THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: January 26, 2018

Sanctions Board Decision No. 108
(Sanctions Case No. 357)

Multi-Donor Trust Fund for Forest Grant No. TF054523-VN
IDA Credit No. 3953-VN
IDA Credit No. 5070-VN
IDA Credit No. 3887-VN
IDA Credit No. 4604-VN
IDA Credit No. 4402-VN
IDA Credit No. 3292-VN
Vietnam

Decision of the World Bank Group[1] Sanctions Board imposing sanctions of debarment on the individual respondents in Sanctions Case No. 357 (respectively, the "First Respondent" and the "Second Respondent," together, the "Respondents"), together with certain Affiliates,[2] for a period of one (1) year and eleven (11) months for the First Respondent and three (3) years and eleven (11) months for the Second Respondent, beginning from the date of this decision. These sanctions are imposed on the Respondents for corrupt practices.

I. INTRODUCTION

1. The Sanctions Board met in panel sessions in March and August 2017 at the World Bank Group's headquarters in Washington, D.C. to review this case. The Sanctions Board was composed of J. James Spinner (Chair), Olufunke Adekoya, and Catherine O'Regan. Neither the Respondents nor the World Bank Group's Integrity Vice Presidency ("INT") requested a hearing in this matter. Nor did the Sanctions Board Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.[3]

---

[1] In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (the "Sanctions Procedures"), the term "World Bank Group" means, collectively, the International Bank for Reconstruction and Development ("IBRD"), the International Development Association ("IDA"), the International Finance Corporation ("IFC"), and the Multilateral Investment Guarantee Agency ("MIGA"). The term "World Bank Group" includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes ("ICSID"). As in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section 1.01(a), n.1.

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

[3] See Sanctions Procedures at Section 6.01.

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

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")[4] to the Respondents on June 25, 2015 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated January 14, 2015;

ii. Response submitted by the First Respondent to the Secretary to the Sanctions Board on October 22, 2015, and October 30, 2015;

iii. Response submitted by the Second Respondent to the Secretary to the Sanctions Board on October 28, 2015; and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on December 11, 2015 (the "Reply").

3. On June 25, 2015, pursuant to Sections 4.01 and 4.02 of the Sanctions Procedures, the EO issued the Notice and temporarily suspended the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents, from eligibility[5] with respect to any Bank-Financed Projects,[6] pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended in the Notice debarments 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. The EO recommended minimum periods of ineligibility of six (6) years for the First Respondent and eight (8) years for the Second Respondent, after which periods the Respondents may be released from ineligibility only if each Respondent has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that he has (i) taken appropriate remedial measures to address the sanctionable practices for which the Respondent 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 Affiliate directly or indirectly controlled by either of the Respondents to be done in a manner satisfactory to the Bank.

---

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

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

[6] The term "Bank-Financed Projects" encompasses any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. The term "Bank-Financed Projects" includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section 1.01(c)(i), n.3.

II. GENERAL BACKGROUND

4. This case arises in the context of the following forestry, coastal, and urban development projects in the Socialist Republic of Vietnam (together, the "Projects"):

i. the Forest Sector Development Project (the "FSDP");

ii. the Vietnam Urban Upgrading Project (the "VUUP");

iii. the Da Nang Priority Infrastructure Investment Project (the "PIIP"); and

iv. the Coastal Wetlands Protection and Development Project (the "CWPDP").

5. The record reflects that the First Respondent was a client manager of a consulting firm (the "Consulting Firm")[7] that bid for, and was subsequently awarded, contracts under the FSDP, VUUP, and PIIP (hereinafter referred to as, respectively, the "FSDP Contracts," the "VUUP Contract," and the "PIIP Contract"). The record shows that the Consulting Firm acquired another company (the "Acquired Firm") that, together with its joint venture partner (the "JV Partner"),[8] bid for, and was thereafter awarded, a contract under the CWPDP (the "CWPDP Contract"). Further, the record shows that the Second Respondent was a local agent of the Consulting Firm and was employed by the JV Partner as its country representative or country manager in Vietnam.

6. INT alleges that the Respondents engaged in corrupt practices under the FSDP, VUUP, and PIIP by promising and providing public officials with bribe payments disguised as "study tours" in accounting records or as "ghost" contracts in order to influence the award and execution of the relevant contracts. INT further alleges that the Respondents engaged in corrupt practices under the CWPDP by providing government officials with recreational trips disguised as "study tours" in 2004 to facilitate the payment of disputed invoices, and again in 2006 to extend the CWPDP Contract.

III. APPLICABLE STANDARDS OF REVIEW

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

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

---

[7] The Consulting Firm entered into a Negotiated Resolution Agreement with INT.

[8] The Consulting Firm and the JV Partner also entered into profit share agreements for the FSDP. The JV Partner is one of the respondents in Sanctions Board Decision No. 96 (2017).

shifts to the respondent to demonstrate that it is more likely than not that its conduct did not amount to a sanctionable practice.

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

10. *Applicable definitions of corrupt practices*: This case involves multiple allegations of corrupt practices that INT submits occurred at various times during and following the bidding and contract implementation processes. For each of the contracts, the alleged sanctionable practices are defined by the applicable version of the Bank's Consultant Guidelines as set out below.

i. For the FSDP, the relevant financing agreement and requests for proposals reference the applicability of the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, revised September 1997, January 1999, and May 2002) (the "May 2002 Consultant Guidelines"). However, the relevant requests for proposals and the FSDP Contracts expressly set out definitions of corrupt practice in accordance with the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) (the "May 2004 Consultant Guidelines"). In accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the Sanctions Board has previously held that the standards agreed between the borrowing or recipient country and the respondent as set forth in the bidding documents or contract forms at issue shall take precedence over conflicting standards agreed between the borrowing or recipient country and the Bank.[9] Further, the Sanctions Board has previously held that in cases where bidding documents refer generally to a certain version of the Guidelines, but in their text set out definitions that accord with another version of the Guidelines, the latter definitions shall prevail as set out directly in the text.[10] In these circumstances, the Sanctions Board considers that the corruption allegations relating to the FSDP Contracts are governed by the May 2004 Consultant Guidelines.

