

Date of issuance: January 31, 2014

**Sanctions Board Decision No. 63  
(Sanctions Cases No. 119 and No. 124)**

**IDA Credit No. 3771-TA  
Tanzania**

**Decision of the World Bank Group<sup>1</sup> Sanctions Board:**

- i. imposing a sanction of debarment on the respondent entity in Sanctions Case No. 119 (the “First Respondent Firm”) for a period of six (6) months beginning retroactively from six (6) months prior to the date of this decision. This sanction is imposed on the First Respondent Firm for corrupt practices.**
- ii. imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 124 (the “Second Respondent Firm”) and an individual respondent in Sanctions Case No. 124 (owner and managing director of the Second Respondent Firm, hereinafter referred to as the “Individual Respondent”), together with any entity that is an Affiliate<sup>2</sup> directly or indirectly controlled by either of these Respondents, with a minimum period of ineligibility of five (5) years and six (6) months beginning from the date of this decision. This sanction is imposed on the Second Respondent Firm and the Individual Respondent for corrupt and fraudulent practices.**

**I. INTRODUCTION**

1. The Sanctions Board met in a plenary session on December 6, 2012, at the World Bank’s headquarters in Washington, D.C., to review Sanctions Cases No. 119 and No. 124 (the “Cases”). The Sanctions Board was composed of L. Yves Fortier (Chair), Marielle

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<sup>1</sup> In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as amended through July 8, 2011 (the “July 2011 Sanctions Procedures”), which apply in Sanctions Case No. 119, and Section 1.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (the “April 2012 Sanctions Procedures”), which apply in Sanctions Case No. 124, the term “World Bank Group” means, collectively, the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), and the Multilateral Investment Guarantee Agency (“MIGA”). For avoidance of doubt, the term “World Bank Group” includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes (“ICSID”). As in the Sanctions Procedures, the terms “World Bank” and “Bank” are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section 1.01(a), n.1. In this decision, references to the Sanctions Procedures shall be understood to refer to the version applicable to each of the Cases, except as otherwise specified or clear from the context.

<sup>2</sup> In accordance with Section 1.02(a) of the Sanctions Procedures, the term “Affiliate” means “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.”

Cohen-Branche, Patricia Diaz Dennis, Catherine O'Regan, Denis Robitaille, and Randi Ryterman.

2. Because the Cases involve related accusations, facts, and matters, the Sanctions Board determined that materials relating to the sanctions proceedings in each of the Cases would be made available to the parties to the other proceedings in accordance with Section 5.04(b) of the Sanctions Procedures. All written pleadings were therefore shared between the parties to both Cases. In addition, following the requests of the First Respondent Firm and the World Bank Group's Integrity Vice Presidency ("INT") for a hearing in Sanctions Case No. 119, the Sanctions Board Chair exercised his discretion in accordance with Section 6.01 of the April 2012 Sanctions Procedures to call a hearing in Sanctions Case No. 124, to be conducted jointly with the hearing in Sanctions Case No. 119. INT participated in the oral proceedings through its representatives attending in person. The First Respondent Firm was represented by its President and CEO, one of its Vice Presidents, and external counsel, all attending in person. The Second Respondent Firm and the Individual Respondent were represented by the Individual Respondent, who participated remotely via videoconference. The Sanctions Board deliberated and reached its decision in the Cases based on the written record and arguments presented at the hearing.

3. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration in the Cases included the following pleadings as well as other submissions:

*From Sanctions Case No. 119:*

- i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")<sup>3</sup> on September 1, 2011 (the "119 Notice"), as revised by the EO on February 29, 2012, appending the Statement of Accusations and Evidence presented to the EO by INT, dated December 17, 2009 (the "119 SAE");
- ii. Explanation submitted by the First Respondent Firm to the EO on February 3, 2012 (the "119 Explanation");
- iii. Response submitted by the First Respondent Firm to the Secretary to the Sanctions Board on May 10, 2012 (the "119 Response");
- iv. Reply in Support of Notice of Sanctions Proceedings submitted by INT to the Secretary to the Sanctions Board on July 5, 2012 (the "119 Reply");

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<sup>3</sup> Effective March 31, 2013, the EO's title changed to "IBRD/IDA Suspension and Debarment Officer" ("SDO"). For consistency with the Sanctions Procedures and the pleadings in the Cases, this decision refers to the former title.

- v. Supplemental Response submitted by the First Respondent Firm to the Secretary to the Sanctions Board on November 9, 2012 (the “119 Supplemental Response”); and
- vi. Supplemental Reply in Support of Notice of Sanctions Proceedings submitted by INT to the Secretary to the Sanctions Board on November 19, 2012 (the “119 Supplemental Reply”).

*From Sanctions Case No. 124:*

- i. Notice of Sanctions Proceedings issued by the EO to the Second Respondent Firm and the Individual Respondent on June 1, 2012 (the “124 Notice”), as revised by the EO on July 24, 2012, appending the Statement of Accusations and Evidence presented to the EO by INT, dated February 22, 2010 (the “124 SAE”);
- ii. Explanation submitted by the Second Respondent Firm and the Individual Respondent to the EO on June 28, 2012 (the “124 Explanation”);
- iii. Response submitted by the Second Respondent Firm and the Individual Respondent to the Secretary to the Sanctions Board on September 18, 2012 (the “124 Response”);
- iv. Reply in Support of Notice of Sanctions Proceedings submitted by INT to the Secretary to the Sanctions Board on October 18, 2012 (the “124 Reply”); and
- v. Supplemental Response submitted by the Second Respondent Firm and the Individual Respondent to the Secretary to the Sanctions Board on November 9, 2012 (the “124 Supplemental Response”).

4. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarments with conditional release for each of the Respondents in the Cases. The EO recommended a minimum period of ineligibility of two (2) years (revised downward, after the EO reviewed the 119 Explanation, from the originally recommended minimum period of three (3) years) for the First Respondent Firm, together with Affiliates under its direct or indirect control, after which period the First Respondent Firm may be released from ineligibility only if it has demonstrated that it has (a) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (b) put in place an effective integrity compliance program acceptable to the Bank and implemented this program in a manner satisfactory to the Bank. The EO recommended a minimum period of ineligibility of twelve (12) years for the Second Respondent Firm and the Individual Respondent, together with any entity that is an Affiliate under the direct or indirect control of either of these Respondents, after which period each of these Respondents may be released from ineligibility only upon demonstrating that such Respondent has (a) taken appropriate remedial measures to address the sanctionable practices for which the Respondent has been sanctioned; (b) in the case of the Second Respondent Firm, adopted and implemented an effective integrity compliance program in a

manner satisfactory to the Bank; and (c) in the case of the Individual Respondent, completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and complied with the condition that any Affiliate entity that he directly or indirectly controls has adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

5. Effective September 1, 2011, pursuant to Section 4.02(a) of the July 2011 Sanctions Procedures, the EO temporarily suspended the First Respondent Firm, together with any Affiliates under its direct or indirect control, from eligibility to (i) be awarded contracts for any Bank-financed or Bank-executed project or program governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (hereinafter collectively referred to as "Bank-Financed or Bank-Executed Projects") or (ii) participate in new activities in connection with Bank-Financed or Bank-Executed Projects pending the final outcome of the sanctions proceedings. Effective June 1, 2012, pursuant to Section 4.02(a) of the April 2012 Sanctions Procedures, the EO temporarily suspended the Second Respondent Firm and the Individual Respondent, together with any entity that is an Affiliate that either Respondent directly or indirectly controls, pending the final outcome of the sanctions proceedings, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;<sup>4</sup> (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider<sup>5</sup> of an otherwise eligible firm being awarded a Bank-financed contract; or (iii) receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (hereinafter collectively referred to as "Bank-Financed Projects").

6. The 124 Notice also recommended that a third Respondent, who was a director of the Second Respondent Firm at the time of the alleged misconduct (the "Director"), together with any entity that is an Affiliate he directly or indirectly controls, be debarred with conditional release after a minimum period of ineligibility of six (6) years. After the Second Respondent Firm and the Individual Respondent informed the EO of the death of the Director, the EO declared the 124 Notice null and void with respect to the Director.

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<sup>4</sup> For the avoidance of doubt, the declaration of ineligibility to be awarded a contract will include, without limitation, (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. See April 2012 Sanctions Procedures at Section 9.01(c)(i), n. 16.

<sup>5</sup> In accordance with Section 9.01(c)(i), n. 14 of the July 2011 Sanctions Procedures, as well as Section 9.01(c)(i), n. 17 of the April 2012 Sanctions Procedures, a nominated sub-contractor, consultant, manufacturer or supplier, or service provider 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.

## **II. GENERAL BACKGROUND**

7. The Cases arise in the context of the Dar es Salaam Water Supply and Sanitation Project (the “Project”). On June 23, 2003, IDA and the United Republic of Tanzania entered into a Development Credit Agreement for the Project. The Project was co-financed by Tanzania and other public and private sources. The Project became effective on July 31, 2003, and closed on November 30, 2010. The Project sought to provide reliable, affordable, and sustainable water supply service, and to improve sewerage and sanitation, in Dar es Salaam and surrounding regions.

8. On June 23, 2003, IDA also entered into a Project Agreement with the Tanzanian government agency implementing the Project (the “Implementing Agency”). The Project Agreement required that consultants’ services be procured pursuant to Sections I and IV of the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, revised September 1997, January 1999, and May 2002) (the “May 2002 Consultant Guidelines”).

9. In March 2003, the Implementing Agency issued a Request for Proposals (the “RFP”) to five shortlisted consultants to provide consulting services for construction supervision of contracts to rehabilitate and extend water supply and sewerage facilities (the “Contract”). In April 2003, a joint venture (“JV”) comprising the First Respondent Firm, the Second Respondent Firm, and a third firm (the “Third JV Partner”)<sup>6</sup> submitted a technical proposal (the “Technical Proposal”) and a financial proposal (the “Financial Proposal”) in response to the RFP. The Technical Proposal included representations regarding each JV partner’s past project experience.

10. On June 30, 2003, a Proposal Evaluation Committee recommended awarding the Contract to the JV as the sole qualified bidder. Although two other bidders had submitted proposals for the Contract, they were disqualified for specifying incorrect bid validity periods. The Implementing Agency and the JV signed the Contract on July 31, 2003, for US\$6,364,904. On October 31, 2003, the three JV partners executed a Joint Venture Agreement (the “JV Agreement”), which stipulated that a JV Policy Committee, with representatives of each JV partner, would be responsible for decisions on the JV’s policies.

11. INT alleges that the Respondents in both Cases engaged in corrupt practices by offering and/or paying bribes to officials of the Implementing Agency in exchange for the award of the Contract and to expedite payments to the JV during the Contract’s execution. INT additionally alleges that the Second Respondent Firm and the Individual Respondent engaged in fraudulent practices by misrepresenting the Second Respondent Firm’s prior experience in the JV’s Technical Proposal.

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<sup>6</sup> The record reflects that INT may be pursuing separate sanctions proceedings with respect to the Third JV Partner and/or its owner.

