THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: April 30, 2018

Sanctions Board Decision No. 111
(Sanctions Case No. 456)

GEF Trust Fund Grant No. TF095839
Philippines

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 456 (the "Respondent"), together with certain Affiliates,[2] with a minimum period of ineligibility of nine (9) months beginning from the date of this decision. This sanction is imposed on the Respondent for a corrupt practice.

I. INTRODUCTION

1. The Sanctions Board met in a panel session on March 15, 2018, at the World Bank Group's headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of Ellen Gracie Northfleet (Panel Chair), Olufunke Adekoya, and Alejandro Escobar.

2. A hearing was convened at the requests of the Respondent and the World Bank Group's Integrity Vice Presidency ("INT"), and held on March 15, 2018, in accordance with Section III.A, sub-paragraph 6 of the Sanctions Procedures. INT participated in the hearing through its representatives attending in person. The Respondent was represented by two of its current directors, a former director, in-house counsel, and external counsel, all attending in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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

i. Notice of Sanctions Proceedings issued by the World Bank's Acting Suspension and Debarment Officer (the "Acting SDO") to the Respondent on April 27, 2017 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE")

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[1] In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects issued 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 "Affiliates" as "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." The sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraph 63.

presented by INT to the World Bank's Suspension and Debarment Officer, dated January 11, 2017;

ii. Explanation submitted by the Respondent to the Acting SDO on June 29, 2017 (the "Explanation");

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on September 15, 2017 (the "Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on October 30, 2017 (the "Reply").

4. On April 27, 2017, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the Acting SDO issued the Notice and temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility[3] with respect to any Bank-Financed Projects,[4] 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 Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the Acting SDO recommended in the Notice debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The Acting SDO recommended a minimum period of ineligibility of three (3) years, after which the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practice for which the Respondent has been sanctioned, and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

II. GENERAL BACKGROUND

5. This case arises in the context of the Integrated Persistent Organic Pollutants ("IPOPs") Management Project (the "Project") in the Republic of the Philippines (the "Recipient"). The Project sought to assist the Recipient in minimizing the risk of human and environmental exposure to Persistent Organic Pollutants ("POPs") by strengthening its regulatory and monitoring framework, and improving capacity for, and providing demonstrations of, safe management of Polychlorinated Biphenyls, reduction of releases of unintentionally produced POPs, and reduction of exposure to POPs in contaminated sites. The Bank, acting as implementing agency of the Global Environment Facility ("GEF"), entered into a GEF trust fund grant agreement with the Recipient on June 28, 2010, to

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

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

provide US$8.64 million for the Project (the "GEF Trust Fund"). The Project became effective on June 24, 2011, and closed on September 30, 2017.

6. On September 9, 2011, the implementation unit for the Project (the "PIU") issued a request for proposals for a contract for consulting services for the Technical Assistance and Training to Support Local Governmental Units in the Application of Best Available Technology/Best Environmental Practice ("BAT/BEP") to Reduce Polychlorinated Dibenzo-Para-Dioxin and Polychlorinated Dibenzofuran ("PCDD/PCDF") from Solid Wastes (the "IPOP 2 Contract"). On October 21, 2011, the Respondent, in a consortium with two other firms (the "Consortium"), submitted technical and financial proposals in response to the request for proposals for the IPOP 2 Contract. On January 12, 2012, the PIU approved the technical evaluation report giving the Consortium the highest technical score. After the PIU and the Consortium negotiated the IPOP 2 Contract, the PIU recommended the award of the IPOP 2 Contract to the Consortium. On January 23, 2013, the PIU and the Consortium signed the IPOP 2 Contract.

7. During the selection process for, but prior to the signing of, the IPOP 2 Contract, the Consortium participated in the selection processes for two other contracts, i.e., a contract for the Conduct of Training on BAT/BEP for Reduction of PCDD/PCDF from Agricultural and Industrial Sources (the "IPOP 8 Contract"), and a contract for the Development of the National Health Monitoring Program for POPs and Conduct of Survey and Monitoring of Selected Targeted Groups for Specific Sources and Sites (the "IPOP 7 Contract"). Specifically, on December 18, 2012, the Consortium submitted technical and financial proposals in response to the PIU's request for proposals for the IPOP 8 Contract. On December 21, 2012, the Consortium submitted an expression of interest for the IPOP 7 Contract. The PIU and the Consortium signed the IPOP 8 Contract on June 23, 2014, while negotiations on the IPOP 7 Contract between the PIU and the Consortium ultimately failed.

8. INT alleges that the Respondent engaged in a corrupt practice by offering to hire a consultant staff member to provide services to the PIU on matters unrelated to the IPOP 2 Contract for purposes of influencing the procurement processes for the IPOP 7 and IPOP 8 Contracts.