ii. For the VUUP, the relevant development credit agreement provides that the May 2002 Consultant Guidelines would apply. The relevant request for proposals and the VUUP Contract expressly set out definitions of corrupt practice in accordance with the same version of the Guidelines. Therefore, the corruption allegations relating to the VUUP Contract are governed by the May 2002 Consultant Guidelines.

iii. For the PIIP, the relevant financing agreement refers to the May 2004 Consultant Guidelines. The relevant request for proposals and the PIIP Contract expressly

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

[10] Sanctions Board Decision No. 87 (2016) at para. 16. See also Sanctions Board Decision No. 88 (2016) at para. 12.

set out definitions of corrupt practice consistent with the common definition in the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006, and May 1, 2010) (the "May 2010 Consultant Guidelines") and the World Bank's Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits & Grants by World Bank Borrowers (January 2011) (the "January 2011 Consultant Guidelines"). Following the rationale set out in Paragraph 10(i) above, the Sanctions Board considers that the corruption allegation relating to the PIIP Contract has the meaning set forth in the May 2010 and January 2011 Consultant Guidelines.

iv. For the CWPDP, the relevant development credit agreement and request for proposals reference the applicability of the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, revised September 1997, and January 1999) (the "January 1999 Consultant Guidelines"). The relevant request for proposals and the CWPDP Contract expressly set out definitions of corrupt practice in accordance with the same version of the Guidelines. Therefore, the corruption allegations relating to the CWPDP Contract are governed by the January 1999 Consultant Guidelines.

11. The applicable definitions of corrupt practice are set out below in the analysis of each of INT's allegations.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

12. *Corruption allegation 1*: INT alleges that the Second Respondent, on behalf of the Consulting Firm, and authorized and instructed by the First Respondent, promised and paid officials of the project implementation unit ("PIU") of the FSDP a sum of money for the award and execution of each of the two FSDP Contracts. INT asserts that the payments were disguised by invoices for "study tours" and a "ghost" contract with a third party for services that were either not performed or performed for inflated prices.

13. *Corruption allegation 2*: INT alleges that the Second Respondent, on behalf of the Consulting Firm, and authorized and instructed by the First Respondent, promised and paid VUUP PIU officials a sum of money for the award and execution of the VUUP Contract. INT asserts that the payments were disguised by "ghost" contracts with third parties for services that were in fact not performed.

14. *Corruption allegation 3*: INT alleges that the Second Respondent, on behalf of the Consulting Firm, and authorized and instructed by the First Respondent, promised and paid PIIP PIU officials a sum of money for the award and execution of the PIIP Contract. INT asserts that the payments were disguised by an arrangement with a third party for services that were in fact not performed.

15. *Corruption allegation 4*: INT alleges that the Respondents, on behalf of the Consulting Firm and the JV Partner, organized and paid for recreational "study tours" for CWPDP PIU officials in 2004 in order to facilitate the payment of disputed invoices under the CWPDP Contract.

16. *Corruption allegation 5*: INT alleges that the Respondents, on behalf of the Consulting Firm and the JV Partner, organized and paid for a recreational "study tour" for the project director of the CWPDP (the "CWPDP Director") in 2006 in order to gain her support in extending the CWPDP Contract.

17. *Sanctioning Factors*: INT alleges repeated pattern of conduct, sophisticated means, management's role in the misconduct, and the involvement of high-level public officials as aggravating factors. INT asserts that the Respondents' cooperation warrants some mitigation for the First Respondent and limited mitigation for the Second Respondent.

B. The First Respondent's Principal Contentions in his Response

18. The First Respondent contests only the recommended sanction, and not the allegations. The First Respondent asserts that the sanctions "process . . . is flawed and unfair," as he was not contacted during the investigation against the Consulting Firm. He argues that a settlement between the Bank and the Consulting Firm had been concluded based on incomplete information, effectively prejudging the case against him. The First Respondent thus requests the Sanctions Board to reconsider the sanction imposed on the Consulting Firm and ensure that his sanction is proportional thereto. Further, the First Respondent asserts that the EO's recommended sanction took into account his failure to assist the Bank's investigation, which failure was on account of the confidentiality of matters he had discussed with the Australian Federal Police (the "AFP") as regards the AFP's own investigation. The First Respondent states that he is now willing to assist the Bank in its investigation. In addition, the First Respondent argues that he had already suffered a "substantial detriment" by losing his job at the Consulting Firm. He adds that any sanction should thus prevent him from taking any "senior leadership position where he would have some responsibility for determining whether facilitation payments should be made," but should not prevent him from assuming technical roles in Bank-funded projects.

C. The Second Respondent's Principal Contentions in his Response

19. The Second Respondent argues that he worked for the Consulting Firm on a part-time basis as an agent. He thus claims to have no knowledge of deals between the Consulting Firm and third parties that involved only the First Respondent and other management officers of the Consulting Firm. The Second Respondent denies responsibility for any contract signing or implementation in relation to third parties, and states that he is not aware of any corrupt payments to government officials.

D. INT's Principal Contentions in the Reply

20. With respect to the First Respondent, INT contends that the basis for his claim that the sanctions process is "flawed and unfair" is not clear. INT asserts that the First Respondent has been given an opportunity through his Response to present any additional information and

evidence he claims to have, but he failed to do so. INT further argues that since the sanction imposed on the Consulting Firm was through a settlement, the Sanctions Board has nothing to reconsider since settlements do not relate and are not relevant to sanctions proceedings. INT asserts that the different treatment accorded to the Consulting Firm as compared to the First Respondent is justified under the Bank's sanctions framework, considering the Consulting Firm's admissions, cooperation, and agreement to settle. Lastly, INT argues that the First Respondent should be debarred from any involvement in Bank-funded projects and it is not appropriate to limit his sanction only to "jobs in a 'senior leadership position'" because the Sanctions Procedures do not provide for such a sanction and the First Respondent was involved in multiple bribes.

21. With respect to the Second Respondent, INT contends that he failed to provide any evidence to support his blanket denials, and resorted instead to shifting the blame to the First Respondent and others higher up in the Consulting Firm.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

22. The Sanctions Board will first address the issue of jurisdiction in this case. The Sanctions Board will next consider the procedural issues raised by the First Respondent. The Sanctions Board will then consider whether it is more likely than not that the alleged sanctionable practices occurred, and if so, which of the Respondents may be held liable for each of the sanctionable practices. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on each of the Respondents.

