THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: November 14, 2018

Sanctions Board Decision No. 113
(Sanctions Case No. 474)

GEF Trust Fund Grant No. TF095839
Philippines

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of reprimand on the respondent entity (the "Respondent Firm") and the individual respondent (the managing director of the Respondent Firm, hereinafter referred to as the "Respondent Managing Director") in Sanctions Case No. 474, by means of a formal letter of reprimand to be posted on the World Bank's website for a period of six (6) months beginning from the date of this decision. This sanction is imposed on the Respondent Firm and the Respondent Managing Director (together, the "Respondents") for a collusive practice.

I. INTRODUCTION

1. The Sanctions Board convened as a panel composed of Olufunke Adekoya (Panel Chair), Alejandro Escobar, and Ellen Gracie Northfleet to review this case. A hearing was held on October 1, 2018, at the World Bank Group's headquarters in Washington, D.C. at the request of the Respondents, and in accordance with Section III.A, sub-paragraph 6 of the Sanctions Procedures. The World Bank Group's Integrity Vice Presidency ("INT") participated in the hearing through its representatives attending in person. The Respondents were represented by their outside counsel and the Respondent Managing Director, all attending in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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 Acting Suspension and Debarment Officer (the "Acting SDO") to the Respondents on July 25, 2017 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the Acting SDO by INT (undated);

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

ii. Explanation submitted by the Respondents to the Acting SDO on September 7, 2017, as supplemented on September 12 and September 13, 2017 (the "Explanation");

iii. Response submitted by the Respondents to the Secretary to the Sanctions Board on February 2, 2018 (the "Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on March 26, 2018 (the "Reply").

3. On July 25, 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 Respondents, together with any entity that is an Affiliate[2] directly or indirectly controlled by either of the Respondents, 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 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 Acting SDO recommended in the Notice debarment with conditional release for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents. The Acting SDO recommended minimum periods of ineligibility of four (4) years for each of the 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) the Respondent Managing Director may be released from ineligibility only if he has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the ICO that he has (i) taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned, (ii) completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and (iii) adopted and implemented an effective integrity compliance program with respect to any entity that is an Affiliate directly or indirectly controlled by him in a manner satisfactory to the Bank.

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[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."

[3] 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.

[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).

4. As provided by Section III.A, sub-paragraph 5.01(a) of the Sanctions Procedures, a respondent may contest INT's allegations and/or the SDO's recommended sanction within ninety (90) days from the date on which the Notice is deemed to have been delivered to that respondent. In this case, absent the Respondents' submission of a written response by the applicable due date,[5] the Acting SDO issued a Notice of Uncontested Sanctions Proceedings and debarred the Respondents on October 27, 2017, pursuant to Section III.A, sub-paragraph 4.04 of the Sanctions Procedures. On October 30, 2017, the Respondents informed the Sanctions Board Secretariat that they wished to contest the sanctions proceedings and requested a retroactive extension of time to file their response. On November 1, 2017, the Sanctions Board Chair granted the Respondents' retroactive extension request and granted an additional sixty (60) days for the Respondents to file a response. On November 2, 2017, the Acting SDO removed the Respondents from the public debarment list and reinstated their temporary suspensions pending the final outcome of these proceedings. On December 12, 2017, the Sanctions Board Chair granted an additional extension of the deadline for the Respondents to submit a response until February 2, 2018.

II. GENERAL BACKGROUND

5. This case arises in the context of the Integrated Persistent Organic Pollutants 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. On July 2, 2008, the Bank, acting as implementing agency of the Global Environment Facility ("GEF"), provided a project preparation grant ("PPG") in the amount of US$240,000 to the Recipient to prepare the Project. On June 28, 2010, the Bank entered into a GEF trust fund grant agreement with the Recipient to 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 April 5, 2011, the implementation unit for the Project (the "PIU") advertised a request for expression of interest (the "REOI") for a Contract for Consulting Services for Technical Assistance and Training on Implementation and Monitoring of Environmentally Sound Management of Polychlorinated Biphenyls (the "Contract"). On April 19, 2011, the Respondent Firm and a local company (the "Local Company"), together as an association (the "Association"), submitted an expression of interest for the Contract, and was subsequently shortlisted. On September 9, 2011, the PIU issued a request for proposals (the "RFP") to the shortlisted firms, including the Association. On October 24, 2011, the Association submitted its technical and financial proposals. Following review of the proposals submitted, the PIU recommended award of the Contract to the Association. On January 21, 2013, the PIU and the Association signed the Contract, valued at approximately US$2.11 million.