### III. APPLICABLE STANDARDS OF REVIEW

12. Section 8.02(b)(i) of the Sanctions Procedures requires the Sanctions Board to determine whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is “more likely than not” that such respondent engaged in a sanctionable practice. Section 8.02(b)(i) defines “more likely than not” to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered; formal rules of evidence do not apply.

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

14. In both Cases, the alleged sanctionable practices have the meanings set forth in the May 2002 Consultant Guidelines. Paragraph 1.25(a)(i) of the May 2002 Consultant Guidelines defines the term “corrupt practice” as “the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution.” Paragraph 1.25(a)(ii) of the May 2002 Consultant Guidelines defines the term “fraudulent practice” as a “misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Borrower.” This definition does not include an explicit mens rea requirement such as the “knowing or reckless” standard adopted by the Bank from October 2006 onward.<sup>7</sup> However, the legislative history of the Bank’s various definitions of “fraudulent practice” reflects that the October 2006 incorporation of the “knowing or reckless” standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.<sup>8</sup> Accordingly, the Sanctions Board has held that the “knowing or reckless” standard may be implied under the pre-October 2006 definitions.<sup>9</sup>

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<sup>7</sup> See, e.g., Guidelines: Procurement Under IBRD Loans and IDA Credits (May 2004, rev. October 2006) (the “October 2006 Procurement Guidelines”) at para. 1.14(a)(ii) (defining a fraudulent practice as “any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation”) (emphasis added).

<sup>8</sup> Sanctions Board Decision No. 41 (2010) at para. 75.

<sup>9</sup> Id.

#### **IV. PRINCIPAL CONTENTIONS OF THE PARTIES**

##### **A. The Written Record in Sanctions Case No. 119**

###### **1. Principal contentions in the 119 SAE**

15. INT alleges that the First Respondent Firm engaged in corrupt practices by paying officials of the Implementing Agency approximately US\$172,700 in bribes between September 2003 and July 2006, disguised as “Commercial Expenses” in the JV’s accounting records and discussions. INT argues that the bribes were intended to reward the officials for awarding the Contract to the JV, and to expedite payments to the JV for services performed under the Contract. INT relies primarily upon statements by the First Respondent Firm and its employees, as well as documentary evidence of payments.

16. INT asserts that aggravation is warranted for the severity of the First Respondent Firm’s misconduct, as the alleged multi-year bribery scheme involved senior employees and multiple payments from September 2003 to July 2006; and for several employees’ initial attempts to obstruct INT’s investigation by making false statements and removing, destroying, and tampering with evidence. As potential grounds for mitigation, INT asserts that the First Respondent Firm took active steps to ensure that the JV ceased the bribery, and eventually provided important assistance to INT’s investigation through voluntary disclosures, admission of employee misconduct, staff cooperation, and permission for INT’s audit and Tanzanian bank disclosures to INT.

###### **2. Principal contentions in the 119 Explanation and the 119 Response**

17. The First Respondent Firm raises procedural challenges to the conduct of INT’s investigation and the sanctions proceedings. In particular, the First Respondent Firm asserts that delays in initiation of the proceedings have compromised the integrity and fairness of the process so as to warrant withdrawal of the 119 Notice or a significant reduction in any sanction. The First Respondent Firm also challenges INT’s use of summary records of interview and redacted exhibits as unreliable and prejudicial.

18. With regard to the merits of INT’s allegations, the First Respondent Firm contends that its passive involvement as a minority partner in the JV does not support a finding of culpability for corrupt practices under the May 2002 Consultant Guidelines, which do not prohibit indirect bribe payments. The First Respondent Firm also asserts that INT has not provided evidence to prove that funds were directed to government officials. Finally, the First Respondent Firm denies liability for any involvement by its employees, whom it characterizes as low-level staff acting in violation of the firm’s policies.

19. The First Respondent Firm asserts that no sanctions are warranted. It argues that any sanction would undermine the incentive for parties to self-report potential misconduct under the Bank’s Voluntary Disclosure Program (“VDP”), as the First Respondent Firm contends it did at INT’s suggestion, before INT rejected its application to participate in the VDP. Should a sanction nevertheless be imposed, the First Respondent Firm argues that it should be limited to conditional non-debarment. The First Respondent Firm denies any cause for aggravation, and argues that substantial mitigation is warranted on various

grounds including its “extraordinary level of cooperation,” compliance program, and other corrective measures.

3. Principal contentions in the 119 Reply

20. In the 119 Reply, INT rejects the First Respondent Firm’s factual and legal assertions. INT asserts that JV records reveal the First Respondent Firm’s “causal and pivotal” role as an active participant in and co-perpetrator of the bribery scheme. INT contends that the First Respondent Firm may be held liable for corrupt practices as carried out by its employees under the theory of respondeat superior, and consistent with the May 2002 Consultant Guidelines, which cannot be read to allow a respondent to escape culpability by using a third party to effect bribe payments. INT disputes the First Respondent Firm’s contentions regarding VDP participation, specifically denying that INT misled the First Respondent Firm as to its eligibility to join the VDP. With respect to potential sanctions, INT agrees that the First Respondent Firm’s cooperation warrants considerable mitigation, but asserts that the EO’s revised recommendation of debarment with the possibility of conditional release after two years appropriately balances all factors and should not be decreased.

4. Principal contentions in the 119 Supplemental Response

21. After the pleadings in the Cases had been joined under Section 5.04(b) of the Sanctions Procedures, the Sanctions Board Chair authorized each of the parties to make additional submissions pursuant to Section 5.01(c) of the Sanctions Procedures. In the 119 Supplemental Response, which provided an opportunity to address the arguments and evidence contained in the pleadings in Sanctions Case No. 124, the First Respondent Firm primarily argues that INT’s record of “pervasive misconduct,” including deliberate withholding of “numerous substantial and highly relevant documents” throughout “protracted and delayed proceedings,” requires dismissal of the sanctions proceedings as “the only appropriate remedy for such gross violations and the prejudice and harm incurred by [the First Respondent Firm] as a result.” Alternatively, if any sanction is to be imposed, the First Respondent Firm asserts that the only appropriate sanction would be time served through suspension or “at most, a short period of conditional non-debarment.”