A. Jurisdiction

23. None of the parties have raised any jurisdictional issues. However, the Sanctions Board considers it useful to discuss jurisdiction where INT alleges that, at the time of the alleged misconduct, each Respondent acted as an employee and/or an agent of firms that are not named as respondents in this case. INT submits that the Bank has jurisdiction over the First Respondent based on his participation in the Projects as an employee of the Consulting Firm. INT further submits that the Bank has jurisdiction over the Second Respondent for his involvement in the Projects as an employee of the JV Partner and as an agent of the Consulting Firm.

24. The Sanctions Board has previously stated that "the Bank does not need the consent of or privity with a respondent to assert jurisdiction to sanction."[11] In addition, the Sanctions Board has asserted jurisdiction over corporate officers, managers, and directors employed by a firm that

[11] Sanctions Board Decision No. 64 (2014) at para. 28; Sanctions Board Decision No. 81 (2015) at para. 28.

competed for or received a contract award – even where the applicable guidelines do not refer directly to the possibility of sanctioning individuals.[12]

25. With respect to the First Respondent, the record demonstrates that he was employed by the Consulting Firm as a client manager at the time of the alleged misconduct. At the Consulting Firm, the First Respondent was responsible for finding, bidding on, implementing, and managing projects, including the Projects at issue. With respect to the Second Respondent, the record shows that, at the time of the alleged misconduct, he was employed by the JV Partner as its country representative or country manager in Vietnam. In these circumstances and consistent with past precedent, the Sanctions Board finds that it has jurisdiction over the Respondents.

B. Procedural Matters

1. Reconsideration of the Consulting Firm's sanction

26. The First Respondent requests "a reconsideration of the penalty" imposed on the Consulting Firm, focusing on "the degree to which [he] was responsible for the conduct in question" vis-à-vis "the responsibility of more senior management." In its Reply, INT notes that the sanction imposed on the Consulting Firm was through a settlement agreement. Citing precedent, INT asserts that settlements are not "materials relating to sanctions proceedings" and are thus irrelevant to the present sanctions proceedings. The Sanctions Board notes that the sanctions framework does not provide a basis for the Sanctions Board to review sanctions imposed pursuant to a settlement. In past cases, the Sanctions Board did not consider the sanctions agreed between settling parties to be in any way relevant to its own determination of contested sanctions for respondents, as the final sanctions in settlements may be shaped by considerations extrinsic to the sanctioned party's relative culpability or responsibility for misconduct.[13] In the present case, the sanction imposed on the Consulting Firm was pursuant to a settlement entered into in July 2013, prior to the issuance of the Notice. In these circumstances, the Sanctions Board denies the First Respondent's request.

2. Stay of proceedings

27. The First Respondent asserts that there are advantages to "delaying [the Bank's] administrative processes until the AFP concludes its investigation or until the conclusion of any criminal proceedings which may be commenced." INT argues that there is no reason to await the outcome of the AFP's investigation since it is a process separate from the present case, and the

---

[12] See, e.g., Sanctions Board Decision No. 81 (2015) at para. 28 (sanctioning two respondent entities and the director of one of those entities under the May 2004 Consultant Guidelines, which do not make any reference to the possibility of sanctioning individuals), citing Sanctions Board Decision No. 51 (2012) (sanctioning two respondent entities and the general manager of one of those entities under the May 2004 Consultant Guidelines); Sanctions Board Decision No. 60 (2013) (sanctioning two respondent entities and their director, as well as the commercial manager of one entity and the co-owner of the other entity, under the May 2004 and October 2006 Procurement Guidelines).

[13] Sanctions Board Decision No. 56 (2013) at para. 82; Sanctions Board Decision No. 85 (2016) at para. 53.

Bank obtains no benefit from delaying sanctions proceedings pending the AFP's investigation. The Sanctions Board notes that stays are addressed only in Section 11.01 of the Sanctions Procedures in the context of settlements, where it is the EO who grants them. In past cases, the Sanctions Board has denied a respondent's request for a stay of proceedings, taking into account, inter alia, that sanctions proceedings are solely administrative in nature; and that the Sanctions Board carries out its proceedings in accordance with the World Bank Group's sanctions framework, which does not provide for a stay of proceedings due to concurrent criminal, civil, or administrative proceedings before a national court or other tribunal.[14] In this case, the Sanctions Board further notes that the totality of the evidence in the record is sufficient to determine the First Respondent's potential liability without needing to delay the sanctions proceedings pending conclusion of the AFP's investigation. On the basis of the foregoing, the Sanctions Board declines to stay the present proceedings pending the outcome of the investigation conducted by the AFP.

3. Alleged flawed and unfair process

28. The First Respondent asserts that the Bank imposed a sanction on the Consulting Firm based on incomplete information and without INT contacting him during its investigation of the Consulting Firm. The First Respondent argues that this process was flawed and unfair, and has "in effect, prejudged the case" against him. INT contends that the First Respondent was afforded the opportunity through his Response to present evidence. As discussed in Paragraph 26, the Sanctions Board does not consider that the sanction imposed on the Consulting Firm has any bearing upon the Sanctions Board's own determination of the present case.[15] Further, as stated in Paragraph 27, the totality of the evidence in this case is sufficient to determine the Respondents' potential liability. The Sanctions Board also notes that the First Respondent has been afforded an opportunity to be heard – as evidenced by the filing of his reply to INT's show-cause letter, and the Response on October 22 and 30, 2015 – and could have additionally availed himself of the opportunity to file an Explanation to the EO or request a hearing, which he chose not to do. The Sanctions Board thus finds no unfairness or fundamental procedural flaw that affected the First Respondent's ability to mount a meaningful response to INT's allegations.

C. Evidence of Corrupt Practices

1. Corruption allegation 1: Alleged bribe payments under the FSDP

29. In accordance with the definition of corrupt practice under Paragraph 1.22(a)(i) of the May 2004 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) offered, gave, received, or solicited, directly or indirectly, any thing of value (ii) to influence the action of a public official in the selection process or in contract execution.[16]

---

[14] Sanctions Board Decision No. 93 (2017) at para. 36; Sanctions Board Decision No. 97 (2017) at para. 30.