[5] The Respondents' Response was originally due on October 26, 2017.

7. INT alleges that the Respondents engaged in a collusive practice in relation to the Contract by entering into an arrangement, with two other individuals, that was designed to improperly secure the Contract for the Association.

III. APPLICABLE STANDARDS OF REVIEW

8. *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.

9. *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.

10. *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.

11. *Applicable definition of collusive 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") shall govern the procurement of consultant services under the Project. The RFP and the Contract defined collusive 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"). Therefore, the alleged collusive practice in this case has the meaning set forth in the October 2006 and May 2010 Consultant Guidelines. Paragraph 1.22(a)(iii) of the October 2006 Consultant Guidelines and Paragraph 1.22(a)(iii) of the May 2010 Consultant Guidelines define "collusive practices" as "an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party." An explanatory footnote in the October 2006 and May 2010 Consultant Guidelines provides that "[f]or the purpose of these Guidelines, 'parties' refers to participants in the procurement or selection process (including public officials) attempting to establish contract prices at artificial, non-competitive levels."[6]

[6] October 2006 Consultant Guidelines at p. 9, n.19; May 2010 Consultant Guidelines at p. 9, n.19.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

12. INT alleges that the Respondents had an arrangement with the president of the Local Company (the "Local Company President") and a consultant with the PIU (who was later a consultant for the World Bank) (the "Consultant"). INT submits that, through this arrangement, the Respondent Managing Director obtained confidential information, including the PIU's cost estimates and terms of reference ("TORs") for the Contract. According to INT, the Consultant and other public officials passed along confidential information to the Local Company President, who in turn sent the information to the Respondent Managing Director. INT argues that the arrangement was designed to secure the Contract for the Association, asserting that the confidential information obtained by the Respondent Managing Director gave the Association an unfair advantage over other consultants competing for the Contract.

13. INT submits as aggravating factors (i) the involvement of a high-level manager – the Respondent Managing Director – in the collusive practice, and (ii) the involvement of a PIU and World Bank staff member in the Respondents' misconduct. Regarding mitigation, INT states that the Respondents provided INT with documents and agreed to interviews during INT's audit. INT also states that "the Respondents' compliance was undermined by [the Respondent Managing Director's] repeated denials of any wrong-doing, even in the face of contrary evidence."

B. The Respondents' Principal Contentions in the Explanation and the Response

14. The Respondents dispute INT's allegations, arguing that the Respondents had no arrangement with either the Local Company President or the Consultant to improperly obtain or use non-public information. The Respondents further argue that the collusive arrangement took place only between the Local Company President and the Consultant, and that the Respondents did not take advantage of confidential information in winning the Contract. According to the Respondents, INT makes three significant errors in its analysis in the SAE that undermine entirely INT's conclusions. First, INT implies that the Respondent Managing Director was colluding with the Consultant and in doing so invented a relationship between them that did not exist. Second, INT fundamentally misconstrues the key contemporaneous communications between the Respondent Managing Director and the Local Company President. Third, the narrative in the SAE regarding the budget document – i.e., the narrative that the Respondent Managing Director believed that the budget document that he received from the Local Company President was genuine and could give him an advantage – is based on a false premise.

15. The Respondents dispute the application of the aggravating factors asserted by INT. They submit as mitigating factors that (i) the Respondents have no prior offenses, (ii) the Respondents' conduct is peripheral to the misconduct, (iii) the Respondents fully cooperated with the investigation, and (iv) the Respondents took voluntary corrective actions.

C. INT's Principal Contentions in the Reply

16. INT submits that the SAE presents "ample evidence" that the Respondents engaged in collusive practices and that the Respondents have not provided any evidence capable of showing

that they did not engage in such misconduct. INT argues that emails in the record show that the Respondent Managing Director was involved in the collusive scheme and that he was fully aware that he was receiving confidential information. INT further argues that the Respondents acted on the confidential information they received with the intent to influence the selection process for the Contract.