5. Principal contentions in the 119 Supplemental Reply

22. With the Sanctions Board Chair’s authorization, INT filed the 119 Supplemental Reply to address the 119 Supplemental Response and clarify the nature and status of certain documents provided by or sought from INT. INT asserts that the First Respondent Firm has not suffered any harm from withholding of documents; the additional materials that INT has already provided upon the First Respondent Firm’s requests are not exculpatory or mitigating; and to the extent that the additional materials may add any new information, they reflect the First Respondent Firm’s lack of diligence in vetting its JV partners. In addition, INT asserts that other material requested by the First Respondent Firm qualifies as sensitive material under Section 5.04(c) of the Sanctions Procedures, and requests that the material be withheld from all Respondents under this provision. Finally, INT submits that none of the First Respondent Firm’s contentions override “the fact that



[the First Respondent Firm], by its own admission, engaged in serious misconduct and participated in paying bribes to [Implementing Agency] officials totaling approximately US\$172,700.”

**B. The Written Record in Sanctions Case No. 124**

1. Principal contentions in the 124 SAE

23. Relying on the same core evidence as presented in Sanctions Case No. 119, INT alleges that the Respondents in Sanctions Case No. 124 engaged in corrupt practices in regard to the Contract. Specifically, INT relies primarily upon statements by the First Respondent Firm and its employees, as well as documentary evidence of payments, to allege that the Second Respondent Firm and the Individual Respondent offered and paid approximately US\$172,700 in bribes to reward officials of the Implementing Agency for awarding the Contract to the JV and to expedite payments to the JV under the Contract.

24. INT alleges that the Second Respondent Firm and the Individual Respondent also engaged in fraudulent practices by knowingly or recklessly submitting false documentation with the JV’s Technical Proposal that misrepresented the Second Respondent Firm’s prior work experience.

25. INT asserts that no mitigating factors apply to the Second Respondent Firm or the Individual Respondent. INT asserts that aggravation is warranted by the severity of their misconduct, as the alleged multi-year bribery scheme involved repeated payments and was combined with fraudulent practices; the fact that the Individual Respondent, as the Second Respondent Firm’s owner and managing director, personally participated in the misconduct; the Respondents’ interference with INT’s investigation, particularly the attempted audit; and the Respondents’ false representations, in signing the JV’s proposal, that the Second Respondent Firm had not contacted or bribed officials of the Implementing Agency in the course of bid preparation.

2. Principal contentions in the 124 Explanation and the 124 Response

26. The Second Respondent Firm and the Individual Respondent contest all of INT’s accusations on a range of procedural and substantive grounds. With regard to the evidence, they principally assert that INT has “willfully ignored,” obscured, or misrepresented relevant facts and exculpatory or mitigating evidence; and that some evidence in the record appears to have been tampered with or fabricated, or is defamatory and unreliable. They also assert that the lapse of time from the Project period beginning in 2003 until the start of sanctions proceedings against them in 2012 has compromised their defense due to evidence loss or tampering.

27. With regard to the merits of INT’s corruption allegations, the Respondents contend that INT has failed to show that they offered or made any improper payments to government officials or benefited from any improper influence in contract selection or execution. More generally, they disclaim liability for any alleged misconduct by the JV because, according to the Respondents, the Second Respondent Firm had the least authority or control among the JV partners; and the Individual Respondent had limited

involvement in the JV and no authority to direct its funds. In addition, they disclaim responsibility for any payments that may have been made without their knowledge by the Director, whom they assert to have worked independently.

28. The Respondents likewise contest INT's fraud allegations, and deny any misrepresentations in their claims of prior work experience for the JV's Technical Proposal. While contesting the competence of INT's witnesses and the reliability of INT's summary records of interview in this matter, the Respondents assert that the loss of their own business records and their inability to locate other potential witnesses have limited their ability to produce supporting evidence for the claimed experience.

29. Regarding possible sanctions, the Respondents contest INT's assertion that they deserve aggravated treatment for obstruction of INT's investigation. They assert that they supplied all documents within the scope of the Bank's audit rights, and that the Individual Respondent assisted INT in multiple respects.

3. Principal contentions in the 124 Reply

30. In reply, INT asserts that the Second Respondent Firm and the Individual Respondent were key actors in planning and actively implementing the JV's bribery scheme, with the Individual Respondent's personal involvement from the selection process onward. INT contends that these Respondents are liable for corrupt practices on the basis of this involvement and the conduct of the Director, who represented the Second Respondent Firm and the JV. INT maintains that the Second Respondent Firm and the Individual Respondent are also liable for fraud as they fail to present any invoices, documents, or witness statements to counter INT's confirmation from multiple witnesses that the JV's Technical Proposal misrepresented the Second Respondent Firm's prior experience. Finally, INT denies any evidence tampering, concealment of exculpatory or mitigating materials, or other investigative improprieties. INT seeks sanctions at least as severe as the twelve-year-minimum debarments recommended by the EO.

4. Principal contentions in the 124 Supplemental Response

31. With the Sanctions Board Chair's authorization, the Second Respondent Firm and the Individual Respondent filed the 124 Supplemental Response to address the arguments and evidence in Sanctions Case No. 119. Asserting a lack of time and resources to properly review and assess these materials, the Second Respondent Firm and the Individual Respondent object to INT's "prosecution by ambush" in failing to lay out a complete case against each Respondent from the beginning of the proceedings. INT declined to file a Supplemental Reply in Sanctions Case No. 124.

