properly and without any hostility or intimidation towards the Respondent Firm. The Sanctions Board has previously declined to apply mitigation based on the conduct of INT's investigation, observing that this factor is not relevant to a respondent's culpability or responsibility in relation to the sanctionable practice at issue.[46] Consistent with this precedent, the Sanctions Board finds that no mitigation is warranted on this basis in the present case.

G. Determination of Appropriate Sanctions

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

i. the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, 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;[47] (ii) be a nominated sub-contractor, consultant, manufacturer

[46] See, e.g., Sanctions Board Decision No. 97 (2017) at para. 79; Sanctions Board Decision No. 106 (2017) at para. 50.

[47] A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for pre-qualification, 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 III.A, sub-paragraph 9.01(c)(i), n.14.

or supplier, or service provider[48] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of nine (9) years and nine (9) months beginning from the date of this decision, the Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent Firm for collusive, fraudulent, and obstructive practices as defined in Paragraph 1.16(a)(ii), Paragraph 1.16(a)(iii), and Paragraph 1.16(a)(v)(bb) of the January 2011 Procurement Guidelines; and

ii. the Individual Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Individual Respondent, shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[49] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[50] 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 for a period of four (4) years and six (6) months beginning from the date of this decision. This sanction is imposed on the Individual Respondent for a collusive practice as defined in Paragraph 1.16(a)(iii) of the January 2011 Procurement Guidelines.

73. The Respondents' ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of these declarations of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may determine whether to

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

[49] See supra n.47.

[50] See supra n.48.

enforce the declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[51]

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
Ellen Gracie Northfleet

[51] 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 website (http://go.worldbank.org/B699B73Q00).