

Date of issuance: December 19, 2017

**Sanctions Board Decision No. 104
(Sanctions Case No. 426)**

**IDA Credit No. 4954-BD
Bangladesh**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 426 (the “Respondent”), together with certain Affiliates,² with a minimum period of ineligibility of one (1) year beginning from the date of this decision. This sanction is imposed on the Respondent for an obstructive practice.

I. INTRODUCTION

1. The Sanctions Board met in a panel session on March 17, 2017, at the World Bank Group’s headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of Teresa Cheng (Panel Chair), Ellen Gracie Northfleet, and Anne van’t Veer.

2. A hearing was held on the same day, following a request from the Respondent and in accordance with Section III.A, paragraph 6 of the Sanctions Procedures. The World Bank Group’s Integrity Vice Presidency (“INT”) participated in the hearing through its representatives, all attending in person. The Respondent was represented by outside counsel, also attending in person. One additional representative of the Respondent participated in the hearing remotely via video conference. 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 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 Suspension and Debarment Officer (the “SDO”) to the Respondent on July 7, 2016 (the

¹ In accordance with Section II of the Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued 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”). For the avoidance of doubt, the term “World Bank Group” includes Bank Guarantee Projects and Bank Carbon Finance Projects, 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.

² Section II of the Sanctions Procedures defines “Affiliate” to include “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” The sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondent. See [infra](#) Paragraph 43.

- “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) presented to the SDO by INT, dated March 22, 2016;
- ii. Explanation submitted by the Respondent to the SDO on August 24, 2016 (the “Explanation”);
 - iii. Response submitted by the Respondent to the Sanctions Board on October 9 and October 12, 2016 (the “Response”); and
 - iv. Reply submitted by INT to the Sanctions Board on November 10, 2016 (the “Reply”).

4. Effective March 23, 2015, pursuant to Section III.A, paragraph 2 of the Sanctions Procedures, which provides for early temporary suspension prior to sanctions proceedings in certain circumstances, the SDO temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility³ with respect to any Bank-Financed Projects.⁴ The SDO specified that the temporary suspension would apply across the operations of the World Bank Group. On March 23, 2016, the SDO informed the parties and the Sanctions Board that INT had submitted the SAE and the Respondent’s temporary suspension was therefore automatically extended, pending the final outcome of these sanctions proceedings.⁵

5. On July 7, 2016, pursuant to Section III.A, sub-paragraphs 4.01, 9.01, and 9.04 of the Sanctions Procedures, the SDO issued the Notice to the Respondent and recommended the following sanction for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent: debarment with conditional release, after a minimum period of one (1) year and nine (9) months.⁶ The SDO identified the following conditions for release from debarment: (i) appropriate remedial measures to address the obstructive practices alleged by INT against the Respondent and (ii) an effective integrity compliance program, to be adopted and implemented in a manner satisfactory to the Bank.⁷ On September 22, 2016, the SDO issued a determination with respect to the Respondent’s Explanation, finding no basis to withdraw the Notice or revise the sanction originally recommended therein.⁸ On October 9 and October 12, 2016, the Respondent filed a Response in two parts, in which the Respondent contested the SDO’s finding of liability and recommended sanction.⁹

³ The full scope of ineligibility effected by a temporary suspension is defined in the Sanctions Procedures at Section III.A, sub-paragraphs 4.02(a) and 9.01(c), read together.

⁴ The term “Bank-Financed Projects” encompasses any project or program financed by the Bank and governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. The term “Bank-Financed Projects” includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section III.A, sub-paragraph 1.01(c)(i), n.3.

⁵ See Sanctions Procedures at Section III.A, sub-paragraph 2.04(b).

⁶ See Sanctions Procedures at Section III.A, sub-paragraphs 1.02(a) and 9.04.

⁷ See Sanctions Procedures at Section III.A, sub-paragraph 9.03.

⁸ See Sanctions Procedures at Section III.A, sub-paragraphs 4.02(b)-(c).

⁹ See Sanctions Procedures at Section III.A, sub-paragraph 5.01(a).

II. GENERAL BACKGROUND

6. This case arises in the context of the Bangladesh Health Sector Development Program (the “Project”), which sought to “enable [Bangladesh] to strengthen its health systems and improve its health services, particularly for the poor.” On September 12, 2011, IDA entered into a financing agreement with the People’s Republic of Bangladesh (the “Borrower”) for a credit of approximately US\$359 million to help finance the Project (the “Financing Agreement”). The Project became effective on October 23, 2011, and closed on June 30, 2017.