[15] Sanctions Board Decision No. 56 (2013) at para. 82; Sanctions Board Decision No. 85 (2016) at para. 53.

[16] The definition of "corrupt practice" in the FSDP RFPs does not include the footnote defining the term "public official."

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

30. INT alleges that the Second Respondent, on behalf of the Consulting Firm and authorized and instructed by the First Respondent, promised FSDP PIU officials US$50,000 for each of the FSDP Contracts. INT asserts that at least US$25,601.17 had been paid by 2008, and that payments were disguised by invoices for "study tours" and a "ghost" contract with a third party ("Company A") for services not performed or performed at inflated prices. The First Respondent states that "facilitation payments" were made, while the Second Respondent denies the accusations and asserts that he is not aware of any corrupt payments to government officials.

31. The record supports a finding that the Second Respondent, with the knowledge and approval of the First Respondent, offered and gave FSDP PIU officials bribe payments. During his interview with the Consulting Firm's counsel, the First Respondent admitted that the Consulting Firm made illicit payments for the FSDP Contracts. The First Respondent stated that he requested the Second Respondent to look for companies willing to invoice the Consulting Firm for services that these companies would not actually provide. The First Respondent asserted that the Second Respondent then arranged for some or all of the invoiced amounts to be paid to government officials. Testimonial evidence from other employees of the Consulting Firm corroborates the First Respondent's statements with respect to the Respondents' involvement in the scheme.

32. The record also contains contemporaneous emails that further support a finding that the Respondents offered or paid bribes to public officials. For instance, in an email from the Second Respondent to the First Respondent and the Consulting Firm's business manager (the "Business Manager"), the Second Respondent attached a "summary of marketing fee for VUUP + FSDP," listing a "Marketing fee" for each of the FSDP Contracts. It appears that portions of each "Marketing fee" had been paid and invoiced as a "study tour." And in an email from the First Respondent to the JV Partner's Asia Pacific division director (the "Division Director"), the First Respondent referred to a "'study tour' for some FSDP people, including no doubt some from the awards committee." Finally, the First Respondent sent an email to the Division Director explaining that "payments embedded" in the contract between the Consulting Firm and Company A were for a "de facto" company of the FSDP PIU that is paid "higher than normal rates . . . to get their support for project implementation and ongoing relationships with the forestry network." In the same email, the First Respondent described Company A as being "instrumental in positioning [the Consulting Firm and the JV Partner] for the 2 FSDP wins."

33. On the basis of this record, the Sanctions Board finds that it is more likely than not the Respondents offered or gave a thing of value to FSDP PIU officials.

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

34. The second element of corrupt practices requires a showing that a respondent, in offering or giving a thing of value to another party under the first element, acted with a purpose to influence the action of a public official in the selection process or in contract execution.[17] In this case, the

[17] Sanctions Board Decision No. 78 (2015) at para. 55.

record supports a finding that the Respondents acted with the requisite intent. The First Respondent stated during his interview that the Consulting Firm included "provision[s] for illegitimate payments in all of the projects for which [the Consulting Firm] tendered since 2000." According to the First Respondent, the Second Respondent met with government officials responsible for awarding tenders in order to determine the payments as a "pre-requisite to having the tender seriously considered by the Vietnamese government." As discussed in Paragraph 32, the First Respondent stated in his email to the Division Director that the "study tour" was meant for members of the FSDP awards committee. Other employees of the Consulting Firm corroborate the First Respondent's statements, specifically with respect to the necessity for the Consulting Firm to make payments to government officials in order to be considered for projects and ensure that the Vietnamese government performed its obligations under the contract once awarded. The Business Manager added that the Second Respondent talked to "Vietnamese government officials who have some influence in relation to the project" regarding the payments.

35. In addition, the timing of the payments to FSDP PIU officials supports a finding that the Respondents acted with corrupt intent. The Sanctions Board found in a past case that the timing of the alleged corrupt act relative to the procurement processes at issue supported the conclusion that the respondent acted with the required intent.[18] Here, the First Respondent stated during his interview that the Consulting Firm's objective, with respect to the timing of payments, had been to ensure that the payments were structured so as to be made throughout the term of the FSDP Contracts, deferring most of the payments towards the end. According to the First Respondent, the payments were "generally aligned with a major step in the project."

36. Considering the First Respondent's statements and the corroborating evidence in the record, the Sanctions Board finds that it is more likely than not that the Respondents offered or gave a thing of value to public officials to influence the actions of the public officials in the selection process for and the execution of the FSDP Contracts.

2. Corruption allegation 2: Alleged bribe payments under the VUUP

37. In accordance with the definition of corrupt practice under Paragraph 1.25(a)(i) of the May 2002 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) offered, gave, received, or solicited any thing of value (ii) to influence the action of a public official in the selection process or in contract execution.

a. Offering or giving a thing of value

38. INT alleges that the Second Respondent, on behalf of the Consulting Firm, and authorized and instructed by the First Respondent, promised VUUP PIU officials up to US$155,000 for the VUUP Contract. INT asserts that US$90,000 had been paid between 2008 and 2011, and that payments were disguised by invoices for "ghost" contracts with third parties for services that were not performed. The First Respondent states that "facilitation payments" were made, while the

[18] Sanctions Board Decision No. 78 (2015) at para. 57.

Second Respondent denies the accusations and asserts that he is not aware of any corrupt payments to government officials.

39. The record supports a finding that the Second Respondent, with the knowledge and approval of the First Respondent, offered and gave VUUP PIU officials bribe payments. During his interview with the Consulting Firm's counsel, the First Respondent stated that he was directly involved in the tender and implementation process of the VUUP Contract, for which US$155,000 had been agreed upon as the total payments to government officials. According to the First Respondent, he asked the Second Respondent to look for registered companies willing to invoice the Consulting Firm for services that these companies would not actually provide. The First Respondent stated that the Consulting Firm paid these companies' invoices, and the Second Respondent then arranged for some or all of the invoiced amounts to be paid to government officials. Testimonial evidence from other employees of the Consulting Firm corroborates the First Respondent's statements with respect to the Respondents' involvement in the scheme. Further, as discussed in Paragraph 32, the Second Respondent sent the First Respondent a "summary of marketing fee for VUUP + FSDP" that lists a "Marketing fee" – a portion of which appears to have already been paid – for the VUUP.

40. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondents offered or gave a thing of value to VUUP PIU officials.

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

41. The record supports a finding that the Respondents acted with intent to influence the action of VUUP PIU officials in the selection process for and the execution of the VUUP Contract. As discussed in Paragraph 34, the First Respondent stated that the Second Respondent met with government officials responsible for awarding tenders in order to determine the amount of illegitimate payments to government officials as a prerequisite for these officials to seriously consider the Consulting Firm's tenders. The Business Manager's testimony as regards the Consulting Firm's payments and the involvement of both Respondents in that scheme corroborates the First Respondent's statements.

42. In addition, the timing of the payments further supports a finding that the Respondents acted with corrupt intent. As discussed in Paragraph 35, the First Respondent stated that payments were "generally aligned with a major step in the project." In specific reference to the VUUP Contract, the First Respondent stated in his interview that he "would try and match up the submission of an invoice" of the third parties sourced by the Second Respondent with a "project milestone under the head contract for the VUUP." The Business Manager stated during his interview that "payments were made at or around the time of milestones on the VUUP [C]ontract," and that he and the First Respondent discussed making payments to government officials as each milestone approached.

43. Considering the First Respondent's statements and the corroborating evidence in the record, the Sanctions Board finds that it is more likely than not that the Respondents offered or

gave a thing of value to public officials in order to influence the public officials' actions in the selection process for and the execution of the VUUP Contract.

3. Corruption allegation 3: Alleged bribe payments under the PIIP

44. In accordance with the definition of corrupt practice under Paragraph 1.22(a)(i) of the May 2010 Consultant Guidelines and Paragraph 1.23(a)(i) of the January 2011 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) offered, gave, received, or solicited, directly or indirectly, anything of value (ii) to influence improperly the actions of another party.

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

45. INT alleges that the Respondents arranged for the payment to a third party ("Company B") of more than US$100,000, which the Respondents intended to be passed on to government officials. INT asserts that at least US$15,771 had been paid in 2011. The First Respondent states that "facilitation payments" were made, while the Second Respondent denies the accusations and asserts that he is not aware of any corrupt payments to government officials.

46. The record supports a finding that the Second Respondent, with the knowledge and approval of the First Respondent, offered and gave PIIP PIU officials bribe payments. During his interview with the Consulting Firm's counsel, the First Respondent stated that he was directly involved in the tender and implementation process of the PIIP Contract, as well as in arranging and signing the contract with Company B. The First Respondent stated that the Second Respondent sourced Company B, whose agreement with the Consulting Firm contained a provision on payments for work that Company B did not in fact undertake. The First Respondent admitted that he "turned a blind eye" to the Consulting Firm's payments, which were ultimately given to a government official pursuant to the Second Respondent's arrangement with Company B. Testimonial evidence from other employees of the Consulting Firm corroborates the First Respondent's statements with respect to the Respondents' involvement in the scheme.

47. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondents offered or gave a thing of value to PIIP PIU officials.

b. To influence improperly the actions of another party

48. The record supports a finding that the Respondents acted with intent to influence improperly the actions of PIIP PIU officials. As discussed in Paragraphs 34 and 41, the First Respondent stated that the Second Respondent met with government officials responsible for awarding tenders in order to determine the amount of illegitimate payments to government officials as a prerequisite for these officials to seriously consider the Consulting Firm's tenders. Further, as discussed in Paragraph 46, the First Respondent stated that he "turned a blind eye" to the Consulting Firm's payments to a government official. Apart from corroborating the First Respondent's statements as regards the Consulting Firm's payments and the involvement of both Respondents in that scheme, the Business Manager expressly identified during his interview a line

item in the PIIP budget proposal as "the illegitimate payment to Vietnamese government officials" in relation to the PIIP Contract.

49. In addition, the timing of the payments further supports a finding that the Respondents acted with corrupt intent. As discussed in Paragraphs 35 and 42, the First Respondent stated that payments were "generally aligned with a major step in the project." Other employees of the Consulting Firm corroborate the First Respondent's statements, specifically with respect to the provision of payments for various project milestones, pursuant to the contract between the Consulting Firm and Company B.

50. Considering the First Respondent's statements and the corroborating evidence in the record, the Sanctions Board finds that it is more likely than not that the Respondents offered or gave a thing of value to public officials to improperly influence their actions.

4. Corruption allegation 4: Alleged recreational study tours in 2004 under the CWPDP

51. This and the following section analyze INT's corruption allegations in accordance with the definition of "corrupt practice" under the January 1999 Consultant Guidelines. Pursuant to Paragraph 1.25(a)(i) of the January 1999 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) offered, gave, received, or solicited any thing of value (ii) to influence the action of a public official in the selection process or in contract execution.

a. Offering or giving a thing of value

52. The first element of corrupt practice requires a showing that a respondent gave a thing of value. The Sanctions Board has held that a "thing of value" for purposes of corrupt practice need not be in the form of money, as it can instead be some other type of benefit or advantage.[19] In past cases, the Sanctions Board has found that providing trips to public officials constitutes giving a "thing of value."[20] In the present case, INT alleges that the Respondents actively participated in organizing, planning, and executing the provision of recreational "study tours" to Australia in 2004 to CWPDP PIU officials. The First Respondent does not contest INT's allegations, while the Second Respondent denies the accusations and asserts that he is not aware of any corrupt payments to government officials.

53. The record supports a finding that the Respondents gave CWPDP PIU officials at least one trip in 2004. During INT's interview with the Second Respondent, he asserted that it was the First Respondent's idea to provide study tours to government officials. According to the Second

---

[19] See, e.g., Sanctions Board Decision No. 66 (2014) at para. 24 (finding that the respondent's predecessor gave a "thing of value" to a Bank staff member by acceding to the staff member's request that the respondent's predecessor hire his son); Sanctions Board Decision No. 78 (2015) at paras. 53-54 (finding that the respondent firm had provided a "thing of value" to a public official by hiring the official's daughter as an intern and then as a full-time employee).

