

Date of issuance: April 13, 2018

**Sanctions Board Decision No. 109
(Sanctions Case No. 443)**

**IDA Grant No. H547-LA
IDA Grant No. H789-LA
Lao People's Democratic Republic**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 443 (the “Respondent Firm”), together with certain Affiliates,² with a minimum period of ineligibility of three (3) years and one (1) month beginning from the date of this decision; and a sanction of debarment on each of the individual respondents in Sanctions Case No. 443 (the project manager and the director of the Respondent Firm, hereinafter referred to, respectively, as the “Respondent Project Manager” and the “Respondent Director,” and jointly as the “Individual Respondents”), together with certain Affiliates, for a period of two (2) years and seven (7) months beginning from the date of this decision. These sanctions are imposed on the Respondent Firm and the Individual Respondents (all together, the “Respondents”) for a corrupt practice.

I. INTRODUCTION

1. The Sanctions Board met in panel sessions in March 2018 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), Alejandro Escobar, and Mark Kantor. 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 on the written record.³

¹ In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects issued by the World Bank on June 28, 2016 (the “Sanctions Procedures”), the term “World Bank Group” means, collectively, the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), and the Multilateral Investment Guarantee Agency (“MIGA”). The term “World Bank Group” includes Bank Guarantee Projects and Bank Carbon Finance Projects, but does not include the International Centre for 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 II(x).

² Section II(a) 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 sanctions imposed by this decision apply only to those Affiliates that are directly or indirectly controlled by one or more of the Respondents. See infra Paragraphs 56-57.

³ See Sanctions Procedures at Section III.A, sub-paragraph 6.01.

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

- i. Notice of Sanctions Proceedings issued by the World Bank's Alternate Suspension and Debarment Officer (the "Alternate SDO") to the Respondents on June 9, 2017 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") with exhibits presented to the World Bank's Suspension and Debarment Officer (the "SDO") by INT, dated January 17, 2017;
- ii. Explanation with exhibits submitted by the Respondent Firm to the Alternate SDO on July 19, 2017;
- iii. Explanation with exhibits submitted by the Respondent Project Manager to the Alternate SDO on July 19, 2017;
- iv. Explanation with exhibits submitted by the Respondent Director to the Alternate SDO on July 19, 2017;
- v. Response with exhibits submitted by the Respondent Firm to the Secretary to the Sanctions Board on September 18, 2017;
- vi. Response with exhibits submitted by the Respondent Project Manager to the Secretary to the Sanctions Board on September 18, 2017;
- vii. Response submitted by the Respondent Director to the Secretary to the Sanctions Board on September 18, 2017; and
- viii. Reply submitted by INT to the Secretary to the Sanctions Board on October 27, 2017 (the "Reply").

3. On June 9, 2017, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the Alternate SDO issued the Notice and temporarily suspended the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by any of the Respondents, from eligibility⁴ with respect to any Bank-Financed Projects,⁵ pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspensions would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the Alternate SDO recommended in the Notice debarment with conditional release for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by any of the Respondents. The Alternate SDO recommended minimum periods of ineligibility of four (4) years

⁴ The full scope of ineligibility effected by a temporary suspension is set out in the Sanctions Procedures at Section III.A, sub-paragraphs 4.02(a) and 9.01(c), read together.

⁵ 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 II(e).

for the Respondent Firm, and three (3) years for each of the Individual Respondents, after which periods (a) the Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer (the "ICO") that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank; and (b) each of the Individual Respondents may be released from ineligibility only if she has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the ICO that she has (i) taken appropriate remedial measures to address the sanctionable practices for which she has been sanctioned, (ii) completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and (iii) adopted and implemented an effective integrity compliance program with respect to any entity that is an Affiliate directly or indirectly controlled by her in a manner satisfactory to the Bank.

II. GENERAL BACKGROUND

4. This case arises in the context of the Road Sector Project (the "Project") in the Lao People's Democratic Republic (the "Recipient"), which sought to improve road services on two main national corridors and the provincial road network, to rehabilitate roads damaged by a typhoon, and to establish and operationalize a contingency fund for quick disaster response in the road sector. On April 2, 2010, the Bank entered into a financing agreement with the Recipient to provide an amount equivalent to Special Drawing Rights ("SDR") 17.9 million (approximately US\$27.8 million) to support the Project (the "Financing Agreement"). The Financing Agreement was amended on August 8, 2012, to provide additional financial assistance in support of the Project by an amount equivalent to SDR14 million (approximately US\$21 million). The Project became effective on July 1, 2010, and closed on September 30, 2017.