7. On January 30, 2013, the implementation unit for the Project (the “PIU”) issued bidding documents (the “Bidding Documents”) for the procurement of ultrasound machines under the Project (the “Contract”). On April 16, 2013, the Respondent submitted a bid (the “Bid”) for the Contract. On June 12, 2013, the PIU issued a bid evaluation report with respect to the Contract; the Respondent’s Bid was not selected. On November 5, 2013, INT sent the Respondent a request to inspect certain accounts and records of the Respondent and its affiliates (the “Inspection Letter”). Between November 2013 and May 2014, INT and the Respondent exchanged correspondence, held a telephone conference, and met at the Respondent’s offices in Bangladesh to discuss INT’s request.

8. INT alleges that the Respondent engaged in an obstructive practice by deliberately refusing to allow INT to conduct an audit of the Respondent’s books and records relating to the Bid.

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 definition of obstructive practice:* The alleged obstructive practice in this case has the meaning set forth in the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 1, 2006, and May 1, 2010) (the “May 2010 Procurement Guidelines”), which are referenced in the Financing Agreement and the Bidding Documents. Paragraph 1.14(a)(v)(bb) of these Guidelines defines an obstructive practice to

include “acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under par. 1.14.(e) below.” Paragraph 1.14(e) in turn states that the Bank “will have the right to require that a provision be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.” The Bidding Documents provide that “[b]idders shall permit the Bank to inspect any accounts and records and other documents relating to the Bid submission and contract performance, and to have them audited by auditors appointed by the Bank.”

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

13. INT alleges that the Respondent engaged in an obstructive practice by deliberately refusing to allow INT to conduct an audit and inspection of the Respondent’s books and records. INT submits that this refusal represented an intentional and material impediment to INT’s investigative activities. INT states that it has not identified any mitigating factors that may be applicable to the Respondent. INT requests that aggravation be applied for the Respondent’s failure to honor its initial expression of intent to cooperate with INT’s inquiry, which resulted in INT’s “unnecessar[y]” expenditure of financial and investigative resources.

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

14. The Respondent argues that it should not be held liable for any obstructive practice because INT’s request to inspect its books and records was both improperly presented and otherwise invalid. Specifically, the Respondent argues that INT did not correctly identify and fully articulate to the Respondent the precise legal basis and scope of INT’s asserted audit rights, as required by national law in Bangladesh. The Respondent further asserts that the Bank has no authority to conduct an audit of the Respondent’s books and records, because, *inter alia*, the past contracts identified by INT in its audit request do not define obstruction as a sanctionable practice, the Bidding Documents contain an invalid definition of obstruction, the Respondent was not selected to receive the Contract following the Bid, and INT’s request to audit the Respondent’s books and records arrived only after the bidding process for the Contract had ended.

15. The Respondent requests mitigation for its asserted cooperation with INT and asks the Sanctions Board to consider the expected impact of any sanction on the Respondent’s business.

C. INT’s Principal Contentions in the Reply

16. INT asserts that the Respondent’s refusal of the audit in May 2014 appears uncontested, and disputes the Respondent’s arguments regarding the Bank’s authority to audit. INT states that the Bank’s right to audit a firm flows from the text of the bidding documents or the contract, which need not also define obstruction as a sanctionable practice. INT also asserts that the Respondent may be sanctioned for obstruction because the Bidding Documents in this case did

define obstruction as a sanctionable practice, and that the Respondent's vulnerability to sanction does not depend on any subsequent contract with the Borrower or expire when the procurement or contract execution process may be completed. Finally, INT submits that it has provided the Respondent, through correspondence in the record, with appropriate notice of valid authority for, and scope of, the proposed audit and inspection, as well as the possibility of an obstruction allegation against the Respondent by INT.

17. INT appears to oppose mitigating credit for the Respondent's asserted cooperation. INT additionally argues that the Respondent's refusal to allow an audit with respect to past Bank-financed contracts, which were identified in the Inspection Letter but which did not define obstruction as a sanctionable practice, merits aggravation.