III. APPLICABLE STANDARDS OF REVIEW

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

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

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

12. *Applicable definition of corrupt practice*: The GEF Trust Fund 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. The requests for proposals for the IPOP 2 and IPOP 7 Contracts, and the IPOP 2 Contract defined corrupt practice in accordance with the common definitions in the October 2006 Consultant Guidelines; 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"). However, the request for proposals for the IPOP 8 Contract contained a definition of corrupt practice consistent with the definition in the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) (the "May 2004 Consultant Guidelines). Therefore, the corruption allegation in this case has the meaning set forth in the May 2004, October 2006, May 2010, and January 2011 Consultant Guidelines. Paragraph 1.22(a)(i) of the May 2004 Consultant Guidelines defines "corrupt practice" as "offering, giving, receiving, or soliciting of, directly or indirectly, any thing of value to influence the action of a public official in the selection process or in contract execution." Paragraph 1.22(a)(i) of the October 2006 and May 2010 Consultant Guidelines, and Paragraph 1.23(a)(i) of the January 2011 Consultant Guidelines define "corrupt practice" as "offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party."

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

13. INT alleges that the Respondent offered "extra contractual services" to the PIU in order to influence the procurement of the IPOP 7 and IPOP 8 Contracts. Specifically, INT contends that a director of the PIU (the "PIU Director") met with the local consortium partner's (the "Consortium Partner") then vice president for business development (the "Consortium Partner's VP") and requested that the Consortium hire two staff members to assist the PIU with its public relations efforts. According to INT, the Consortium Partner's VP understood the PIU Director's request to be a solicitation of a bribe and relayed the request to the Respondent's project manager (the "Project Manager"). INT asserts that the Project Manager and the PIU Director subsequently exchanged correspondence, in which the PIU Director reiterated his request to hire two staff members to assist in the PIU's media efforts, and the Project Manager made a counter-offer to have the Consortium Partner hire one staff member to work partly for the Consortium and partly for the PIU. INT argues that the Project Manager made this offer after, inter alia, informing the PIU Director that the Consortium had just submitted a proposal for a contract and will submit an expression of interest for another contract, which contracts likely pertained to the IPOP 8 Contract and the IPOP 7 Contract, respectively. INT asserts that, consistent with his discussion with the PIU Director, the Project Manager urged the Consortium Partner to hire one staff member under the IPOP 2 Contract who would assist the PIU. INT states that the Respondent and the Consortium Partner thereafter

entered into a sub-consultancy agreement that included budget for such staff member. INT states that the PIU's request ultimately fell through as the PIU's need for media assistance died down.

14. INT does not allege any aggravating factors. INT submits that the Respondent deserves mitigation for its minor role in the misconduct, considering that the Respondent's offer was a reaction to the solicitation of PIU officials.

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

15. The Respondent requests the disclosure of all exculpatory and mitigating evidence, asserting that the transcripts of interviews in the record show that INT has more than 400 exhibits, though only 42 were included in the SAE. The Respondent also specifically seeks disclosure of all transcripts of interviews, particularly those with certain employees of the Respondent.

16. With regard to INT's corruption allegation, the Respondent argues that the Consortium Partner's VP did not construe the PIU's request as a solicitation of a bribe. Relying on written statements from the PIU Director, the Project Manager, and the Consortium Partner's VP (attached as annexes to the Response), as well as other evidence in the record, the Respondent contends that (i) the Project Manager's communication with the PIU Director did not amount to an "offer," considering that the PIU's request was only "exploratory" in nature; (ii) the Project Manager only tentatively considered the PIU's request without actually expressing the Respondent's "formal readiness" to accede to it; and (iii) making a formal offer to hire staff for the PIU would have required the Respondent's internal clearance and approval, which the Project Manager never sought. The Respondent further asserts that the Project Manager made it clear in his correspondence with the PIU Director that he understood the PIU's request as being unconnected to the IPOP 2 Contract, and that the Project Manager neither presented nor implied a quid pro quo arrangement with respect to the IPOP 7 and IPOP 8 Contracts. With respect to the Project Manager's correspondence with the Consortium Partner's VP regarding the hiring of a staff member to work partly for the PIU, the Respondent asserts that none of these emails involved, or were shared with, the PIU. The Respondent also contends that, at that time when the Project Manager and the Consortium Partner's VP corresponded, the Project Manager and the PIU were no longer exploring the PIU's request and the PIU's need for staff had already been resolved. Lastly, the Respondent argues that, although the Consortium did hire a secretary, her engagement was unrelated to the PIU's request and she worked solely on the IPOP 2 Contract, not for the PIU.