**C. Presentations at the Joint Hearing**

1. Presentations on procedural matters

32. At the outset of the hearing, the Sanctions Board addressed INT's pending request to withhold from all Respondents certain material that INT had submitted to the Sanctions Board pursuant to Section 5.04(c) of the Sanctions Procedures (as discussed in more detail

in Section V.A.2 below). In response to the Sanctions Board's expressed view that the material did not appear relevant to the proceedings and could be withdrawn, INT concurred with this assessment and withdrew the material from the record.

33. The Sanctions Board then invited the parties to address the request for dismissal included in the 119 Supplemental Response, which the Sanctions Board had taken under advisement until the hearing. The First Respondent Firm requested that the Sanctions Board act under Article XI of the Sanctions Board Statute as revised September 15, 2010 (the "Sanctions Board Statute") to dismiss the proceedings on various procedural grounds, including INT's alleged pattern of withholding of exculpatory and/or mitigating evidence in violation of Section 3.02 of the Sanctions Procedures, *ex parte* communications with the Sanctions Board, and improper use of *in camera* review to restrict the First Respondent Firm's access to materials without the Sanctions Board's authorization. The Second Respondent Firm and the Individual Respondent stated that they supported these arguments and joined in the motion for dismissal.

34. While accepting the Sanctions Board's authority to consider a motion to dismiss, and expressing its intention to review and improve its disclosure processes, INT asserted that any errors in the present proceedings did not harm the Respondents or meet the high threshold required for dismissal. In particular, INT asserted that (i) it had met its obligations to present exculpatory or mitigating evidence under Section 3.02 of the Sanctions Procedures; (ii) while INT is obliged to present evidence sufficient to support the accusations, as set out in Section 3.01(b)(iv), it is not obliged to present all relevant evidence; (iii) INT has a valid interest in avoiding unnecessary disclosures, particularly where materials are distributed to multiple respondents pursuant to Section 5.04(b); and (iv) the evidence presented *in camera* following the requests of the First Respondent Firm was inculpatory, duplicative, or irrelevant.

## 2. Presentations on the merits

35. In its oral presentation on the merits, INT emphasized that the record of documentary and testimonial evidence demonstrates that the Respondents engaged in corrupt practices through a scheme among all the JV partners to pay bribes to secure the award of the Contract and to expedite payment of invoices to the JV. INT contrasted the beneficial cooperation of the First Respondent Firm, which shared information from its own internal investigation, with the non-cooperation and obstruction of INT's audit by the Second Respondent Firm and the Individual Respondent. INT also reiterated its accusations of fraud against the Second Respondent Firm and the Individual Respondent.

36. The First Respondent Firm did not deny that bribery may have occurred, but reasserted that its own involvement was only indirect and would not support liability under the applicable definition of corrupt practices. It also requested consideration of a number of mitigating factors, including its efforts to promptly investigate and stop the misconduct, remedy any harm, report its findings to INT, and – despite its ultimate exclusion from the VDP – continue to cooperate fully thereafter. Finally, the First Respondent Firm claimed to have suffered significant harm already as a result of the Bank's investigation, the temporary suspension, and national criminal proceedings in Norway.

37. The Second Respondent Firm and the Individual Respondent briefly reiterated their challenges to the authenticity and weight of INT's evidence, and denied any knowledge of or involvement in the alleged sanctionable practices.

## **V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS**

38. The Sanctions Board will first address various procedural matters raised by the parties. The Sanctions Board will then consider whether the record supports a finding of corrupt and/or fraudulent practices as INT has alleged, and if so, which of the Respondents may be held liable for each of the sanctionable practices. Finally, the Sanctions Board will consider what sanctions, if any, should be imposed on each of the Respondents.

### **A. Procedural Determinations**

39. As noted above, the Respondents assert a variety of procedural grounds in support of their motion to dismiss the sanctions proceedings. In addition, the Respondents proffered additional evidence during and after the Sanctions Board's hearing. The Sanctions Board addresses each issue in turn below.

#### **1. Delayed disclosures of evidence under Sections 3.01(b)(iv) and 3.02**

40. The record reveals that INT omitted certain relevant and potentially exculpatory or mitigating evidence in its possession from the 119 SAE and the 124 SAE, and that INT provided this evidence only later in the course of the sanctions proceedings. As set out in Section 3.01(b)(iv) of the Sanctions Procedures, INT is obligated to include in the SAE "the evidence in support of its accusations, together with any exculpatory or mitigating evidence, as required by Section 3.02" – which in turn requires INT to disclose "all relevant evidence in INT's possession that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability." The Sanctions Board notes the broad wording of these provisions, which encompass "any" and "all" relevant evidence that would reasonably tend to be exculpatory or mitigating. INT's full and timely compliance with these disclosure obligations is essential to a respondent's ability to mount a meaningful response to INT's allegations, and to the fairness and credibility of the sanctions process as a whole.

41. While the record reveals that INT belatedly disclosed certain required evidence only in response to the First Respondent Firm's request and the Sanctions Board's instruction, the Sanctions Board does not find that the belated disclosures ultimately compromised the ability of any of the Respondents to mount a meaningful response. All Respondents were provided with the opportunity to review and respond to the newly disclosed documents, prior to the Sanctions Board's consideration of all arguments. On this record, and balancing the disclosure concerns noted above with the broader purpose of the sanctions system to address sanctionable practices, the Sanctions Board does not find the delayed disclosures to warrant the extraordinary remedy of dismissal. However, this finding should not be read as approving the shortcomings in INT's production of the required evidence.