D. Presentations at the Hearing

18. At the hearing, INT reiterated that the Respondent had obstructed INT's investigation by refusing to allow INT to conduct an audit and inspection of the Respondent's books and records. INT asserted that it was entitled to conduct the audit with respect to all contracts and bids where the respective bidding or contract documents articulated the Bank's authority to conduct an audit and inspection. INT elaborated, however, that the present allegation of obstruction arises from the Respondent's refusal to allow an audit of a subset of the files which INT has a right to audit: specifically, documents relating to the Bid, because the Bidding Documents included an applicable definition of obstruction as a sanctionable practice. INT emphasized that its staff did explain to the Respondent the Bank's legal authority to conduct the audit, and that the Respondent's refusal came after the company had agreed to the audit both in writing and over the telephone, resulting in a waste of INT's resources and time. In addition, INT argued that the national law of Bangladesh should have no bearing on the Bank's authority to conduct inspections of documents relating to bids and contracts under Bank-financed projects.

19. The Respondent stated that the Bidding Documents did not bind the Respondent to comply with INT's audit request and that what INT describes as a refusal to permit a rightful audit was in fact appropriately zealous advocacy by the Respondent's counsel. Specifically, the Respondent argued that the Respondent's counsel acted in good faith and in order to protect the rights of his client while also communicating with INT. The Respondent further submitted that it may be Bangladesh, and not the Bank, that has discretion to determine the permissible scope of INT's audit and the reasonableness of the Respondent's counsel's response to INT's audit requests. Given the asserted reasonableness of counsel's advice in this case, the Respondent argued that it was "immunized." The Respondent also asked the Sanctions Board to consider that the Bid was for the procurement of only one item, that the Respondent did not ultimately win the Contract, and that INT is not alleging that the Respondent engaged in any fraudulent or corrupt misconduct with respect to the Bid.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

20. The Sanctions Board will first address the preliminary matter raised by the Respondent. The Sanctions Board will then consider whether the record supports a finding that it is more likely than not that the Respondent engaged in the alleged obstructive practice. Finally, the Sanctions Board will determine what sanction, if any, should be imposed on the Respondent.

A. Preliminary Matter

21. *Applicable definition of obstructive practice:* The Respondent argues that the definition of obstruction presented in the Bidding Documents is “incomplete and defective.” The Sanctions Board notes that the Bidding Documents appear to contain a typographical error in a subparagraph reference, but that the document contains all provisions relevant to the correct understanding of the applicable definition of obstructive practice. Taking into consideration the totality of the circumstances outlined in Paragraph 12 above, the non-substantive nature of the error identified by the Respondent, and guidance from the office of the World Bank Group’s General Counsel on this point, the Sanctions Board declines to accept the Respondent’s argument as a shield against potential liability in this case.

B. Evidence of Obstructive Practice

22. In accordance with the definition of “obstructive practice” under the May 2010 Procurement Guidelines,¹⁰ INT bears the initial burden to show that it is more likely than not that the Respondent engaged in any conduct “intended to materially impede the exercise of the Bank’s inspection and audit rights[.]”¹¹

23. First, as a specific threshold question, the Respondent argues that the Sanctions Board should take into account the national law of Bangladesh in considering, *inter alia*, the scope of the Respondent’s obligation to permit the Bank’s inspection and audit, the scope of INT’s obligation to identify for the Respondent the legal basis of its authority to conduct the audit, and the Bank’s ability to sanction the Respondent. The Respondent refers broadly to the Constitution of Bangladesh and privity of contract, but does not identify with specificity what national laws may be relevant to the Sanctions Board’s analysis in this case. Second, the Respondent argues that INT’s request was predicated on a misunderstanding or misstatement of the Bank’s audit rights and that, in any event, the Respondent did not “stonewall” INT or intend to impede any valid audit. The Respondent submits that it acted reasonably and on advice of counsel in providing some documents to INT but declining to permit a full audit without additional articulation of the Bank’s basis for and right to an inspection.

24. INT states that the Sanctions Board has previously declined to apply or defer to national laws in making decisions regarding liability or sanction and that, in any event, by submitting the Bid, the Respondent voluntarily accepted its obligation to permit the Bank’s possible inspection and audit.

25. *Applicability of national law:* The Sanctions Board does not accept the Respondent’s threshold argument regarding the applicability of Bangladeshi law. The Sanctions Board has previously observed that “national law standards and judgments are not binding on the Bank or the Sanctions Board’s proceedings,”¹² and that the scope of a respondent’s liability for purposes

¹⁰ See *supra* Paragraph 12.

¹¹ May 2010 Procurement Guidelines at Paragraph 1.14(a)(v)(bb).