5. On August 29, 2012, the Project Implementation Unit (the "PIU") issued a request for proposals for a contract for consulting services for sector planning and management (the "Contract"). On October 8, 2012, the Respondent Firm in association with a local partner (the "Local Partner") submitted a proposal for the Contract. On June 24, 2013, the Respondent Firm and the PIU entered into the Contract valued at US\$460,300.

6. INT alleges that the Respondents engaged in corrupt practices by offering and providing a vehicle to a public official to influence him in the Respondent Firm's favor during the implementation of the Contract. INT further alleges that the Respondent Firm engaged in corrupt practices by offering a bribe to members of the PIU to influence the award and execution of the Contract in the Respondent Firm's favor.

III. APPLICABLE STANDARDS OF REVIEW

7. *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.

8. *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.

9. *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.

10. *Applicable definition of corrupt practice:* The Financing Agreement provided that the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006) (the “October 2006 Consultant Guidelines”) would apply, and the request for proposals for the Contract defined sanctionable practices in accordance with the common definitions in the October 2006 Consultant Guidelines and 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”). In these circumstances, a corrupt practice, as alleged to have occurred in this case, has the meaning set forth in Paragraph 1.22(a)(i) of the October 2006 Consultant Guidelines and Paragraph 1.22(a)(i) of the May 2010 Consultant Guidelines, which define the term “corrupt practice” as “the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.” A footnote to this definition in both sets of Guidelines explains that the term “another party” includes public officials acting in relation to the selection process or contract execution, including World Bank staff and “employees of other organizations taking or reviewing selection decisions.”⁶

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

1. Allegations of corrupt practices

11. *Corruption allegation 1:* INT alleges that the Respondents engaged in corrupt practices by offering and providing to the deputy director general of a department within the PIU (the “Deputy Director”) a vehicle worth approximately US\$38,800 in order to influence the Deputy Director in the Respondents’ favor during the implementation process for the Contract. According to INT, the vehicle was purchased through the Local Partner and transferred to the PIU after the conclusion of the Contract, for the personal benefit of the Deputy Director. INT alleges that the Respondent Project Manager played an active role in negotiating this corrupt arrangement, and that the

⁶ October 2006 Consultant Guidelines at para. 1.22(a)(i), n.17; May 2010 Consultant Guidelines at para. 1.22(a)(i), n.17.

Respondent Director was directly involved, or “at the very least informed of” the agreement and “knowingly and actively participated in its implementation.”

12. *Corruption allegation 2:* INT submits that the Respondent Firm made a corrupt offer when it agreed to pay 4% of the value of the Contract to members of the PIU during the proposal evaluation stage. INT alleges that employees of the Respondent Firm, through the Local Partner, acceded to a solicitation for the 4% payment from the public officials, with the intent to influence the award and execution of the Contract in the Respondent Firm’s favor. INT asserts that, while the payment was ultimately not made, the Respondent Firm’s conduct is sanctionable, as it constituted an offer as defined under the applicable guidelines.

2. Sanctioning factors

13. INT submits as an aggravating factor the Respondent Firm’s repeated pattern of conduct. INT asserts that the Respondents’ claimed cooperation with INT does not warrant mitigation and that only limited mitigating credit is due to the Respondent Firm for its compliance improvements.

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

1. Contentions regarding INT’s allegations of corrupt practices

14. *Corruption allegation 1:* In its Explanation, the Respondent Firm raises concerns as to the credibility and certainty of the evidence presented by INT – in particular, the testimonies of a former consultant for the Respondent Firm (the “Former Consultant”) and the chief executive officer (“CEO”) of the Local Partner. In the Response, the Respondent Firm refers to the concerns raised in the Explanation, but also submits that, insofar as the Respondent Project Manager has taken part in a corrupt practice, the Respondent Firm accepts responsibility for her actions. In reviewing this allegation, the Respondent Firm requests that the Sanctions Board take into account that the Respondent Project Manager was in a fragile state of health – under significant pressure and mental strain – at the time of the alleged misconduct, and that her actions would be “best considered as negligence caused by relative inexperience and stress.”