2. Proposed withholding of sensitive materials under Section 5.04(c)

42. The Respondents also seek dismissal on the basis of INT's withholding of documents. INT explicitly sought to withhold from the Respondents certain evidence submitted to the Sanctions Board on November 5, 2012, as sensitive material under Section 5.04(c) of the Sanctions Procedures. Section 5.04(c) provides that "[t]he Sanctions Board may, in its discretion and upon request by INT, agree to the withholding of particular evidence submitted to the Evaluation Officer or the Sanctions Board, upon a determination that there is a reasonable basis to conclude that revealing the particular evidence might endanger the life, health, safety, or well-being of a person or constitute a violation of any undertaking by the Bank in favor of a VDP participant." Section 5.04(c) further provides that, in the event that the Sanctions Board denies INT's request, INT may opt to withdraw the evidence from the record or to seek to withdraw the Notice.

43. As the parties were informed on November 28, 2012, the Sanctions Board initially agreed that the material could be withheld from the Respondents, as INT had shown a reasonable basis to conclude that revealing the evidence might endanger an individual's life, health, safety, or well-being. The Sanctions Board also noted that the relevance, materiality, weight, and sufficiency of the evidence remained to be determined by the Sanctions Board, in its discretion, consistent with Section 7.01 of the Sanctions Procedures. While INT's submissions in support of its withholding request addressed the sensitivity of the evidence at issue, they did not clarify the nature, relevance, or materiality of the evidence. Upon further review of the material, the Sanctions Board considered the evidence not relevant and invited INT to withdraw it from the record. INT concurred and withdrew the evidence at the hearing. On this record, the Sanctions Board finds no support for the Respondents' assertion that INT has inappropriately withheld evidence.

3. Redactions of evidence under Section 5.04(d)

44. In the 119 Explanation, the First Respondent Firm asserts that INT redacted certain records of interview and correspondence "without any justification." Section 5.04(d) of the July 2011 Sanctions Procedures provides that "INT, in its sole discretion, may redact particular parts or pieces of evidence presented to the Respondent or the Sanctions Board, by: (i) removing references to Bank staff; and (ii) removing references to other third parties (together with other material which would permit such third parties to be identified), in cases where the identity of such parties is either not relevant or not germane to the case." Section 5.04(d) further provides that "[t]he Respondent may challenge such redaction in its Response under Section 5.01(a), in which case the Sanctions Board shall review the unredacted version of such evidence to determine whether the redacted information is necessary to enable the Respondent to mount a meaningful response to the allegations against it." As the First Respondent Firm did not renew its challenge in its Response as prescribed by Section 5.04(d), the Sanctions Board does not consider the matter further.

4. In camera review of evidence under Section 5.04(e)

45. In correspondence between the parties, the First Respondent Firm wrote to INT on October 21, 2012, to request additional documents. INT provided the First Respondent

Firm with in camera access to a number of documents on October 25, 2012, but maintained that it had already met its disclosure obligations.

46. Section 5.04(e) of the Sanctions Procedures provides that, “[u]pon request by INT, the Sanctions Board may provide that certain pieces of evidence be made available to the Respondent solely for review at a designated Bank country office or such other place as the Sanctions Board Chair may designate for such purpose.” In this instance, INT did not request prior authorization from the Sanctions Board to use an in camera restriction. Nor did INT offer the same review to the Respondents in Sanctions Case No. 124, despite the Sanctions Board’s prior determination that the record should be shared between the two Cases. INT states that it proceeded with the review as it did, following discussions with counsel for the First Respondent Firm, because “time was of the essence” and INT sought to give the First Respondent Firm as much time as possible to incorporate any additional arguments in the 119 Supplemental Response due shortly thereafter.

47. Ultimately, the documents that INT provided to the First Respondent Firm for in camera review on October 25, 2012, were included in the additional materials that the Secretary to the Sanctions Board distributed to all Respondents on November 21, 2012, at the Sanctions Board Chair’s instruction. Any impropriety in INT’s use of in camera review for the First Respondent Firm, without the Sanctions Board’s authorization and without equal access for the other Respondents, was thus limited and does not support the Respondents’ request for dismissal. Nevertheless, the Sanctions Board underscores the importance of INT’s timely requests for the Sanctions Board’s authorization for in camera review under Section 5.04(e), and the importance of ensuring equal access for all respondents in the same proceedings or in related proceedings joined under Section 5.04(b) of the Sanctions Procedures.

##### 5. Ex parte communications

48. On November 2, 2012, INT submitted a memorandum to the Sanctions Board that presented arguments against the document request that the First Respondent Firm had sent to INT on October 21, 2012. INT’s memorandum had not been invited by the Sanctions Board Chair and did not appear to have been copied to any of the Respondents. Following the Sanctions Board Chair’s instructions, the Secretary to the Sanctions Board wrote to all parties on November 12, 2012, to share the memorandum with all Respondents; relay the Chair’s determination to accept the memorandum into the record, in his discretion, provided that all Respondents would have an appropriate opportunity to respond in writing or at the hearing; and remind all parties of the need to avoid ex parte communications.

49. The Sanctions Board recognizes the risks to fair process and perceived impartiality that ex parte communications entail. The Code of Conduct for Members of the Sanctions Board as appended to the Sanctions Board Statute includes a provision regarding “Ex Parte Communications,” which states, “Member[s] of the Sanctions Board shall not engage in ex parte communications with INT or the Respondent regarding the merits of a sanctions proceeding.” Although the Sanctions Procedures do not specify a corresponding prohibition for INT or respondents, the Sanctions Board urges all parties to avoid ex parte

communications given the obvious risks of prejudice to the other parties and the sanctions process.