¹² Sanctions Board Decision No. 63 (2014) at para. 53.

of the Bank's administrative sanctions process may not be coextensive with the scope of the Respondent's potential liability under national law.¹³ Rather, the Sanctions Board applies the standards set out in the World Bank Group Policy: Statute of the Sanctions Board, Sanctions Procedures, and other formal guidelines issued by the World Bank with respect to sanctions matters.¹⁴

26. *The Bank's right to conduct an audit of items relating to the Bid:* The Sanctions Board has previously observed that INT does not have the power to compel the production of evidence or witness testimony, and that its investigative toolkit is limited.¹⁵ Accordingly, INT's audit rights are an integral part of its investigative and fact-finding mandate, without which INT's ability to detect, deter, and prevent fraud and corruption may be compromised.¹⁶ In the present case, the Bidding Documents required the Respondent to "permit the Bank to inspect any accounts and records and other documents relating to the Bid submission and contract performance, and to have them audited by auditors appointed by the Bank" and put the Respondent on notice that it may be sanctioned for obstructive practices if it failed to accommodate INT's audit. This requirement to permit an audit and inspection of records relating to the Bid applied to every entity that submitted a bid in response to the Bidding Documents and that requirement was not limited to the selection period or to the winning bidder. Moreover, the Respondent explicitly acknowledged and assented to this requirement in the Bid by including a statement that the requirement was "[a]ccepted, [f]ollowed and will be followed." The record therefore supports a finding that INT correctly invoked the Bank's right to audit records relating to the Bid.

27. *The Respondent's refusal of INT's audit request:* INT asserts that the Respondent refused to comply with INT's request to audit documents relating to the Bid. The Respondent suggests that the actions of its counsel were an example of advocacy and not a refusal. The record shows that, after INT's initial request for an inspection and months of correspondence, the Respondent ultimately declined to allow an inspection or professional audit of its files as required under the Bidding Documents. Both the Respondent's counsel and the Respondent's sole owner (the "Owner") clearly communicated this refusal to INT, in person and/or in writing.

- i. In an email to INT on May 25, 2014, the Respondent's counsel confirmed having met with INT and stated, "[The Respondent] would like to reiterate its legal position that as long as the Bank is able to establish its legal authority and jurisdiction over the affairs of [the Respondent], it will not hesitate to allow [an] inspection and audit of its books of account. . . . As of now, we are fully convinced that under the current dispensation of the contractual provisions, the Bank does not have any such authority."
- ii. In emails on May 26-27, 2014, INT reached out directly to the Owner. In those emails, INT shared and commented on counsel's letter of May 25, 2014; invited the Owner to contact INT on the next day and to cooperate with the audit; referred to several rejected

¹³ See, e.g., *id.*

¹⁴ See *id.*

¹⁵ Sanctions Board Decision No. 93 (2017) at para. 83.

¹⁶ See *id.*

requests to meet with the Respondent's counsel, the Owner, and the Respondent's other staff; and specifically articulated the Respondent's obligation to permit the Bank's audit and inspection of the Respondent's books and records in relation to the Bid.

- iii. In a reply on May 27, 2014, the Owner stated, "Please communicate with our lawyer for all further correspondence. I do not accept your legal arguments regarding your right to audit Our lawyer will send you our reply in due co[u]rse."
- iv. The record does not suggest that either the Owner or any other representatives of the Respondent later contacted INT or amended the Respondent's position.

28. *Conclusions regarding the Respondent's intent:* Considering the totality of the record, including the parties' written submissions and arguments at the hearing, the Sanctions Board finds that the actions of the Respondent's counsel and the Owner in response to INT's requests to conduct an audit constituted an unambiguous refusal. This refusal supports an inference that the Respondent's counsel and the Owner intended to materially impede the exercise of the Bank's inspection and audit rights.¹⁷ The Sanctions Board is not persuaded by the Respondent's proposition that counsel's zealous advocacy and protection of the Respondent's perceived rights in Bangladesh cannot amount to a refusal. The Sanctions Board notes that, for a finding of sufficient intent, INT need not prove that the refusal of an audit was motivated solely or primarily by the wish to impede the exercise of the Bank's rights.¹⁸ As the Sanctions Board has held before, sanctions proceedings are "an administrative process based on contractual obligations undertaken by a respondent. Those contractual obligations include, first, an obligation to comply with an audit request by the Bank in relation to the relevant bids or contracts, and second, an agreement that failure to comply with an audit request by the Bank may constitute the sanctionable practice of obstruction."¹⁹ In the present case, these contractual obligations were imposed and accepted when the Respondent submitted the Bid.²⁰ The Sanctions Board therefore finds that the actions of the Respondent's counsel and the Owner, in refusing INT's numerous requests to conduct an audit and inspection, were intended to materially impede the exercise of the Bank's inspection and audit rights and therefore constitute an obstructive practice.