15. *Corruption allegation 2:* The Respondent Firm argues that INT does not provide sufficient evidence that the Respondent Firm offered a payment to public officials. Conceding that the CEO of the Local Partner received an improper solicitation from the PIU, the Respondent Firm asserts that it never “agreed to meet any solicitation request,” nor did it successfully communicate such a decision to any public officials. The Respondent Firm argues that any internal communications between its employees and the CEO of the Local Partner might be construed, at worst, as an attempted offer of a payment. According to the Respondent Firm, attempted offers are not sanctionable under the relevant definition of corrupt practice.

2. Sanctioning factors

16. The Respondent Firm argues that, in determining any sanction, the Sanctions Board should consider the following mitigating factors: (i) minor role in the misconduct, (ii) compliance

improvements, (iii) cooperation, and (iv) period of temporary suspension served. The Respondent Firm also submits that its Finnish subsidiary (the “Subsidiary”) should be excluded from any sanction, asserting that the Subsidiary is independently managed, that its staff were not involved in the alleged misconduct, and that sanctioning it would be disproportionate and not reasonably necessary to prevent evasion.

C. The Respondent Project Manager’s Principal Contentions in Her Explanation and Response

1. Contentions regarding INT’s allegations of corrupt practices

17. *Corruption allegation 1:* The Respondent Project Manager argues that INT has not shown that she offered or gave a thing of value, or that she acted with an improper purpose. According to the Respondent Project Manager, INT has accused her of the “*promising* of a bribe” (emphasis in original) – which she submits does not constitute sanctionable misconduct under the applicable definition of corrupt practice. In addition, the Respondent Project Manager asserts that she never agreed to have the Local Partner transfer a vehicle to a public official, and that there is insufficient evidence that such a transfer ever took place. The Respondent Project Manager raises concerns similar to those raised by the Respondent Firm with respect to the evidence presented by INT, and asserts that the record offers support for the alternative theory that the CEO of the Local Partner alone engaged in the alleged corrupt practice. Finally, the Respondent Project Manager argues that, even if the Sanctions Board infers that she had knowledge of a corrupt practice, that inference is not sufficient to find her culpable for a corrupt practice.

2. Sanctioning factors

18. The Respondent Project Manager submits that, in determining any sanction, the Sanctions Board should consider her (i) personal circumstances and hardship (including her medical diagnosis, as supported by medical records), (ii) cooperation with INT’s investigation, and (iii) minor role in the misconduct. The Respondent Project Manager also requests that the Sanctions Board consider proportionality in sanctioning the same misconduct, specifically referring to the Local Partner’s sanction pursuant to its settlement agreement with INT.

D. The Respondent Director’s Principal Contentions in Her Explanation and Response

1. Contentions regarding INT’s allegations of corrupt practices

19. *Corruption allegation 1:* The Respondent Director submits that she “inherited the Project” after execution of a consortium agreement (the “Consortium Agreement”) – pursuant to which the Local Partner would “provide a transport service package” (including a vehicle), and the Respondent Firm would “make payments for the Project vehicle service.” The Respondent Director argues that her authorization of payments pursuant to the Respondent Firm’s obligations under the Consortium Agreement do not constitute a corrupt practice – asserting that she had no knowledge of any impropriety, and that INT has not shown that she acted with a specific “demonstrable purpose” to influence the Deputy Director’s acts so as to establish corrupt intent.

Similar to the other Respondents, the Respondent Director raises concerns with respect to the evidence presented by INT, and argues that the record offers support for the theory that, if the vehicle was indeed transferred to the Deputy Director, the CEO of the Local Partner alone engaged in the alleged corrupt practice. Finally, the Respondent Director argues that, even if the Sanctions Board infers that she had knowledge of a corrupt practice, that inference is not sufficient to find her culpable for a corrupt practice.

2. Sanctioning factors

20. The Respondent Director submits that, in determining any sanction, the Sanctions Board should consider her (i) cooperation with INT's investigation and (ii) minor role in the misconduct. Mirroring the Respondent Project Manager's submission, the Respondent Director requests that the Sanctions Board consider proportionality in sanctioning the same misconduct, specifically referring to the Local Partner's sanction pursuant to its settlement agreement with INT.