17. The Respondent seeks mitigation on the following grounds: minor role, including lack of involvement of the Respondent's senior executives; cessation of misconduct; effective compliance program; cooperation; internal investigation; voluntary restraint; period of temporary suspension served; and lack of harm.

C. INT's Principal Contentions in the Reply

18. In response to the Respondent's disclosure request, INT asserts that it has produced all relevant mitigating or exculpatory evidence. INT states that it recorded its interviews with all of the Respondent's employees – transcripts of which INT attaches to its Reply – except with one employee from whom INT purportedly did not solicit any information.

19. With respect to INT's corruption allegation, INT characterizes the written statements from the PIU Director, the Project Manager, and the Consortium Partner's VP (attached as annexes to the Response) as "made-for-litigation statements . . . that conveniently retract their prior incriminating statements." INT reiterates its arguments regarding the correspondence between the Project Manager and the PIU Director, and the correspondence between the Project Manager and the Consortium Partner's VP. According to INT, the communication between the Project Manager and the PIU Director shows that the Project Manager made an offer in the form of a "specific monetary amount for specific extra-contractual services," which the Project Manager linked to tenders that the Respondent had not yet won, but for which the PIU Director indicated his willingness to provide his "best effort" and support.

20. INT submits that the Respondent deserves "little-to-no mitigation" for cooperation; limited mitigation for the Respondent's "non-leading role" in the misconduct and period of temporary suspension served; and no mitigation for the Respondent's internal review, asserted lack of involvement of the Respondent's senior executives, lack of harm to the Project, purported cessation of the misconduct and corrective action, and supposed compliance program.

D. Presentations at the Hearing

21. At the hearing, INT first argued that the Project Manager's proposal to hire staff for the PIU was sufficiently clear. INT asserted that the term "offer" within the meaning of "corrupt practice" includes a situation where the terms of the offer may change, as there is no need for offers to be firm or final in nature. Second, INT averred that the offer to hire staff to render services to the PIU can be considered a "thing of value." Citing Sanctions Board precedent, INT stated that a "thing of value" need not be in the form of money, and the recipient of the thing of value offered need not be the public official who is the intended target of influence. Finally, INT contended that the Project Manager had corrupt intent when he linked the offer to the Respondent's receipt of future contracts. According to INT, the Project Manager's knowledge of the PIU Director's authority over the Project and the timing of the Project Manager's correspondence with the PIU in relation to the Respondent's submission of tenders further evidence the Project Manager's intent to improperly influence the actions of a public official.

22. The Respondent argued that the text and context of the referenced emails, as well as the explanations of the individuals involved, show that there was no corrupt practice. First, the Respondent asserted that it is clear from the text of the correspondence between the Project Manager and the PIU Director that the PIU's request was exploratory and unrelated to any of the IPOP contracts, and the Project Manager's wording was tentative and non-committal. Second, the Respondent addressed the context of the same emails, asserting that the Project Manager was merely being "service-minded" and polite to the PIU without making any final commitments. Third, the Respondent echoed the explanations provided by the Project Manager and the PIU Director in their respective written statements (attached as annexes to the Response) that (i) the Project Manager's reference to future tenders was merely to express the Respondent's aim for growth in general, rather than the award of any specific contracts; and (ii) the PIU Director understood the Project Manager's emails as simply conveying the Respondent's interest in expanding business in the country, rather than asking for specific favors in relation to projects with the PIU. The Respondent further argued that exploring options does not constitute an "offer" within the meaning of "corrupt practice," and

considering a request from a government body cannot be perceived as an intent to influence a public official. The Respondent concluded by reiterating a few of its previously asserted mitigating factors and adding that mitigation is also warranted for the passage of time.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

23. The Sanctions Board will first consider the Respondent's disclosure requests. The Sanctions Board will then determine whether it is more likely than not that the alleged corrupt practice occurred, and if so, whether the Respondent may be held liable for the misconduct. Finally, the Sanctions Board will ascertain what sanctions, if any, should be imposed on the Respondent.

A. The Respondent's Disclosure Requests

24. As discussed in Paragraph 15, the Respondent requests disclosure of all exculpatory and mitigating evidence, including all exhibits presented during INT's interviews and all of INT's transcripts of interviews with certain employees of the Respondent. In its Reply, INT asserts that it has produced all relevant mitigating or exculpatory evidence, and attaches transcripts of interviews with all but one of the Respondent's named employees, from whom INT states that it did not solicit any information. The Respondent neither followed up nor reiterated its disclosure requests at any time during these sanctions proceedings.