[20] Sanctions Board Decision No. 85 (2016) at para. 23; Sanctions Board Decision No. 92 (2017) at para. 56.

Respondent, he helped develop the itinerary and joined one trip in Australia, where the vice minister of the CWPDP PIU (the "CWPDP Vice Minister") participated. The Consulting Firm's chief technical adviser and project manager for the CWPDP (the "Project Manager") stated during his interview with the Consulting Firm's counsel that the Acquired Firm and the JV Partner arranged and paid for two study tours to Australia in 2004. The Project Manager stated that the First Respondent was involved in the planning of, and the determination and approval of costs for, the trips, while the Second Respondent organized one of those trips in 2004. The Project Manager further stated that the study tours were worth approximately US$40,000, and were meant for CWPDP PIU officials, including the CWPDP Vice Minister and the CWPDP Director.

54. Consistent with the testimonial evidence discussed above, the record contains contemporaneous documentary evidence indicating that the Respondents provided at least one trip for CWPDP PIU officials in 2004. For example, minutes of a meeting held on December 3, 2004 (the "December 2004 Minutes"), contain the following entries under the heading "Study-Tour": "New Vice-Minister will come," and "[o]riginally proposed a large technical component. Scaled down slightly, but still technical meetings in Brisbane and Melbourne." The December 2004 Minutes reflect the attendance of the First Respondent, the Second Respondent, and the Project Manager.

55. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondents offered or gave a thing of value to CWPDP PIU officials in the form of a trip in 2004.

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

56. The Sanctions Board has previously held that while providing study tours to public officials do not necessarily indicate intent to influence the public officials' actions, the provision of a trip that is predominantly recreational, rather than educational or technical, in nature may support an inference of corrupt intent.[21] The Sanctions Board held in a previous case that the respondent more likely than not offered a thing of value in order to influence the action of a public official in the procurement process where the record clearly demonstrated, inter alia, that the trip had been predominantly recreational.[22] In this case, the record is insufficient to establish that the trip provided by the Respondents in 2004 was recreational in nature. While the record contains testimonial evidence from the Project Manager indicating that he had organized a recreational trip, his claim remains uncorroborated. In addition, it is not clear from his testimony or the record as a whole whether this trip was the trip organized by the Second Respondent. The evidence on the record suggests that there was at least one trip in 2004 that the Respondents knew to be technical in nature.

57. Further, contemporaneous documentary evidence in the record is insufficient to establish that the Respondents had corrupt intent. For example, the December 2004 Minutes state that some disputed invoices may be paid after the study tour. The Sanctions Board is not convinced that the

[21] Sanctions Board Decision No. 96 (2017) at para. 58.

[22] Sanctions Board Decision No. 85 (2016) at paras. 25, 30-32.

language in the December 2004 Minutes would be sufficient to demonstrate the Respondents' corrupt intent. Neither does the fact that the invoices were paid approximately one year after the trip satisfactorily demonstrate a link between the two. Moreover, consistent with past precedent, the Sanctions Board accords limited weight to this incomplete, unsigned, and unconfirmed minutes of meeting.[23]

58. In light of the above, the Sanctions Board concludes that it is unable to find on this record that it is more likely than not that the Respondents gave a thing of value to CWPDP PIU officials in order to influence their actions in contract execution. Accordingly, the Sanctions Board concludes that INT has failed to discharge its burden to prove that it is more likely than not that Respondents engaged in the alleged corrupt practice in relation to the CWPDP in 2004.

5. Corruption allegation 5: Alleged recreational study tour in 2006 under the CWPDP

59. INT alleges that the Respondents were actively involved in providing the CWPDP Director with a recreational "study tour" to Australia in 2006 to gain her support for, and influence in, extending the CWPDP Contract. The First Respondent does not contest INT's allegations, while the Second Respondent denies the accusations and asserts that he is not aware of any corrupt payments to government officials.

60. The record does not support a finding that it is more likely than not that the Respondents provided the CWPDP Director with a study tour, let alone a recreational trip, to Australia in 2006. The record contains conflicting testimonial evidence regarding this alleged trip. For instance, the Second Respondent stated during his interview with INT that, although the Acquired Firm or JV Partner wanted to invite the CWPDP Director and other government officials for a study tour in 2006, the study tour never took place because the CWPDP Director did not accept the trip. In contrast, the Project Manager claimed that the Second Respondent "probably" organized a "study tour" in 2006 for the CWPDP Director and her husband to visit Australia. The Project Manager asserted that the trip did not have "any significant technical content programmed into it" and was instead "a recreational trip."

61. Further, contemporaneous documentary evidence in the record is insufficient to establish that the Respondents provided a study tour in 2006. For example, copies of minutes of several meetings among the Respondents and the Project Manager suggest that a study tour may have taken place. However, as articulated in Paragraph 57, the Sanctions Board accords limited weight to these incomplete, unsigned, and unconfirmed minutes of meetings, especially in light of the conflicting testimonial evidence discussed above, as well as the general lack of detail in the record as regards the purported study tour, including its specific date, place, purpose, and itinerary.[24]

62. In light of the above, the Sanctions Board considers that the evidence in the record is insufficient to show that it is more likely than not that the Respondents gave the CWPDP Director

---

[23] See Sanctions Board Decision No. 96 (2017) at para. 62.

[24] Sanctions Board Decision No. 96 (2017) at para. 62.

a thing of value in the form a study tour in 2006. The Sanctions Board therefore need not consider whether the Respondents acted with a purpose to influence the actions of a public official in contract execution.