E. INT's Principal Contentions in the Reply

1. Contentions in support of its allegations of corrupt practices

21. *Corruption allegation 1:* INT submits that, contrary to the Respondents' arguments, the record "leaves little doubt" that the Respondents engaged in corrupt practices by providing a vehicle to the Deputy Director. According to INT, evidence shows that the Respondent Project Manager directly negotiated and took specific steps to implement the corrupt arrangement through the Local Partner, and thereby participated in giving the vehicle to a public official. In addition, INT refers to Sanctions Board precedent in support of its assertion that, contrary to the Respondent Project Manager's claims, the term "offer" includes a promise or commitment to pay a bribe when solicited. With respect to the Respondent Director, INT asserts that she is liable for knowingly and directly approving the corrupt payments, regardless of whether the arrangement had been formalized under an agreement that she "inherited."

22. *Corruption allegation 2:* INT submits that the Respondent Firm's argument that there was at worst an "attempted offer" is implausible given the evidence in the record. In addition, INT contends that email evidence indicates that the Respondent Firm's agreement to pay 4% of the value of the Contract to public officials was communicated to public officials.

2. Sanctioning factors

23. INT argues that the Respondents' conduct throughout the investigative process and during these sanctions proceedings does not warrant mitigating credit, but rather significant aggravation. In addition, INT submits that the Subsidiary should not be excluded from the Respondent Firm's sanction, arguing that the Subsidiary's managing director reports to the Respondent Firm's managing director, that both companies' portfolios include World Bank-financed contracts, and that the Subsidiary could be used as a vehicle for the Respondent Firm to circumvent any sanction.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

24. The Sanctions Board will first consider whether it is more likely than not that the alleged corrupt practices occurred, and if so, whether any of the Respondents may be held liable for the misconduct. The Sanctions Board will then determine what sanctions, if any, should be imposed on each of the Respondents.

A. Evidence of Corrupt Practices

25. In accordance with the definition of corrupt practice under the October 2006 and May 2010 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.

1. Corruption allegation 1: Alleged vehicle given to the Deputy Director

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

26. INT alleges that the Respondents engaged in corrupt practices by offering and providing a vehicle to the Deputy Director. As noted above, INT asserts that the Respondent Project Manager played an active role in negotiating the corrupt arrangement, and that the Respondent Director was directly involved in authorizing the Respondent Firm's payments for the vehicle. The Respondent Firm raises concerns with respect to INT's evidence – in particular, the testimonies of the Former Consultant and the CEO of the Local Partner. The Respondent Project Manager disputes that she offered or gave a thing of value, and argues that INT has only accused her of the "*promising* of a bribe" (emphasis in original). For her part, the Respondent Director does not contest that she authorized and processed payments for the Respondent Firm in relation to the vehicle in question, asserting that these actions were taken pursuant to the Respondent Firm's obligations under the Consortium Agreement.

27. Testimonial and documentary evidence supports a finding that the Individual Respondents, acting through the Local Partner, gave a vehicle to the Deputy Director. In terms of testimonial evidence, the Former Consultant stated during his interview with INT that, following a meeting in July 2013, the Respondent Project Manager informed him that the Deputy Director had explicitly requested that the Respondent Firm "buy a vehicle . . . and then at the end of the project hand it over to him." According to the Former Consultant, after conferring with a senior manager of the Respondent Firm (the "Senior Manager"), the Respondent Project Manager arranged for a vehicle to be given to the Deputy Director through the Local Partner. In addition, the CEO of the Local Partner stated during his interview with INT that a vehicle was provided to the PIU. In assessing the weight of this testimonial evidence, the Sanctions Board considers all relevant factors bearing on the witnesses' credibility,⁷ including the Former Consultant's apparent employment dispute with the Respondent Firm and indications in the record of the involvement of the Local Partner's CEO in the misconduct at issue.

⁷ See Sanctions Board Decision No. 71 (2014) at para. 54.