25. Section III.A, sub-paragraph 3.02 of the Sanctions Procedures mandates INT to "present all relevant evidence in INT's possession that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability." With respect to the Respondent's request to disclose all the exhibits that INT presented during its interviews but did not attach to the SAE, the Sanctions Board finds that the Respondent has not identified, and the record does not suggest, which of the requested exhibits may contain exculpatory or mitigating evidence. With regard to the Respondent's request to disclose transcripts of interviews with named employees of the Respondent, INT disclosed all but one of these transcripts in its Reply. In any event, the Sanctions Board does not consider the contents of these transcripts of interviews to be exculpatory or mitigating. Section III.A, sub-paragraph 7.03 of the Sanctions Procedures provides that "[e]xcept as expressly provided for in this Procedure, the Respondent shall have no right to review or obtain any information or documents in the Bank's possession." Considering that the Sanctions Procedures provide no right to discovery, INT's submission of all but one of the requested transcripts of interviews, and consistent with precedent,[5] the Sanctions Board denies the Respondent's disclosure requests.

B. Evidence of Corrupt Practice

26. In accordance with the definitions of "corrupt practice" under the May 2004, October 2006, May 2010, and January 2011 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) offered, gave, received, or solicited, directly or

[5] See, e.g., Sanctions Board Decision No. 92 (2017) at para. 48 (denying the disclosure request where the record already contained the evidence sought); Sanctions Board Decision No. 96 (2017) at para. 51 (denying the disclosure request where the respondent managing director had not asserted, and the record did not indicate, that the requested evidence was exculpatory or mitigating).

indirectly, anything of value (ii) to influence the action of a public official in the selection process or in contract execution, or to influence improperly the actions of another party.

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

27. INT alleges that the Respondent offered to hire staff to provide "extra contractual" services to the PIU. The Respondent argues that the communication INT relies on in support of its allegations does not amount to an "offer" within the meaning of "corrupt practice," and the PIU did not construe such communication as an improper offer.

28. The Sanctions Board has previously observed that the Bank's legal framework for sanctions does not limit culpability for corrupt practices to instances in which a respondent initiates a corrupt scheme.[6] Thus, the term "offer," as used in the applicable definitions of corrupt practice, includes both a proactive offer of payment and a promise or commitment to pay a bribe when solicited.[7] Further, a "thing of value" for purposes of a corrupt practice need not be in the form of money, as it can instead be some other type of benefit or advantage, such as a respondent's hiring of certain individuals.[8]

29. In the present case, the Project Manager acknowledged during his interview with INT that, when the PIU requested the Consortium to hire staff to work on the PIU's communications issues, he suggested that the secretary already hired by the Consortium could provide services to both the Consortium and the PIU. According to the Project Manager, the PIU rejected his offer on the grounds that the PIU did not have the office space for the secretary and that the proposal did not exactly meet the PIU's needs.

30. Corroborating email correspondence between the Project Manager and the PIU Director shows that, in response to the PIU Director's solicitation, the Project Manager directly communicated an offer to the PIU Director to hire staff who would provide services to the PIU and services in relation to the IPOP 2 Contract. For instance, the PIU Director sent the Project Manager emails in December 2012 and January 2013 requesting the Respondent to hire two staff members to work on "info and media efforts" for 18 months at the suggested rate of US$1,200 per month. The Project Manager responded by, inter alia, providing options for hiring the requested staff, including potentially having the Consortium Partner engage staff to work partly for the PIU and partly on the IPOP 2 Contract. Emails between the Project Manager and the Consortium Partner's VP further evidence the Project Manager's offer to the PIU. In an email on March 1, 2013, the Project Manager suggested that the Consortium Partner hire one person "and place this person at the office of [the PIU]" to provide services to the Consortium, the Consortium Partner, or the PIU. On March 8, 2013, the Project Manager sent the Consortium Partner's VP by email a draft sub-consultancy agreement between the Respondent and the Consortium Partner that provided for

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[6] Sanctions Board Decision No. 60 (2013) at para. 73.

[7] Id.

[8] See 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 to 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).

"Project Assistance" for 12 months at the rate of US$1,300 per month. In the same email, the Project Manager explained that he added the provision for "project assistance" in the draft sub-consultancy agreement and suggested that the staff member to be hired for this position can be the "ears and eyes" at the PIU. The record contains a copy of the final sub-consultancy agreement signed in May 2013 reflecting the same terms provided in the draft version.

31. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Project Manager offered the PIU Director a thing of value in the form of hiring staff for the PIU.