17. Regarding sanctions, INT argues that the Respondents do not deserve additional mitigation.

D. Presentations at the Hearing

18. In its presentation, INT reiterated its allegation that the Respondents joined a collusive arrangement with the Local Company President and the Consultant through which the Respondents sought and obtained confidential information that gave the Respondents an unfair advantage during the selection process for the Contract. INT argued that the Respondents prepared the Association's expression of interest and financial proposal based on confidential draft TORs and budget information. According to INT, the Local Company President was the conduit through which the Respondents received confidential information from the Consultant and other public officials. In addition, INT argued that the applicable definition of collusive practice does not require showing an "agreement" or meeting of the minds. Rather, INT argued that a respondent's knowledge or understanding of unfair and anti-competitive activity on the part of its co-colluders is sufficient to constitute an "arrangement" under the definition. Regarding sanctioning factors, in response to a question from the Sanctions Board, INT agreed that the Respondents deserve mitigation for cooperation.

19. The Respondents disputed INT's allegation, arguing that INT did not establish that the Respondent Managing Director was part of a collusive arrangement. The Respondents asserted that the Local Company President and the Consultant were the insiders in the collusive scheme, and that they sought to use the Respondents, the outsiders, to win the Contract. According to the Respondents, it is noteworthy that the Local Company President and the Consultant – who both submitted to interviews and reached settlement agreements with INT in relation to the alleged misconduct – never implicated the Respondent Managing Director in their collusive scheme. The Respondents also argued that the Respondent Managing Director never received the draft TORs and that he did not believe that the budget information from the Local Company President was real. Regarding the definition of collusive practice, the Respondents argued that the definition is a "bounded" one designed to deal with price-fixing and bid-rigging cases; but they also stated that the Respondents would lose this case if the Respondent Managing Director knew that the budget was from the government at the time he received it.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

20. The Sanctions Board will first address the evidentiary matter presented in this case. The Sanctions Board will then determine whether it is more likely than not that the alleged collusive practice occurred, and if so, whether either of the Respondents may be held liable for the misconduct. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on either of the Respondents.

A. Evidentiary Matter

21. INT requested to withhold certain materials from the Respondents. In the SAE, INT described the materials in question as two "Strictly Confidential Exhibits" to be withheld from the Respondents pursuant to Section III.A, sub-paragraph 5.04(c) of the Sanctions Procedures. Strictly Confidential Exhibit 1 is a transcript of an interview with the Consultant, and Strictly Confidential Exhibit 2 is a compilation of employment related documents for the Consultant. INT did not submit any arguments in support of its request. At the invitation of the Sanctions Board Chair, INT filed a strictly confidential submission on July 27, 2018 (the "Submission"), in which INT clarified the basis for its withholding request. INT argued in the Submission that the confidentiality of the Strictly Confidential Exhibits is based on the World Bank Group's Staff Rules, in particular Staff Rule 2.01, which provides that personnel information is confidential and should not be disclosed to third parties without the authorization of the relevant staff member.

22. On August 28, 2018, having considered the totality of the record, as well as the applicable provisions of the Sanctions Framework and relevant Sanctions Board precedent,[7] the Sanctions Board made the following determinations. First, the Sanctions Board determined that INT shall provide the Respondents with those parts of Strictly Confidential Exhibits 1 and 2 upon which INT relies for its case against the Respondents, noting that INT may excise and redact information in the Exhibits in its discretion according to Section III.A, sub-paragraph 5.04(d) of the Sanctions Procedures. Second, the Sanctions Board determined that, in the alternative, INT may withdraw either or both of the Exhibits from the record in accordance with Section III.A, sub-paragraph 5.04(c) of the Sanctions Procedures. Finally, the Sanctions Board invited the Respondents to provide written comments on any additional materials they receive in relation to the Sanctions Board's determination on the withholding request. Pursuant to the Sanctions Board's determinations, on September 11, 2018, INT provided the Respondents with Strictly Confidential Exhibit 1 in its entirety (following receipt of the Consultant's consent to such disclosure) and Strictly Confidential Exhibit 2 with redactions; and on September 25, 2018, the Respondents submitted written comments on the materials.