28. With respect to contemporaneous documentary evidence, in an email exchange in August 2013, the Respondent Project Manager expressly stated to the Respondent Director that a significant part of the Contract budget had been allocated to a “nice[] expensive car that we negotiated for [the Deputy Director].” In that same message, the Respondent Project Manager stated that the Deputy Director would “[get] his car that he harped on about so much,” noting that it would be “for his own personal use.” In a later email, the Former Consultant asked the Respondent Director to confirm his understanding that the Respondent Firm would have “no residual interest in the car after the project is finished,” to which the Respondent Director replied, “correct.” In addition, other email correspondence indicates that the Respondent Director approved payments to reimburse the Local Partner for the car. Finally, the Sanctions Board notes that contemporaneous budget documents and purchase invoices support a finding that the Respondent Firm’s employees purchased a car, through the Local Partner, during implementation of the Contract. This evidence counters the Individual Respondents’ assertion that the Individual Respondents only arranged for a car rental or “transport service package” for the PIU, and never agreed to transfer the vehicle to any public officials.

29. Considering testimonial and documentary evidence in the record – in particular, the August 2013 email, subsequent communications, and contemporaneous budget documents – the Sanctions Board finds that it is more likely than not that the Individual Respondents gave a vehicle to the Deputy Director in connection with the Contract. Because “offering” and “giving” are set out as alternative elements of corrupt practice under the applicable definition, the Sanctions Board declines to address INT’s separate allegation of an offer.⁸

b. To influence improperly the actions of another party

30. INT argues that the Respondents gave a vehicle to the Deputy Director in order to influence his actions during the implementation process for the Contract. The Individual Respondents maintain that they did not act with corrupt intent, and that the CEO of the Local Partner alone engaged in the corrupt practice.

31. The totality of the evidence supports a finding that the Individual Respondents acted under the first element with the requisite intent to influence the Deputy Director. As the evidence in Paragraphs 27-28 above indicates, in response to a solicitation, the Respondent Project Manager arranged for a vehicle to be given to the Deputy Director, with the Respondent Director’s subsequent knowledge and approval. Evidence supports that, in so doing, the Individual Respondents complied with the Deputy Director’s request expecting him to use his influence in the Respondent Firm’s favor. For example, the Former Consultant stated to INT that “[the Deputy Director] wanted a vehicle and there didn’t seem to be any way around it [the Deputy Director] put the hard word on [the Respondent Project Manager] and so that’s what she did.” In addition, in the aforementioned email exchange from August 2013, the Respondent Project Manager informed the Respondent Director that the Deputy Director had “weasel[ed] a car out of it for his own personal use.” In that same email, the Respondent Project Manager stated that she had wanted to talk about the Respondent Firm’s “earnings in the project, against [the Deputy

⁸ See Sanctions Board Decision No. 93 (2017) at para. 43.

Director's] explicit wishes," and that "if they take our earnings then [the Deputy Director] can forget about his nice[] expensive car that we negotiated for him." In a separate exchange from June 2014, the CEO of the Local Partner emailed the Respondent Director about pending invoices, noting that the Local Partner had made "much effort to ask government to proceed payment to [the Respondent Firm] . . . and successfully," and also had to "pay down for vehicle at every month . . . so your proceed payment ASAP is required." In response, the Respondent Director acknowledged that the Local Partner was "working hard to help things [go] smoothly" and stated that she would proceed to make the delayed payments. This evidence supports a finding that the Individual Respondents acted with corrupt intent and weighs against the alternative theory that the CEO of the Local Partner acted alone and without the Individual Respondents' knowledge.

32. In light of the above, and considering the record as a whole, the Sanctions Board finds that it is more likely than not that the Individual Respondents acted with the intent to influence the Deputy Director during the execution of the Contract.

2. Corruption allegation 2: Alleged offer to members of the PIU

33. INT submits that the Respondent Firm engaged in corrupt practices by offering to pay 4% of the Contract's value to members of the PIU. As previously noted, the Respondent Firm argues that it did not communicate an offer to any public officials and that, therefore, its conduct did not amount to a sanctionable practice.