2. To influence (improperly) the action of a public official in the selection process or in contract execution

32. The second element of corrupt practice requires a showing that a respondent, in offering a thing of value under the first element, acted with a purpose to (i) "influence the action of a public official in the selection process or in contract execution" (May 2004 Consultant Guidelines) or (ii) "influence improperly the actions of another party" (October 2006, May 2010, and January 2011 Consultant Guidelines). The focus of this second element is thus on the respondent's purpose and intended target of influence. Despite the differences in wording between the two definitions, explanatory footnotes in these versions of the Consultant Guidelines make clear that the target of influence is the same: public officials acting in relation to the selection process or contract execution, including World Bank staff and employees of other organizations taking or reviewing procurement and selection decisions.[9]

33. INT alleges that the Respondent offered to hire staff for the PIU in order to influence the selection processes for the IPOP 7 and IPOP 8 Contracts. The Respondent denies any corrupt intent, arguing that the Project Manager understood the PIU's request as being unconnected to any contract under the Project. The Respondent also asserts, as reiterated at the hearing, that the Project Manager did not offer or imply a quid pro quo arrangement with respect to the IPOP 7 and IPOP 8 Contracts.

34. The record supports a finding that the Project Manager acted with intent to influence the selection processes for the IPOP 7 and IPOP 8 Contracts. In an email from the Project Manager to the PIU Director on December 18, 2012, the Project Manager stated that the Respondent cannot make any final decision on the PIU's request without a "clearer view of our market potential" in the country. In the same email, the Project Manager pointed out that the Respondent had "just submitted a proposal for a small additional project, and . . . will submit an [expression of interest] for another component." During his interview with INT, the Project Manager clarified that the "small additional project" in his email of December 18, 2012, referred to the IPOP 8 Contract. The record demonstrates that the Consortium submitted its financial and technical proposals for the IPOP 8 Contract on December 18, 2012, and the expression of interest for the IPOP 7 Contract on December 21, 2012.

35. Email correspondence between the Project Manager and the Consortium Partner's VP further supports a finding that the Project Manager acted with corrupt intent. In an email sent by the

[9] May 2004 Consultant Guidelines at Section 1.22(a)(i), n.15; October 2006 Consultant Guidelines at Section 1.22(a)(i), n.17; May 2010 Consultant Guidelines at Section 1.22(a)(i), n.17; January 2011 Consultant Guidelines at Section 1.23(a)(i), n.19. See also Sanctions Board Decision No. 60 (2013) at para. 75.

Project Manager on January 10, 2013, the Project Manager expressed his willingness to accede to the PIU's request if, inter alia, the Consortium Partner hires the staff; and then invited the Consortium Partner's acquiescence "given the other projects that are tendered or in the pipeline." In addition, as discussed in Paragraph 30, the Project Manager stated in his email of March 8, 2013, that the staff member hired for "project assistance" in the sub-consultancy agreement between the Respondent and the Consortium Partner could serve as the Consortium's "ears and eyes" at the PIU.

36. Further, the record indicates that the Project Manager was aware that the PIU Director was in a position of authority over the Project and the selection processes for the IPOP 7 and IPOP 8 Contracts.[10] The Project Manager stated during his interview that, at the time of his correspondence with the PIU Director, he knew the PIU Director to be the officer-in-charge of the PIU's foreign assisted special project office, which provides oversight, advisory, procurement, and fiduciary management for the Project. Moreover, in the PIU Director's email to the Project Manager on January 10, 2013, the PIU Director stated that the PIU would be "willing to extend our best effort to provide your work here in the country with all our support, in order for you[] to facilitate your work, and . . . help you also to offset some of the costs involved" in hiring the requested staff.

37. As discussed in Paragraph 16 above, to bolster its defense that no corrupt intent existed, the Respondent submitted statements from the PIU Director, the Project Manager, and the Consortium Partner's VP explaining and, to some extent, repudiating earlier testimony given during their interviews with INT. The Sanctions Board finds that while these witnesses' testimonies during their respective interviews with INT were given with candor and spontaneity, their subsequent statements were prepared after being informed of INT's allegations in the SAE. In assessing the weight of witness statements, the Sanctions Board "takes into account 'all relevant factors bearing on the witness's credibility,'"[11] including unexplained and fundamental inconsistencies between multiple statements of the same witness.[12] Thus, the Sanctions Board gives little weight to these subsequent witness statements.

38. In these circumstances, and considering the record as a whole, the Sanctions Board finds that it is more likely than not that the Project Manager acted with corrupt intent.

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

39. 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.[13] Where a respondent entity denies responsibility for

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[10] See, e.g., Sanctions Board Decision No. 78 (2015) at para. 56 (finding corrupt intent where the record showed that, prior to hiring the individual respondent's daughter, the respondent firm's employees were aware that the individual respondent was in a position of authority over the project and held influence over the contracts' tender processes).