6. The Respondents' other challenges to the investigation and proceedings

50. In addition to the above concerns addressed under specific provisions of the Sanctions Procedures or Code of Conduct for Members of the Sanctions Board, the Respondents allege other improprieties in INT's conduct of the investigation and initiation of sanctions proceedings. For example, all Respondents challenge INT's use of summary records of interview as opposed to verbatim transcripts. While understanding the concern, consistent with past precedent, the Sanctions Board may, where appropriate, give less weight to summary records of interview, with due regard to relevant indicia of reliability such as how and when the records were prepared, whether their content is corroborated by other evidence, and whether the interviewee reviewed or signed the record to attest to its accuracy.<sup>10</sup> However, the Sanctions Board does not accept the First Respondent Firm's suggestion that all uncorroborated records of interview are intrinsically inaccurate, unreliable, and prejudicial, and therefore "must be excluded or given no weight." Nor do the Second Respondent Firm and the Individual Respondent provide support for their allegations that INT deliberately misrepresented any interviews, tampered with or fabricated other evidence in the record, or willfully ignored or obscured relevant facts and evidence. As the Sanctions Board has previously observed, an assertion must have an evidentiary basis in the record, or it remains a mere assertion and not a substantiated fact.<sup>11</sup>

51. The Respondents also allege improper delays in the initiation of the sanctions proceedings. The First Respondent Firm asserts that the lapse of twenty months between INT's submission of the original SAE to the EO in December 2009 and the EO's issuance of the 119 Notice in early September 2011 has compromised the integrity of the proceedings so as to justify withdrawal of the 119 Notice or a significant reduction in any sanction. The Second Respondent Firm and the Individual Respondent assert that the multi-year delay from the time of the Project, which began in 2003, until the start of sanctions proceedings in Sanctions Case No. 124 in 2012, has compromised their defense due to alleged evidence loss and tampering. Without more specific arguments and evidence to show prejudice from these delays, however, the Sanctions Board does not find the passage of time alone to preclude consideration of the Cases on their merits.

52. For the reasons set out above, the Sanctions Board denies the Respondents' request to dismiss the proceedings on procedural grounds.

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<sup>10</sup> See Sanctions Board Decision No. 55 (2013) at para. 29 (in weighing the probative value of INT's record of interview, the Sanctions Board considered that although the record of interview was non-verbatim and not signed, the content of the record was consistent in key respects with other evidence – namely, a verbatim transcript of interview with the same individual).

<sup>11</sup> Sanctions Board Decision No. 61 (2013) at para. 41.

7. The parties' post-hearing submissions

53. The record in Sanctions Case No. 119 included a copy, as attached to and cited in the 119 Response, of a July 2011 Norwegian district court decision imposing criminal penalties on several officers of the First Respondent Firm but not on the firm itself. At the Sanctions Board's hearing in December 2012, INT and the First Respondent Firm offered to provide an English translation of the most recent decision in the case: an October 2012 appellate court decision imposing corporate criminal liability on the First Respondent Firm. With the Sanctions Board Chair's authorization pursuant to Section 5.01(c) of the Sanctions Procedures, INT and the First Respondent Firm provided an agreed translation, with comments on contested points of interpretation, in early April 2013. When the national proceedings thereafter led to a June 2013 decision of the Supreme Court of Norway – which, like the district court, declined to impose criminal liability on the First Respondent Firm – the Sanctions Board Chair, in his discretion, accepted the First Respondent Firm's translated copy of that decision and INT's comments thereon as submissions relating to the national proceedings already reflected in the record. The parties are reminded, however, that national law standards and judgments are not binding on the Bank or the Sanctions Board's proceedings.<sup>12</sup> The scope of a respondent's liability for purposes of the Bank's administrative sanctions process may not be coextensive with the scope of its potential liability under national law – whether criminal, civil, or administrative.<sup>13</sup> Rather, the Sanctions Board applies the standards set out in the Sanctions Board Statute, Sanctions Procedures, and other formal guidelines issued by the World Bank with respect to sanctions matters.

54. With respect to the allegation of fraudulent practices in Sanctions Case No. 124, the Second Respondent Firm and the Individual Respondent proffered additional post-hearing evidence and arguments on March 14, 2013. With the Sanctions Board Chair's authorization, INT submitted comments on March 25, 2013, regarding the admissibility of the Respondents' filing. On April 10, 2013, the Sanctions Board Chair declined, in his discretion, to accept the Respondents' submission of March 14, 2013, into the record. The Sanctions Board Chair took into consideration that the Respondents' submission, which had been filed absent any prior authorization from the Sanctions Board Chair, did not appear to satisfy either the materiality or timeliness elements of Section 5.01(c) of the Sanctions Procedures. In particular, the proffered evidence did not appear to be newly available to the Respondents insofar as it consisted of correspondence purportedly dating back to 1999, which the Respondents described as having been located in their archives.

**B. Evidence of Corrupt Practices (All Respondents)**

55. In accordance with the definition of corrupt practices under Paragraph 1.25(a)(i) of the May 2002 Consultant Guidelines, INT bears the initial burden to show that it is more

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<sup>12</sup> See Sanctions Board Decision No. 43 (2011) at para. 24; Sanctions Board Decision No. 45 (2011) at para. 46.

<sup>13</sup> See Sanctions Board Decision No. 45 (2011) at para. 46 (declining to accept that Turkish law principles, as asserted by the respondent, would define the respondent's liability for the acts of its representatives).



likely than not that the Respondents (i) offered or gave any thing of value (ii) to influence the action of a public official in the selection process or in contract execution.