34. The record is inconclusive as to whether employees of the Respondent Firm made an offer to officials within the PIU as alleged by INT. The CEO of the Local Partner stated to INT that, prior to the award of the Contract, he received a request from PIU officials to pay 4% of the Contract's value, which request he then relayed to the Respondent Firm. The CEO indicated that any commitment to pay the 4% was made by him alone. Indeed, in response to INT's question as to whether the Respondent Firm was involved in the commitment, the CEO stated "[n]ot, not, but they know. . . . I think the commitment's only on my side." The CEO of the Local Partner further stated that, due to budget constraints, the Respondent Firm was ultimately unable to provide such payments. Nothing in the transcript of the CEO's interview indicates that employees of the Respondent Firm acquiesced to the solicitation and that an offer subsequently was made to PIU officials. Moreover, documentary evidence is ambiguous on the factual issue of the Respondent Firm's alleged offer following the solicitation. For example, in October 2012, a local consultant for the Respondent Firm (the "Local Consultant") stated to the Senior Manager and other employees of the Respondent Firm that he had received feedback on their "recently submitted . . . proposal" for the Contract and that "[c]hances are very good at a 4-7% cost." The Local Consultant also stated that he needed a response "which I can feed back." The Senior Manager replied that he needed more information before making a decision. A few days later, in a separate email communication with the subject: "Project at [the PIU]," the Local Consultant stated to the CEO of the Local Partner that "[i]t took some time, but I have now received a message that [the Respondent Firm] agrees to what you informed." However, in October 2013, the CEO of the Local Partner emailed the Respondent Director about the proposed 4% payment, stating that "I am not promised and decided to pay him any dollars If you say no budget I will tell him we have no budget that easy . . . [because] he also not told and got [the Respondent Firm's] approval before." In response, the Respondent Director stated that "I do not think we have a budget for these costs in

our budget, but let me check.” Contrary to INT’s theory, this evidence suggests that, one year later, employees of the Respondent Firm were still discussing whether to acquiesce to the solicitation.

35. In light of the above, and considering the totality of the record, the Sanctions Board finds that INT has not satisfied its burden of proof to establish that it is more likely than not that employees of the Respondent Firm offered a thing of value to members of the PIU. Because the Sanctions Board has found insufficient evidence under this first element of corrupt practice, it need not address the second element, i.e., the Respondent Firm’s alleged intent to influence improperly the actions of PIU officials.

B. Liability of the Respondent Firm for the Acts of Its Employees

36. INT argues that the Respondent Firm is culpable for the corrupt conduct of its employees, asserting the employees acted on behalf of the company and within the course and scope of their employment. The Respondent Firm submits that, insofar as the Respondent Project Manager has taken part in a corrupt practice, the Respondent Firm accepts responsibility for her actions.

37. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.⁹ In the present case, the record supports a finding that employees of the Respondent Firm, including the Individual Respondents, engaged in a corrupt practice in accordance with the scope of their duties and with the purpose of serving the interests of the Respondent Firm. For instance, the record indicates that the Respondent Project Manager played an active role in negotiating the corrupt arrangement relating to the vehicle, and that the Respondent Director approved payments for that vehicle. There is no indication in the record that these individuals acted for any purpose other than serving the Respondent Firm, i.e., to obtain financial benefits for the Respondent Firm in relation to the Contract. Moreover, the Respondent Firm does not present, and the record does not provide any basis for, a rogue employee defense. Thus, the Sanctions Board finds the Respondent Firm liable for the corrupt practice carried out by its employees.

C. Sanctioning Analysis

1. General framework for determination of sanctions

38. 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 remedy. As stated

⁹ See, e.g., Sanctions Board Decision No. 61 (2013) at paras. 29-30.

in Section III.A, sub-paragraph 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the Alternate SDO's recommendations.

39. 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.¹⁰ 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.¹¹

40. 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.

41. 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

42. 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 and management's role in the misconduct as examples of severity.

43. *Repeated pattern of conduct:* INT submits that aggravation is warranted for the Respondent Firm because it engaged in two counts of misconduct by first promising the 4% bribe payment and then executing the corrupt arrangement with respect to the vehicle. As the Sanctions Board found sufficient evidence of only one count of misconduct involving one corrupt transaction, it declines to apply aggravation under this factor.

44. *Management's role in misconduct:* Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board has previously applied aggravation on this basis where high-level members of a respondent entity's

¹⁰ See Sanctions Board Decision No. 40 (2010) at para. 28.