[11] Sanctions Board Decision No. 71 (2014) at para. 54 (quoting Sanctions Board Decision No. 50 (2012) at para. 39).

[12] Sanctions Board Decision No. 45 (2011) at paras. 37-38.

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

the acts of its employees based on a rogue employee defense, the Sanctions Board has assessed any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.[14]

40. In the present case, the record supports a finding that the Project Manager engaged in the corrupt practice in accordance with the scope of his duties and with the purpose of serving the interests of the Respondent. As the Respondent's representative or contact person with respect to the IPOP 2 Contract, the expression of interest for the IPOP 7 Contract, and the Respondent's proposals for the IPOP 8 Contract, the Project Manager acted within the course and scope of his duties in his dealings with the PIU Director and the Consortium Partner at the time of the misconduct. In addition, correspondence between the Project Manager and the PIU Director, as well as between the Project Manager and the Consortium Partner's VP, shows that the Project Manager was motivated by the intent of serving the Respondent's interests in obtaining the IPOP 7 and IPOP 8 Contracts. The Respondent, however, argues in its Response that the Project Manager acted without the authorization or knowledge of his superior; and asserted at the hearing that management's knowledge was limited to the PIU's request, and did not extend to subsequent actions pursued, including making any offers. The record reveals that the Project Manager copied his superior and team leader in emails not only to the PIU Director, but also to the Consortium Partner's VP. Further, the record does not show that the Project Manager had acted for his personal gain or that the Respondent had adequate corporate policies and controls in place that the Project Manager circumvented or willfully ignored. Thus, the Sanctions Board finds the Respondent's control and supervision to have been inadequate to prevent or detect the type of misconduct in this case. Accordingly, the Sanctions Board finds the Respondent liable for the corrupt practice carried out by the Project Manager.

D. Sanctioning Analysis

1. General framework for determination of sanctions

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

42. 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

[14] See, e.g., Sanctions Board Decision No. 68 (2014) at paras. 29-30; Sanctions Board Decision No. 92 (2017) at paras. 101-102; Sanctions Board Decision No. 95 (2017) at paras. 31, 33.

sanction.[15] 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.[16]

43. 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.

44. Should the Sanctions Board impose 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 such respondent.

2. Factors considered in the present case

a. Magnitude of harm

45. *Lack of harm*: Section III.A, sub-paragraph 9.02(b) of the Sanctions Procedures requires consideration of the magnitude of the harm caused by the misconduct in determining a sanction. Section IV.B.2 of the Sanctioning Guidelines identifies the degree of harm to the project only as a potential basis for aggravation. The Respondent argues that no actual harm was caused because the PIU's request was not fulfilled. The Sanctions Board has repeatedly held that the absence of harm to the project is not a ground for mitigation, but a neutral fact.[17] The Sanctions Board thus declines to apply any mitigation for the lack of harm asserted by the Respondent.

b. Minor role in the misconduct

46. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where the respondent "played a minor role in the misconduct." Section V.A of the Sanctioning Guidelines proposes that this factor be applied to a "[m]inor, minimal, or peripheral participant"; or where "no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board previously granted mitigation where the respondent employed a Bank staff member's son upon that staff member's direct solicitation, without the respondent's prompting or encouragement.[18]

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

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

[17] See, e.g., Sanctions Board Decision No. 71 (2014) at para. 85; Sanctions Board Decision No. 73 (2014) at para. 45; Sanctions Board Decision No. 79 (2015) at para. 40; Sanctions Board Decision No. 88 (2016) at para. 61.

[18] Sanctions Board Decision No. 66 (2014) at para. 37.

47. In this case, INT asserts that mitigation is warranted because the Respondent's offer was in response to the PIU's solicitation; but later argues that mitigation should be limited, as the Project Manager linked the PIU's request to receipt of future contracts and made a counter-offer, which he took steps to implement. The Respondent seeks mitigation on the grounds that the PIU made the solicitation, the case is of relatively minor severity, the Project Manager had no intention to influence the IPOP 7 and IPOP 8 Contracts, the PIU's request did not materialize, and its senior management was not involved. Considering the record as a whole – including evidence that the Project Manager acted in response to the PIU Director's "exploratory request" without the Respondent's initiation or prompting – the Sanctions Board grants mitigation for the Respondent.

c. Voluntary corrective action

48. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where the respondent 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 action.[19]

49. *Cessation of misconduct*: Section V.B.1 of the Sanctioning Guidelines provides that mitigation may be appropriate where a respondent ceases to engage in misconduct. The Sanctions Board has previously declined mitigation where there was no indication that the respondent took the initiative to terminate the sanctionable practices upon learning of misconduct.[20]