¹⁷ See Sanctions Board Decision No. 87 (2016) at paras. 114-116 (finding that, in the context of a valid audit request, the respondent's failure to provide access to requested documents, refusal to authenticate a piece of evidence, and failure to grant access to its email server constituted obstruction by impeding the Bank's exercise of its inspection and audit rights).

¹⁸ See Sanctions Board Decision No. 93 (2017) at paras. 81-84 (finding that the respondent's refusal of an audit request constituted obstruction and rejecting the respondent's proposed defense that refusal was predicated on the respondent's right against self-incrimination in national criminal proceedings).

¹⁹ *Id.* at para. 83.

²⁰ See *supra* Paragraph 26.

C. The Respondent's Liability for the Acts of the Owner and its Counsel

29. In past cases, the Sanctions Board has considered that a respondent entity could be held directly and/or vicariously liable for the acts of its owner,²¹ authorized representative,²² or agent,²³ acting in the course and scope of that individual's duties. In the present case, the Respondent does not argue that it should not be liable for the actions of the Owner but submits that it is "immunized" in having reasonably relied on the advice of counsel when determining its response to INT's audit request. The Respondent submits that an attorney is more independent than an agent in a typical principal-agent relationship and that the attorney's client should therefore not be held liable for following the guidance of counsel's legal opinion. INT contends that, as a basic legal principle, a client entity is responsible for the actions that an attorney takes on its behalf, and that a departure from this standard would present an opportunity for culpable parties to evade sanction.

30. The record reflects that the Owner, in refusing INT's audit, acted in the scope of his position and duty to represent the Respondent. In addition, the record reveals, and the parties do not dispute, that the Respondent's counsel acted within the course and scope of its duties to not only advise, but also to represent the Respondent. The Sanctions Board rejects the Respondent's proposed distinction between a respondent's liability flowing from the actions of legal counsel on one hand and other types of agents or representatives on the other hand. As the record shows and the parties do not dispute, counsel acted as the Respondent's authorized representative in interactions with INT and the Respondent referred INT to counsel even when INT sought to contact the Owner directly. In that correspondence, the Owner notably stated: "Please communicate with our lawyer for all further correspondence. I do not accept your legal arguments regarding your right to audit and your allegation of non-cooperation. Our lawyer will send you our reply in due course."²⁴

31. Thus, the record supports a finding that the Respondent is liable for the obstructive conduct taken on its behalf by the Owner and the Respondent's counsel in acting to materially impede the exercise of the Bank's inspection and audit rights.

D. Sanctioning Analysis**1. General framework for determination of sanctions**

32. 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 sub-paragraph 9.01 includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) restitution or

²¹ See, e.g., Sanctions Board Decision No. 72 (2014) at para. 49.

²² See, e.g., Sanctions Board Decision No. 52 (2012) at para. 32.

²³ See Sanctions Board Decision No. 77 (2015) at paras. 31, 36.

²⁴ See supra Paragraph 27.

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.

33. 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.²⁵ 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.²⁶

34. 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.

35. 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. Factors considered in the present case

a. Severity of the misconduct

36. *Repeated pattern of conduct:* Section III.A, sub-paragraph 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct as one example of severity. INT asserts that the Respondent's failure to comply with audit provisions of additional Bank-financed contracts not related to and preceding the Bid "represents a pattern of conduct similar to the obstruction in relation to [the Bid]." The Sanctions Board has previously declined to apply aggravation for a repeated pattern of conduct where the asserted additional instances of misconduct were not also a subject of the same sanctions proceedings or supported by evidence.²⁷ Similarly, INT does not allege that the Respondent's admitted refusal to permit an audit with respect to past Bank-financed contracts constituted obstruction. The Sanctions Board therefore declines to apply aggravation on this basis in the present case. The Sanctions Board notes that INT also asserts that the Respondent's refusal to allow inspection of records relating to past Bank-financed contracts fits the definition of interference as an aggravating factor. The Sanctions Board considers this claim in Paragraph 37 below.