D. Sanctioning Analysis

1. General framework for determination of sanctions

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

64. As reflected in Sanctions Board precedents, 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]

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

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

2. Plurality of sanctionable practices

67. As the Sanctions Board finds that the Respondents engaged in multiple counts of corrupt practices, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding "Cumulative Misconduct." The Sanctioning Guidelines provide in relevant part:

> Where the respondent has been found to have engaged [in] factually distinct[] incidences of misconduct (*e.g.*, corrupt practices and collusion in connection with

---

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

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

> 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)

68. The Sanctions Board has previously applied separate cumulative sanctions where the different counts of misconduct arose out of factually unrelated cases,[27] and where a respondent's fraudulent conduct was distinct from, and not merely a means of concealing or furthering, the respondent's corrupt practices in the same case.[28] 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.[29] In that case, the Sanctions Board concluded that the plurality of sanctionable practices warranted aggravation, rather than multiplication, of the base sanction for each respondent.[30]

69. The record reflects that the Respondents engaged in three counts of misconduct in relation to four contracts. Each count of misconduct was distinct from, and not merely a means of furthering, the other counts of misconduct. Specifically, the bribe payments relate to different contracts under the FSDP, VUUP, and PIIP; and were made at different points in time.[31] Accordingly, the Sanctions Board concludes that the plurality of sanctionable practices warrants multiplication, rather than aggravation, of the base sanction for the Respondents.

3. Factors considered in the present case

a. Severity of the misconduct

70. Section 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct, sophisticated means of misconduct, management's role in the misconduct, and involvement of a public official, as examples of severity.

---

[27] Sanctions Board Decision No. 87 (2016) at para. 150.

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

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

[30] Id. See also Sanctions Board Decision No. 72 (2014) at para. 67 (finding aggravation to be warranted where the respondent director's corrupt and fraudulent practices were interrelated, involving commissions paid to the same agent).

[31] See supra discussion under Section V.C.

71. *Repeated pattern of conduct*: In past cases, the Sanctions Board has applied aggravation where misconduct related to multiple contracts and/or projects.[32] In this case, INT asserts that the Respondents' repeated pattern of corrupt payments across five Bank-financed projects warrants aggravation. As discussed in Paragraphs 67-69 above, the Sanctions Board has found that the Respondents engaged in factually distinct types of corrupt practices with respect to four different contracts. Thus, the Respondents' plurality of sanctionable practices warrants multiplication, rather than aggravation, of the base sanction.

72. *Sophisticated means:* Section IV.A.2 of the Sanctioning Guidelines states that this factor may include "the complexity of the misconduct (e.g., degree of planning, diversity of techniques applied, level of concealment); the number and type of people or organizations involved; whether the scheme was developed or lasted over a long period of time; [and] if more than one jurisdiction was involved." The Sanctions Board has previously applied aggravation on this basis where several individuals and organizations were actively involved in planning and executing a corrupt scheme that was implemented over a period of several years,[33] and where the respondent's conduct otherwise reflected "considerable forethought and planning."[34] In this case, INT alleges that the Respondents developed a scheme involving "comparably sophisticated means of affecting and covering up the illegitimate payments through the use of third party agreements, ghost contracts, and fake invoices." As discussed above,[35] the First Respondent acknowledged the existence of an arrangement for payments, wherein the Second Respondent engaged third parties to invoice for unperformed work in order to disguise payments made to government officials. In addition, the record indicates that the scheme was implemented over the course of several years with the involvement of various corporate entities in both planning and execution. In these circumstances, the Sanctions Board finds that aggravation is warranted under this factor.

73. *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." INT asserts that aggravation is warranted for the participation of the First Respondent and other high-level management. In a past case where INT asserted aggravation for the individual respondent's seniority in position, the Sanctions Board noted that it has not previously applied aggravation for

---

[32] See, e.g., Sanctions Board Decision No. 60 (2013) at para. 122 (applying aggravation for repetition where corrupt conduct related to multiple Bank-financed contracts under multiple projects); Sanctions Board Decision No. 72 (2014) at para. 56 (applying aggravation for repetition where corrupt payments related to two contracts under the same project).

[33] Sanctions Board Decision No. 63 (2014) at para. 98.

[34] Sanctions Board Decision No. 69 (2014) at para. 33 (applying aggravation for sophisticated means where the respondent forged three different types of official business documents, which were clearly drafted in an effort to avoid detection, including through use of an inauthentic embassy stamp and forged signature seals); Sanctions Board Decision No. 77 (2015) at para. 49 (applying aggravation for sophisticated means where the respondent's false claims of experience were highly detailed and contained specific references to actual development projects and their implementing or financing entities).

[35] See supra Paragraphs 31, 39, 46.

an individual respondent solely on the basis of that respondent's position in the company.[36] Further, in previous cases finding misconduct committed by both a respondent entity and an individual respondent holding a senior position within the respondent entity, the Sanctions Board has considered the individual's seniority in position as a potential aggravating factor only for the respondent entity, and not for the individual respondent.[37] In this case, INT does not assert, and the record does not show, how the First Respondent's position as manager – much less the participation of other managers of the Consulting Firm – are relevant to the First Respondent's culpability or responsibility so as to warrant aggravation. The Sanctions Board thus declines to apply aggravation in these circumstances.

74. *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 past cases, the Sanctions Board has found that aggravation was warranted where the respondents conspired with public officials to win contracts,[38] and where the respondents, admittedly acting on their own initiative, proactively offered and paid a bribe to a public official.[39] In contrast, the Sanctions Board has declined to apply aggravation where the record did not establish that the respondent specifically conspired with or involved a public official in the corrupt scheme[40] or initiated the corrupt arrangement.[41] Here, INT submits that the involvement of "comparatively high-level public officials as the recipients of the illicit payments" warrants aggravation. However, INT does not allege, and the record does not support a finding, that the Respondents specifically conspired with any public official or initiated the corrupt scheme so as to justify aggravation.

b. Cooperation

75. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C of the Sanctioning Guidelines identifies a respondent's assistance with INT's investigation or ongoing cooperation, and admission or acceptance of guilt or responsibility as examples of cooperation.

76. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance with INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance in an investigation," as well as "the truthfulness, completeness, reliability of any information or

---

[36] Sanctions Board Decision No. 86 (2016) at para. 54.

[37] See, e.g., Sanctions Board Decision No. 60 (2013) at para. 125 (applying aggravation with respect to the respondent entities where the individual respondents, who were the director and co-owner of the respondent entities, participated in the misconduct).

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

[39] See Sanctions Board Decision No. 70 (2014) at para. 33.

[40] See Sanctions Board Decision No. 50 (2012) at para. 62.