50. Here, the Respondent seeks mitigation under this factor, arguing that it never followed up with the PIU, the PIU's request never materialized, and no IPOP tender or contract was "improperly induced." INT argues that mitigation is not warranted considering that the Project Manager made a counter-offer to the PIU's request; and the PIU's request was not fulfilled because the staff was no longer needed, and not because the Project Manager took steps to stop the misconduct. The parties do not dispute, and the record shows, that the PIU did not follow up with the Respondent on the request. Nothing in the record indicates that the Respondent took the initiative to terminate the corrupt practice. Indeed, the Respondent acknowledges that even after the PIU Director's final email in January 2013, the Project Manager still had discussions with the Consortium Partner's VP between February and March 2013 regarding the hiring of staff for the PIU. The Sanctions Board thus finds that mitigation is not warranted on this ground.

51. *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 declined to afford mitigation where the record contained no evidence that the respondent had in fact

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[19] Sanctions Board Decision No. 45 (2011) at para. 72.

[20] See, e.g., Sanctions Board Decision No. 102 (2017) at para. 72 (denying mitigation where there was no indication in the record that the sanctionable practices were terminated based on any initiative taken by the respondent upon learning of the misconduct).

implemented compliance measures;[21] or where the evidence did not demonstrate the type of measures that would prevent or address the type of misconduct at issue.[22]

52. The Respondent seeks mitigation for its ethical rules and integrity standards, and compliance program. INT opposes any mitigation, asserting that the Respondent's submitted documents do not explicitly refer to anti-corruption. While the Respondent submitted copies of its Company Code, Quality Manual, and Company Regulations reflecting certain integrity principles, these documents bear no evidence of any specific internal compliance mechanism. Without prejudice to any future assessment that the World Bank Group's Integrity Compliance Officer may conduct to more fully evaluate the adequacy of the Respondent's integrity compliance measures, the Sanctions Board declines to apply mitigating credit for the Respondent's asserted compliance program.

d. Cooperation

53. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C of the Sanctioning Guidelines identifies a respondent's assistance with INT's investigation, internal investigation, and voluntary restraint as examples of cooperation.

54. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance and/or ongoing cooperation, "[b]ased on INT's representation that the respondent has provided substantial assistance in an investigation," with consideration of 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 the respondent met with INT on several occasions and provided relevant information and documentation,[23] or replied to INT's show-cause letter and follow-up inquiries.[24]

55. In this case, the Respondent seeks mitigation for assisting in INT's investigation, allowing staff to be interviewed, responding to the show-cause letter, and discussing settlement options. INT acknowledges that the Respondent allowed INT to inspect the Respondent's records and meet with the Respondent's staff, but argues that the Respondent deserves little to no mitigation as the Respondent has done no more than is required of bidders and contractors under the Bank's audit and inspection clause. The record shows that the Respondent's employees agreed to be interviewed; the Respondent provided INT with documentary evidence at INT's request, including the emails on which INT relies in support of its allegations; and the Respondent replied to INT's show-cause letter.

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[21] See, e.g., Sanctions Board Decision No. 45 (2010) at para. 74 (finding no basis to apply mitigation for the respondent's asserted willingness to pursue corporate measures, absent evidence of actual implementation); Sanctions Board Decision No. 85 (2016) at para. 44 (declining to apply mitigation where the record did not contain evidence of the respondent's asserted anti-bribery policy and related internal rules).

[22] See Sanctions Board Decision No. 65 (2014) at para. 77; Sanctions Board Decision No. 69 (2014) at para. 39.

[23] Sanctions Board Decision No. 53 (2012) at para. 58; Sanctions Board Decision No. 92 (2017) at para. 122.

[24] See, e.g., Sanctions Board Decision No. 66 (2014) at para. 42; Sanctions Board Decision No. 92 (2017) at para. 122.

In light of the above, the Sanctions Board finds that mitigation is warranted for the Respondent's cooperation in the course of INT's investigation.