²⁵ See Sanctions Board Decision No. 40 (2010) at para. 28.

²⁶ Sanctions Board Decision No. 44 (2011) at para. 56.

²⁷ Sanctions Board Decision No. 73 (2014) at para. 43.

b. Interference with investigation

37. *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. Under Section IV.C.1 of the Sanctioning Guidelines, interference with the investigative process includes “acts intended to materially impede the exercise of the Bank’s contractual rights of audit or access to information.” INT asserts that aggravation should apply for the Respondent’s failure to comply with audit provisions of additional Bank-financed contracts, which INT argues was intended to materially impede the exercise of the Bank’s contractual rights of audit or access to information. The parties do not dispute that the Respondent has declined to permit an audit and inspection with respect to past contracts preceding the Bid. The Sanctions Board notes that record contains one such contract for the supply of healthcare-related machinery and equipment (the “Machinery & Equipment Contract”), which includes a provision requiring that the contracting party permit a Bank audit. However, the Sanctions Board does not find the Respondent’s non-compliance with an audit clause in the Machinery & Equipment Contract to be relevant to the Respondent’s culpability or responsibility for obstructing the Bank’s audit with respect to the present Bid.²⁸ The Sanctions Board therefore declines to apply aggravation on this basis.

c. Cooperation

38. *Assistance with investigation:* Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent “cooperated in the investigation or resolution of the case.” Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance to INT’s investigation or ongoing cooperation, with consideration of “INT’s representation that the respondent has provided substantial assistance” as well as “the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.”

39. The Respondent requests mitigation on the basis of the Respondent’s correspondence and meeting with INT, as well as the Respondent’s transmission of certain internal documentation to INT. INT asserts that the Respondent did not engage in any “good faith cooperation” and that the Respondent’s correspondence spanning over six months served to delay INT’s investigation without assisting it. The record does not reflect that the Respondent assisted INT beyond engaging in months of communication regarding the basis and possible arrangements for an audit. The Sanctions Board does not find mitigation warranted in these circumstances.

²⁸ Accord Sanctions Board Decision No. 78 (2015) at para. 92 (declining to apply aggravation based on a matter that INT had not linked to the specific allegations of misconduct in that case).

40. INT separately requests that aggravation be applied in light of “the timing of the Respondent’s lack of cooperation,” i.e., initial correspondence indicating intent to cooperate, followed by refusal of the audit. INT argues that this led the Bank to unnecessarily expend financial and investigative resources, including a trip to the Respondent’s offices in Bangladesh. Consistent with past precedent, the Sanctions Board declines to apply aggravation for the absence of cooperation generally or for the specific timing of the Respondent’s refusal to permit an audit.²⁹

d. Temporary suspension

41. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the Respondent has been temporarily suspended since March 23, 2015.³⁰

e. Other considerations

42. *Adverse consequences of debarment:* Under Section III.A, sub-paragraph 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider “any other factor” that it “reasonably deems relevant to the sanctioned party’s culpability or responsibility in relation to the Sanctionable Practice.” The Respondent contends that the consequences of debarment for its business should be considered as a mitigating factor. Consistent with past precedent, the Sanctions Board declines to apply mitigation on the basis of potential business impact of a sanction on the Respondent.³¹

E. Determination of Liability and Appropriate Sanction

43. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;³² (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider³³ of an

²⁹ Accord Sanctions Board Decision No. 93 (2017).

³⁰ See Sanctions Procedures at Section III.A, paragraph 2 (provides for early temporary suspension by the SDO prior to sanctions proceedings).

³¹ See, e.g., Sanctions Board Decision No. 66 (2014) at para. 48.

³² A respondent’s ineligibility to be awarded a contract includes, without limitation (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, consultant, manufacturer or supplier, or service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(i), n.14.

³³ 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 III.A, sub-paragraph 9.01(c)(ii), n.15.

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 one (1) year beginning from the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, fully complied with the Bank's inspection and audit requests seeking to permit the Bank to inspect any accounts and records and other documents relating to the Bid or the Machinery & Equipment Contract,³⁴ and to have them audited by auditors appointed by the Bank. This ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for an obstructive practice as defined in Paragraph 1.14(a)(v)(bb) of the May 2010 Procurement Guidelines.



Teresa Cheng (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

Teresa Cheng
Ellen Gracie Northfleet
Anne van't Veer

³⁴ For clarity, the parties may find this contract identified in "SAE Exhibit 28" of the confidential written record in this case.