¹¹ Sanctions Board Decision No. 44 (2011) at para. 56.

management personally participated in the misconduct.¹² Here, the record indicates that senior management of the Respondent Firm – including the Senior Manager and the Respondent Director – were involved in the misconduct. Accordingly, the Sanctions Board finds aggravation warranted under this factor for the Respondent Firm.

b. Minor role in the misconduct

45. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation “where the sanctioned party played a minor role in the misconduct.” Section V.A of the Sanctioning Guidelines states that mitigation may be warranted where “no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct.” All of the Respondents seek mitigation under this factor. The Sanctions Board has previously observed that “a respondent bears the burden to show affirmatively that no one with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct.”¹³ As the Respondents have not carried this burden – considering in particular that the record indicates that the Respondent Firm’s employees, including the Individual Respondents, were directly involved in the corrupt practice – the Sanctions Board declines to apply mitigation on this basis.

c. Voluntary corrective action

46. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where the sanctioned party took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies several examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of those actions to be considered as potential indicia of the respondent’s genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.¹⁴

47. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent’s “[e]stablishment or improvement, and implementation of a corporate compliance program.” The Sanctions Board has previously granted mitigation on this ground upon a finding that a respondent’s asserted compliance measures appeared to address the type of misconduct at issue¹⁵ and/or at least some of the elements set out in the World Bank Group’s Integrity Compliance Guidelines (the “Integrity Compliance Guidelines”).¹⁶ The Respondent Firm seeks mitigation under this factor. INT asserts that only limited mitigating credit is warranted for the Respondent Firm for its compliance improvements.

48. The record includes a copy of the Respondent Firm’s Code of Conduct, Policy Document, internal whistleblowing mechanism, and communications indicating membership in the United

¹² See, e.g., Sanctions Board Decision No. 102 (2017) at para. 69.

¹³ Sanctions Board Decision No. 71 (2014) at para. 91.

¹⁴ Sanctions Board Decision No. 45 (2011) at para. 72.

¹⁵ See, e.g., Sanctions Board Decision No. 71 (2014) at para. 94.

¹⁶ See, e.g., Sanctions Board Decision No. 56 (2013) at para. 69.

Nations Global Compact. In addition, the Respondent Firm submits that it has recently appointed a Sustainability Manager with anti-corruption responsibilities. The Sanctions Board notes that the Respondent Firm's compliance documents appear to address the type of misconduct at issue in this case and some of the principles set out in the Integrity Compliance Guidelines.¹⁷ Accordingly, the Sanctions Board finds that the asserted compliance measures, as supported by written policies, warrant some mitigation for the Respondent Firm. This finding is based on the written record before the Sanctions Board, and therefore is made without prejudice to any future assessment that the ICO may conduct to more fully evaluate the adequacy and implementation of integrity compliance measures taken by the Respondent Firm.

d. Cooperation

49. *Assistance and/or ongoing cooperation with investigation:* Section III.A, subparagraph 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 in an investigation," 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." The Sanctions Board has previously granted mitigation where, for example, a respondent's managers met with INT on several occasions and provided relevant information,¹⁸ or corresponded with INT and made relevant personnel available for interviews.¹⁹ The Sanctions Board has declined any mitigation where an interviewee corresponded with INT but did not substantially assist INT's investigation;²⁰ or where interviewees refused to be recorded and/or look at evidence during the interview, and the record did not otherwise demonstrate the respondent's cooperation with INT.²¹ All of the Respondents seek mitigation under this factor. INT asserts that the Respondents' claimed cooperation with INT does not warrant mitigation.

50. The record contains transcripts of INT's interviews with employees of the Respondent Firm, internal documents produced by the Respondent Firm, and the Respondents' responses to INT's show-cause letters. However, the Respondent Firm's document production contained significant gaps – failing to include, for example, the inculpatory email of August 2013 discussed in Paragraph 28 above – and employees of the Respondent Firm declined to comply with specific document requests from INT, while providing implausible justifications for doing so. In these circumstances, and considering the record as a whole, the Sanctions Board declines to apply mitigation under this factor.

¹⁷ See generally Summary of World Bank Group Integrity Compliance Guidelines, available at: http://siteresources.worldbank.org/INTDOII/Resources/IntegrityComplianceGuidelines_2_1_11web.pdf.

¹⁸ Sanctions Board Decision No. 53 (2012) at para. 58.

¹⁹ See Sanctions Board Decision No. 56 (2013) at para. 73; Sanctions Board Decision No. 79 (2015) at para. 48.

²⁰ Sanctions Board Decision No. 61 (2013) at para. 44.

²¹ Sanctions Board Decision No. 71 (2014) at para. 97.

e. Periods of temporary suspension

51. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the periods of the Respondents' temporary suspension since the Alternate SDO's issuance of the Notice on June 9, 2017.

f. Other considerations

52. 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."