56. *Internal investigation*: Section V.C.2 of the Sanctioning Guidelines refers to cooperation where a respondent has "conducted its own, effective internal investigation of the misconduct and relevant facts relating to the misconduct for which it is to be sanctioned and shared results with INT." In determining whether and to what extent an internal investigation warrants mitigating credit, the Sanctions Board considers whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience; whether the respondent shared its investigative findings with INT during INT's investigation or as part of the sanctions proceedings; and whether the respondent has demonstrated that it followed up on any investigative findings and recommendations.[25]

57. In this case, the Respondent seeks mitigation for its internal review. INT opposes the grant of any mitigation, arguing that the Respondent conducted a review only after receiving the show-cause letter, despite having learned of possible misconduct about ten months prior; and that the review was limited to the show-cause letter's allegations and revealed no new information. The record contains a report by the Respondent's Integrity Committee, which states that the Integrity Committee held a hearing with the participation of the Project Manager and other employees. The Respondent's Integrity Committee issued the report finding no evidence of corrupt practice, which report the Respondent shared with INT as part of the Respondent's reply to the show-cause letter. However, the Respondent has not provided any evidence demonstrating that the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience. For example, while the Respondent states that its Integrity Committee conducted the investigation, the Respondent does not clarify the background to the appointment of the committee or speak to its independence.[26] At the hearing, the Respondent confirmed that the Integrity Committee was exclusively composed of the Respondent's employees, but did not expound on the members' experience and expertise, or the committee's independence. In these circumstances, the Sanctions Board declines to apply mitigation on this basis.

58. *Voluntary restraint*: Section V.C.4 of the Sanctioning Guidelines provides for mitigation where a respondent has voluntarily refrained from bidding on Bank-financed tenders pending the outcome of an investigation. The Sanctions Board has previously declined to apply mitigating credit for the respondent's voluntary restraint once its temporary suspension started,[27] and has given partial mitigation for the respondents' voluntary restraint up to the point at which their temporary suspension commenced.[28] In addition, the Sanctions Board's decision to apply or deny mitigation

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[25] See, e.g., Sanctions Board Decision No. 74 (2014) at para. 43; Sanctions Board Decision No. 77 (2015) at para. 56; Sanctions Board Decision No. 83 (2015) at para. 97.

[26] Sanctions Board Decision No. 68 (2014) at para. 43.

[27] Sanctions Board Decision No. 44 (2011) at para. 66.

[28] Sanctions Board Decision No. 56 (2013) at para. 79.

on this ground has depended on whether or not the respondents' asserted voluntary restraint was corroborated by relevant evidence.[29]

59. The Respondent seeks mitigation for its asserted voluntary restraint, arguing that it is "heavily impacted" by the present case and has missed out on a number of tenders. INT contends that the Respondent deserves no mitigation on this ground since the Respondent did not voluntarily restrain from seeking Bank-financed contracts, but was "involuntarily suspended" on account of its misconduct. The Sanctions Board finds nothing in the record indicating that the Respondent voluntarily restrained from bidding on Bank-financed tenders, including those the Respondent enumerated in its Response, so as to warrant mitigation.

e. Period of temporary suspension

60. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent's temporary suspension since the Acting SDO's issuance of the Notice on April 27, 2017.

f. Other considerations

61. 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."

62. *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.[30] 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.[31] The Respondent argued that mitigation should be granted considering that, at the time of the hearing, five years had already passed since the Project Manager exchanged emails with the PIU Director and the Consortium Partner's VP. At

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[29] See Sanctions Board Decision No. 73 (2015) at para. 50 (declining to apply mitigation where the respondent did not provide evidence of a policy or practice of voluntary restraint); Sanctions Board Decision No. 79 (2015) at para. 51 (denying mitigation where the respondents' asserted voluntary restraint was not corroborated by relevant evidence); Sanctions Board Decision No. 83 (2015) at para. 99 (applying mitigation where the record contained an email stating that no bids on any Bank-financed contracts may be made and the contesting parties confirmed at the hearing that this voluntary restraint policy was still in place); Sanctions Board Decision No. 102 (2017) at para. 80 (applying mitigation where the respondent provided contemporaneous evidence of its withdrawal from nine bids).

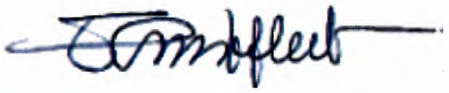
[30] See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to 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).

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

the time that the Acting SDO issued the Notice on April 27, 2017, more than four years had elapsed since the Project Manager made the offer to the PIU Director; and more than two years had elapsed since the Bank apparently became aware of the corrupt practice. The Sanctions Board finds that some mitigation is warranted in these circumstances.

E. Determination of Appropriate Sanction

63. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[32] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[33] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of nine (9) months beginning from the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program that specifically addresses the misconduct at issue in this case, in a manner satisfactory to the World Bank Group. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for a corrupt practice as defined in Paragraph 1.22(a)(i) of the May 2004, October 2006, May 2010 Consultant Guidelines; and Paragraph 1.23(a)(i) of the January 2011 Consultant Guidelines.



Ellen Gracie Northfleet (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

Ellen Gracie Northfleet
Olufunke Adekoya
Alejandro Escobar

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

[33] A nominated sub-contractor, 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 prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(ii), n.15.