[41] See Sanctions Board Decision No. 60 (2013) at para. 126.

testimony, the nature and extent of the assistance, and the timeliness of assistance." In past cases, the Sanctions Board has granted mitigation where a respondent met with INT on several occasions and provided relevant information and documentation,[42] or replied to INT's show-cause letter and follow-up inquiries.[43] The Sanctions Board has granted limited mitigation where a respondent corresponded with INT and made relevant personnel available for interviews, but also impeded the Bank's exercise of audit rights, without credible justification, so as to constitute interference with INT's investigation.[44]

77. In this case, INT asserts that, despite not having "substantially react[ed]" to INT's show-cause letter, some mitigating credit is warranted for the First Respondent's voluntary provision of detailed information to the Consulting Firm's counsel regarding the illicit payments and his involvement therein. INT argues that the Second Respondent's cooperation warrants "very limited mitigating credit" because although he agreed to be interviewed by INT, he denied the existence of illicit payments despite having been confronted with strong evidence of such payments. The First Respondent argues that the Sanctions Board should disregard his earlier refusal to assist the Bank's investigation because of the confidentiality of matters concerning the AFP's investigation, and that he is now willing to assist the Bank in its investigation. The Second Respondent does not address this issue. The record shows that the First Respondent exhibited candor during the interview conducted by the Consulting Firm's counsel, and that INT based its allegations, in large part, on his detailed testimony. The record shows that the Second Respondent agreed to daily interviews by INT from July 23-26, 2014. Accordingly, the Sanctions Board finds that some mitigation is warranted for the Respondents' cooperation.

78. *Admission or acceptance of guilt or responsibility*: Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent's admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance should be given more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. In the present case, the First Respondent made admissions to the Consulting Firm's counsel during his interview and does not contest INT's allegations in his Response. Accordingly, the Sanctions Board finds that mitigation is warranted for the First Respondent under this factor.

c. Periods of temporary suspension

79. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondents' temporary suspensions since the EO's issuance of the Notice on June 25, 2015.

---

[42] Sanctions Board Decision No. 53 (2012) at para. 58.

[43] See, e.g., Sanctions Board Decision No. 37 (2010) at para. 45.

[44] See, e.g., Sanctions Board Decision No. 56 (2013) at paras. 61-62, 73 (applying limited mitigation for cooperation where the respondent corresponded with INT and made relevant personnel available for interviews, but also resisted, on unconvincing grounds, INT's requests for information pre-dating the contract's signature); Sanctions Board Decision No. 87 (2016) at paras. 141-144 (finding that some mitigation is warranted for the respondents' cooperation despite the separate finding of interference through false statements warranting aggravation).

d. Other considerations

80. Under Section 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider "any other factor" that it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice."

81. *Passage of time*: The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.[45] This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents.[46] At the time of the EO's issuance of the Notice in June 2015, between four to eight years had elapsed since the Respondents offered and made payments to government officials in relation to the FSDP, VUUP, and PIIP. The Sanctions Board therefore finds that mitigation is warranted in these circumstances.

82. *Adverse consequences of debarment*: The First Respondent argues that he already suffered a "substantial detriment" by losing his job at the Consulting Firm. The First Respondent asserts that any sanction should be directed at preventing him from having a "senior leadership position," but not from technical roles "with no involvement whatsoever with . . . winning a project, or . . . client negotiations . . . or contract implementation." Consistent with past precedent, the Sanctions Board does not find mitigation to be justified for the negative effects of debarment on the First Respondent.[47]

83. *Proportionality*: The First Respondent argues that the Sanctions Board should reconsider the sanction imposed on the Consulting Firm and ensure that his sanction is proportional thereto. In past cases involving multiple respondents and/or affiliates, the Sanctions Board has declined to consider the sanctions agreed between settling parties to bear upon its determination of contested sanctions for respondents, as the final sanctions in settlements may be shaped by considerations extrinsic to the sanctioned party's relative culpability or responsibility for misconduct.[48] The Sanctions Board thus declines to consider the outcome of INT's settlement with the Consulting Firm as a factor in any sanction imposed on the Respondents.

---

[45] See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where sanctions proceedings were initiated more than five (and up to nine) years after the misconduct, and more than five (and up to eight) years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 68 (2014) at para. 47 (applying mitigation where sanctions proceedings were initiated more than four and a half years after the sanctionable practices had occurred and more than four years after the Bank had become aware of the potential misconduct).

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

[47] See, e.g., Sanctions Board Decision No. 53 (2012) at para. 69; Sanctions Board Decision No. 92 (2017) at para. 131. See also Sanctions Board Decision No. 86 (2016) at para. 55.

[48] Sanctions Board Decision No. 56 (2013) at para. 82.

E. Determination of Liability and Appropriate Sanctions for the Respondents

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

i. the First Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the First 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 one (1) year and eleven (11) months beginning from the date of this decision. This sanction is imposed on the First Respondent for corrupt practices as defined in Paragraph 1.25(a)(i) of the May 2002 Consultant Guidelines, Paragraph 1.22(a)(i) of the May 2004 Consultant Guidelines, Paragraph 1.22(a)(i) of the May 2010 Consultant Guidelines, and Paragraph 1.23(a)(i) of the January 2011 Consultant Guidelines.

ii. the Second Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Second 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; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects for a period of three (3) years and eleven (11) months beginning from the date of this decision. This sanction is imposed on the Second Respondent for corrupt practices as defined in Paragraph 1.25(a)(i) of the May 2002 Consultant Guidelines, Paragraph 1.22(a)(i) of the May 2004 Consultant Guidelines, Paragraph 1.22(a)(i) of the May 2010 Consultant Guidelines, and Paragraph 1.23(a)(i) of the January 2011 Consultant Guidelines.

---

[49] A respondent's ineligibility to be awarded a contract includes, without limitation, (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, consultant, manufacturer or supplier, or service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section 9.01(c)(i), n.16.

[50] A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section 9.01(c)(ii), n.17.

85. The ineligibility of the Respondents shall extend across the operations of the World Bank Group. The Bank will also provide notice of this declaration of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may determine whether to enforce the declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[51]

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
Catherine O'Regan

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