23. The above evidentiary matter highlights the conflict between the requirement of full access to evidence as set out in Section III.A, sub-paragraph 5.04(a) of the Sanctions Procedures (with only limited express exceptions to this requirement) and the restriction on the disclosure of Bank personnel information to third parties without authorization of the relevant staff member, as set out in Staff Rule 2.01. Although in this case INT sought and obtained the requisite disclosure authorization, the provisions of the sanctions framework and the Staff Rules would otherwise conflict. The Sanctions Board must follow the sanctions framework, which governs sanctions proceedings and the Sanctions Board's operations. Resolution of the conflict between the two sets of rules is an institutional policy matter that is beyond the mandate of the Sanctions Board.

B. Evidence of Collusive Practice

24. In accordance with the definition of collusive practice under the October 2006 and May 2010 Consultant Guidelines, INT bears the initial burden to show that it is more likely than

[7] See, e.g., Sanctions Board Decision No. 71 (2014) at para. 48.

not that the Respondents (i) engaged in an arrangement between two or more parties, (ii) designed to achieve an improper purpose, including to influence improperly the actions of another party.

1. Arrangement between two or more parties

25. According to INT, the Respondent Managing Director had an arrangement with the Local Company President and the Consultant through which the Respondent Managing Director received and used confidential information. The Respondents dispute INT's allegations, arguing that the Respondents had no arrangement with either the Local Company President or the Consultant to improperly obtain or use non-public information.

26. As an initial matter, the Sanctions Board addresses the parties' submissions regarding the scope of the definition of collusive practice. The Sanctions Board is not persuaded by the Respondents' argument that the definition is a limited one designed to deal with price-fixing and bid-rigging cases. The plain language of the definition applicable here is clearly intended to capture a broad range of collusive misconduct, including, but not limited to, price-fixing scenarios. The footnote to the applicable definition, which provides that "attempting to establish contract prices at artificial, non-competitive levels" is sanctionable conduct under the definition, merely serves to further explain the definition.[8] INT's allegation – that the Respondent Managing Director had an arrangement through which he received and used confidential government information to gain an unfair advantage in securing the Contract – fits squarely within this covered conduct. Indeed, as noted above, the Respondents conceded at the hearing that the Respondents would lose this case if the Respondent Managing Director knew that the budget in question was from the government at the time he received it.

27. Considering the totality of the record, the Sanctions Board finds that the Respondent Managing Director had an arrangement with the Local Company President – though not with the Consultant – within the meaning of the applicable definition of collusive practice. The record includes contemporaneous email correspondence indicating an arrangement whereby the Respondent Managing Director expressed interest in receiving, and did receive, confidential information from the Local Company President in relation to the selection process for the Contract. For example, in March 2011, approximately one month before the REOI was published, the Respondent Managing Director stated to the Local Company President that "it will be nice to see the draft TORs and understand the nature and scope." The record does not include evidence showing that the Respondent Managing Director received the TORs. In addition, in September 2011, while preparing the Association's financial proposal for the Contract, the Local Company President sent an email to the Respondent Managing Director attaching an ostensibly confidential government budget for the Contract. In her email, the Local Company President stated that "we will prepare our proposal to you based on this (definitely lower so we can be competitive)." According to the Respondents, the Respondent Managing Director did not believe the budget to be legitimate. Noting the low fees allocated to the Respondent Firm in the budget, the Respondents assert that the Respondent Managing Director instead believed that the Local Company President's emails "were merely part of a poorly conceived and badly executed scheme to swindle [the Respondents] out of their fair share of the work." However, the record supports a

[8] October 2006 Consultant Guidelines at p. 9, n.19; May 2010 Consultant Guidelines at p. 9, n.19.