53. *Non-cooperation and lack of candor:* In the Reply, INT argues that the Respondents' conduct during the investigative process and these sanctions proceedings does not warrant mitigating credit, but rather aggravation. The Sanctions Board has previously applied aggravation based on non-cooperation in sanctions proceedings for actions that demonstrate a respondent's lack of candor in the proceedings.²² As discussed in Paragraphs 49-50 above, the Sanctions Board finds that the Respondents did not substantially assist with INT's investigation so as to warrant mitigating credit. Nevertheless, the Sanctions Board does not find that the Respondents' conduct during the investigation or these proceedings justifies aggravating treatment.

54. *Personal circumstances and hardship:* The Respondent Project Manager submits that, in determining any sanction, the Sanctions Board should consider her personal circumstances and hardship, including her medical diagnosis. The Sanctions Board takes note of the Respondent Project Manager's health issues at the time of the misconduct, as supported by medical records, and her related time on sick leave. Nevertheless, the Sanctions Board also takes into account the degree of the Respondent Project Manager's involvement in the misconduct as compared to the conduct of the Respondent Director and other employees of the Respondent Firm.

55. *Proportionality:* The Individual Respondents request that the Sanctions Board consider proportionality in sanctioning the same misconduct, specifically referring to the Local Partner's sanction pursuant to its settlement agreement with INT. In past cases, the Sanctions Board declined to consider the sanctions agreed between settling parties to bear upon its own determination of contested sanctions for respondents, noting that the final sanctions in settlements may be shaped by considerations extrinsic to the sanctioned party's relative culpability or responsibility for misconduct.²³ Consistent with this precedent, the Sanctions Board declines to consider the outcome of INT's settlement with other parties to bear upon its determination of sanctions for the Respondents.

²² See, e.g., Sanctions Board Decision No. 71 (2014) at para. 107 (applying significant aggravation where the respondent firm presented, in the Response and at the Sanctions Board's hearing, an uncorroborated version of events that lacked credibility); Sanctions Board Decision No. 77 (2015) at para. 59 (applying aggravation where the respondent's defense relied on an implausible assertion).

²³ Sanctions Board Decision No. 56 (2013) at para. 82; Sanctions Board Decision No. 92 (2017) at para. 132.

D. Determination of Appropriate Sanctions

56. The Respondent Firm submits that the Subsidiary should be excluded from any sanction. INT argues that the Subsidiary should not be exempted, asserting that the Subsidiary could be used as a vehicle for the Respondent Firm to circumvent any sanction. Consistent with past precedent, sanctions imposed by this decision apply to the Respondents together with any entity that is an Affiliate directly or indirectly controlled by any of the Respondents.

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

- i. the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, including the Subsidiary, 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;²⁴ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider²⁵ of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of three (3) years and one (1) month beginning from the date of this decision, the Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group, including by providing anti-corruption training to its staff and, in particular, the Individual Respondents and the Senior Manager to the extent that these individuals remain in the employ of Respondent Firm or any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm. This sanction is imposed on the Respondent Firm for a corrupt practice as defined in Paragraph 1.22(a)(i) of the October 2006 Consultant Guidelines and Paragraph 1.22(a)(i) of the May 2010 Consultant Guidelines; and
- ii. the Respondent Project Manager and the Respondent Director, together with any entity that is an Affiliate directly or indirectly controlled by either of these Individual Respondents, shall be, and hereby declares that they are, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or

²⁴ A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, 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.

²⁵ A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(ii), n.15.

in any other manner;²⁶ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider²⁷ 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 two (2) years and seven (7) months beginning from the date of this decision. These sanctions are imposed on the Individual Respondents for a corrupt practice as defined in Paragraph 1.22(a)(i) of the October 2006 Consultant Guidelines and Paragraph 1.22(a)(i) of the May 2010 Consultant Guidelines.

58. The Respondents' ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of these declarations of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may determine whether to enforce the declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.²⁸



J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Alejandro Escobar
Mark Kantor

²⁶ See *supra*, n.24.

²⁷ See *supra*, n.25.

²⁸ At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The Cross-Debarment Agreement provides that, subject to the prerequisite conditions set forth in the Cross-Debarment Agreement, unless a participating MDB (i) believes that any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the "opt out" clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank's website (<http://go.worldbank.org/B699B73Q00>).