finding that it is more likely than not that the Respondent Managing Director, contrary to the Respondents' assertion, knew that at least some of the budget information was confidential information from the government. In response to the Local Company President's email, the Respondent Managing Director indicated that he did not believe the attachment to be the "real" budget, based on the amount of international fees, but also signaled that he expected the information to have come from the government, stating that the budget is "a wishful idea by your government." In reply to that email, the Local Company President further signaled the provenance of the information and the authenticity of at least the budget ceiling, stating that "this was the budget that I got in December 2010" and that "you should look at this as the limiting factor in terms of total cost. Meaning we should bid lower than US$2.1 million." The Respondent Managing Director replied "I wish I knew this sheet before; it would have saved a lot of your time and mine. Thus, you should regret . . . that you did not send or shared with me in April." Subsequently, the Respondent Managing Director adjusted and altered various expense areas in the budget but, significantly, kept the total budget under the specified ceiling. The Association then submitted its financial proposal for the Contract with a total budget lower than the ceiling. This further supports that the Respondent Managing Director believed the confidential budget ceiling to be authentic information. Additional contemporaneous email correspondence in the record indicates that the Respondent Managing Director knew he was receiving from the Local Company President other confidential information – beyond the budget documentation – in relation to the Contract. For example, in August 2011 (after the Association submitted its expression of interest for the Contract) the Respondent Managing Director emailed the Local Company President asking for "[a]ny news." The Local Company President responded that "[t]here is no official result yet as the RFP will only be available by 3rd week of Aug. It's not from official channel – but we might be shortlisted ☺."

28. In light of the above, the Sanctions Board finds that it is more likely than not that the Respondent Managing Director entered into an arrangement with the Local Company President within the meaning of the applicable definition.

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

29. INT argues that the Respondents' collusive arrangement was designed to give the Respondents an unfair advantage in securing the Contract for the Association. As discussed above, the Respondents dispute that they had an arrangement with either the Local Company President or the Consultant to improperly obtain or use non-public information.

30. Evidence in the record supports a finding that the Respondent Managing Director's arrangement with the Local Company President was designed to stifle open competition for the Contract by giving the Association an advantage in the selection process for the Contract through use of confidential information. As discussed in Paragraph 27 above, evidence indicates that the Respondent Managing Director expressed interest in receiving, and did receive, confidential information from the Local Company President. As also discussed above, the Respondent Managing Director acted on the confidential information by submitting the Association's financial proposal for the Contract with a sum lower than the specified budget ceiling. Consistent with the collusive arrangement, the Association was awarded the Contract. While evidence that the desired

influence actually materialized is not necessary to establish this element of collusive practice, it may bolster a showing of the Respondents' intent to influence, which is all that is required.[9] In addition, the record indicates the Respondent Managing Director's knowledge of the potential impropriety of the budget information received from the Local Company President. For instance, the Local Company President stated in an email to the Respondent Managing Director that the budget "was forwarded to me and I was asked never to disclose it." The Respondent Managing Director's awareness of the potential impropriety of the information received, and his acting upon that information, provide additional evidence for a finding of collusive intent.[10]

31. Considering the totality of the evidence, including evidence discussed in Paragraph 27 above, the Sanctions Board finds that it is more likely than not that the arrangement under the first element of collusive practice was designed to achieve an improper purpose, i.e., to stifle open competition for the Contract.

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

32. INT asserts that the Respondent Managing Director was representing the Respondent Firm when he entered into the collusive arrangement, and that his actions and knowledge can be fairly imputed to the Respondent Firm.

33. 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.[11] Where a respondent entity denies responsibility for 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.[12] In the present case, the record supports a finding that the Respondent Managing Director engaged in collusion in accordance with the scope of his duties and with the purpose of serving the interests of the Respondent Firm. For instance, the record indicates that the Respondent Managing Director played an active role in preparing the Association's financial proposal using the confidential budget information, and that he signed and submitted the financial proposal on behalf of the Association. There is no indication in the record that the Respondent Managing Director acted for any purpose other than serving the Respondent Firm. Moreover, the Respondents do 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 collusive practice carried out by the Respondent Managing Director.

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[9] See Sanctions Board Decision No. 87 (2016) at para. 81.

[10] See Sanctions Board Decision No. 78 (2015) at para. 68.

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

[12] 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.

D. Sanctioning Analysis

1. General framework for determination of sanctions

34. 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.

35. 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.[13] 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.[14]

36. 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.

37. 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

38. 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 management's role in the misconduct and involvement of a public official, as examples of severity.

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

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

39. *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 management personally participated in the misconduct.[15] Here, the record indicates that a senior manager of the Respondent Firm – the Respondent Managing Director – was involved in the misconduct. Accordingly, the Sanctions Board finds aggravation warranted under this factor for the Respondent Firm.

40. *Involvement of a public official*: Section IV.A.5 of the Sanctioning Guidelines states that this factor may apply "[i]f the respondent conspired with or involved a public official or World Bank staff in the misconduct." In past cases, the Sanctions Board has found that aggravation was warranted where the respondents conspired with public officials to win contracts.[16] In the present case, INT submits that aggravation applies on this basis. However, the record does not support a finding that the Respondents colluded with the Consultant or any other public official so as to justify aggravation.

b. Voluntary corrective action

41. 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.[17]

42. *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 issue[18] and/or at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines (the "Integrity Compliance Guidelines").[19] The Respondents seek mitigation under this factor. The record includes a document showing revisions to the Respondent Firm's Quality Management Manual to strengthen its anti-corruption compliance, a copy of the sign-in sheet of employees who attended an integrity and anti-corruption training in 2016, and copies of the Integrity and Anti-Corruption Declaration as signed by the Respondent Firm's employees – including the Respondent Managing Director. The Sanctions Board notes that the Respondent Firm's compliance documents appear to

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

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

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

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

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

address some of the principles set out in the Integrity Compliance Guidelines.[20] In these circumstances, the Sanctions Board finds that the asserted compliance measures, as supported by written policies, warrant mitigation for the Respondent Firm.

c. Cooperation

43. *Assistance and/or ongoing cooperation with investigation*: Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance to INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance 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,[21] or corresponded with INT and made relevant personnel available for interviews.[22] According to INT, the Respondents deserve mitigation for cooperation.

44. The record includes the transcript of INT's interview with the Respondent Managing Director, email correspondence between the Respondent Managing Director and the Local Company President, other contemporaneous email correspondence sent or received by employees of the Respondent Firm, and financial documents internal to the Respondent Firm. The record reflects that emails and documents upon which INT bases its case were provided by the Respondents. The record also reflects that the Respondents submitted timely responses to INT's show-cause letter, and made their books and digital records accessible to INT's staff. The interview and documents provided by the Respondents include inculpatory evidence as relied upon by INT in the SAE. The Sanctions Board finds that mitigation is warranted for the Respondents in these circumstances.

d. Period of temporary suspension

45. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondents' temporary suspensions since the Acting SDO's issuance of the Notice on July 25, 2017. Separately, the Sanctions Board also takes into account the Respondents' brief periods of debarment from October 27, 2017, to November 2, 2017, resulting from their failure to timely respond to the Notice as discussed in Paragraph 4 above.

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

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

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

e. Other considerations

46. 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."

47. *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.[23] 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.[24] At the time of the Acting SDO's issuance of the Notice in July 2017, approximately six years and four months had elapsed since the collusive arrangement was formed in March 2011 (when the Respondent Managing Director and the Local Company President exchanged emails regarding the Association). The Sanctions Board finds that mitigation is warranted in these circumstances.

48. *Absence of past misconduct*: The Respondents raise as a mitigating factor their asserted lack of prior offenses, stating that they "have maintained a spotless record throughout the two decades of operations in China's complex environment." The Sanctions Board has previously found that the absence of past misconduct does not warrant mitigation, but is a neutral fact.[25] The Sanctions Board therefore declines to apply any mitigation on this basis.

49. *Conduct peripheral to the collusive practice*: The Respondents argue that the core misconduct in this case is the collusion between the Local Company President and the Consultant, and that the Respondents took no part in their improper arrangement and had no knowledge that the Consultant provided confidential information to the Local Company President. However, as discussed in the analysis in Paragraphs 24-33 above, the Sanctions Board has found that the Respondents engaged in a collusive practice. Accordingly, the Sanctions Board finds that mitigation is not warranted.

E. Determination of Appropriate Sanctions

50. Considering the full record and all the factors discussed above, the Sanctions Board issues a formal letter of public reprimand to the Respondents, which shall be posted on the World Bank's website for a period of six (6) months, beginning on the date of this decision, without prejudice to the Respondents' eligibility to participate in Bank-Financed Projects. This sanction is imposed on

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[23] 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).

[24] See Sanctions Board Decision No. 50 (2012) at para. 71.

[25] See, e.g., Sanctions Board Decision No. 88 (2016) at para. 60; Sanctions Board Decision No. 90 (2016) at para. 49.

the Respondents for a collusive practice as defined in Paragraph 1.22(a)(iii) of the October 2006 Consultant Guidelines and Paragraph 1.22(a)(iii) of the May 2010 Consultant Guidelines.

Olufunke Adekoya (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

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