1. Offering or giving a thing of value

56. INT provides testimonial and documentary evidence in support of its allegations that the Respondents made payments to officials of the Implementing Agency totaling approximately US\$172,700. Detailed statements by representatives of the First Respondent Firm, as contained in correspondence and reported in INT's records of interview, describe a scheme under which the JV paid the officials approximately US\$172,700 in cash under the header of "Commercial Expenses" ("CE"). Contemporaneous documentary evidence, including the JV's internal correspondence and accounting records, corroborates the First Respondent Firm's description of the overall payment scheme and specific CE payments. For example, the JV's records of receipts and payments indicate that the First Respondent Firm transferred monies from its account to the JV's bank account to fund CE payments; and that representatives of the First Respondent Firm and the Second Respondent Firm, including the Individual Respondent, signed checks to make CE funds available to the Second Respondent Firm's then Director for cash disbursement. The record also contains a sample of the type of spreadsheet that, according to the First Respondent Firm, the Third JV Partner routinely provided to track the status of CE payments for specific officials as identified by abbreviations and initials.

57. The Respondents argue that the record lacks direct evidence to prove that any public officials in fact received CE payments. The First Respondent Firm specifically contends that its previous descriptions of the payment scheme should not be construed as evidence of corrupt offers or payments. Rather, it asserts, its statements were intended only to disclose a possibility of misconduct, viewed "in the worst possible light" for its own remedial and compliance purposes. The First Respondent Firm also notes the absence of bank or wire records reflecting any officials' receipt of payments, and suggests that the Second Respondent Firm's then Director may have retained a portion of the CE funds. The Second Respondent Firm and the Individual Respondent additionally contest the authenticity and significance of the "Status CE" spreadsheet that the First Respondent Firm provided to INT; contend that the JV's low profit margin on the Contract did not allow room for any bribe payments; argue that circumstantial evidence, including the record of the JV's ongoing difficulties in dealing with officials of the Implementing Agency, supports a finding that no payments were made; and assert that the funds that INT alleges to have been used as bribes were in fact a legitimate mark-up paid to the First Respondent Firm to cover unanticipated unreimbursed expenses and the use of the First Respondent Firm's facilities.

58. Considering the totality of the evidence and arguments presented by the parties, the Sanctions Board finds that it is more likely than not that the Respondents offered and subsequently gave a thing of value to officials of the Implementing Agency so as to satisfy the first element of the definition of corrupt practices. INT has met its initial burden of proof through the combination of business records documenting CE payments, together with the First Respondent Firm's detailed descriptions of the nature and implementation of the payment scheme and its intended recipients.

59. The Respondents' arguments fail to rebut INT's arguments. Contrary to the First Respondent Firm's suggestion, the first element of the definition of corrupt practices requires only that the Respondents have offered or given something of value – not that all the earmarked funds were ultimately disbursed. Likewise, the record does not support the First Respondent Firm's suggestion that its prior admissions regarding knowledge of and participation in the payment scheme are inapplicable to these proceedings. The record reflects that these admissions followed the First Respondent Firm's internal investigation, which included the questioning of several employees and examination of project files, and whose findings appear to have been corroborated by outside counsel. Moreover, the First Respondent Firm's representatives made key admissions in the course of INT's interviews, which focused on the possibility of sanctionable practices as defined by the Bank.

60. The arguments presented by the Second Respondent Firm and the Individual Respondent are also unpersuasive. For example, the Respondents do not provide any evidence to support their assertions that the "Status CE" spreadsheet must be a fabrication as it reflects payments to officials who had left the Implementing Agency or passed away prior to the Project; or that the JV had a low profit margin on the Contract, and therefore could not have afforded to make any corrupt payments.<sup>14</sup> Furthermore, the evidence that the JV experienced difficulties in dealing with officials of the Implementing Agency is inconclusive. Although the Second Respondent Firm and the Individual Respondent argue that evidence of such difficulties refutes the logic of INT's bribery allegations, this evidence could equally be interpreted to reflect the Respondents' incentive to make corrupt payments to seek greater cooperation from the officials. Finally, the record does not support the alternative explanation that the CE payments – which appear to have been funded by transfers from the First Respondent Firm, and released in cash to the Second Respondent Firm's Director – were intended for the JV's legitimate expenses under the Contract, such as compensation for use of the First Respondent Firm's facilities.

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

61. INT relies mainly on its records of interview with representatives of the First Respondent Firm, as well as contemporaneous documentation from the Contract's execution period that referred to CE payments, to support its allegations that the Respondents paid officials of the Implementing Agency initially to ensure that the JV would be awarded the Contract and subsequently to expedite payments of the JV's invoices during the Contract's execution.

62. Considering the totality of the evidence, the Sanctions Board finds that it is more likely than not that the Respondents first used CE payments to influence the selection

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<sup>14</sup> Cf. Sanctions Board Decision No. 50 (2012) at paras. 46-47 (rejecting the respondent's argument that it had no financial incentive to pay the alleged bribe because the bribe would have exceeded its normal profit margin, where the respondent did not provide any evidence of its expected profit margin and the record showed that the respondent had incentives to pursue the contract and adhere to its payment commitment beyond any purely financial benefits from the immediate contract).

process for the Contract and secure its award to the JV. According to INT's record of statements by the First Respondent Firm's original representative on the JV Policy Committee, the Third JV Partner's owner took the First Respondent Firm's representative aside at the first JV Policy Committee meeting on October 20, 2003, to say, "You understand that we had to make certain arrangements to get the contract"; and, in the same meeting, the Individual Respondent and the Third JV Partner's owner discussed the CE spreadsheet and whether it was appropriate to pay so much to certain individuals on the list. Moreover, the record indicates that all the JV partners had agreed to the CE scheme even before the first JV Policy Committee meeting. Email correspondence regarding the JV's budget from the Third JV Partner's owner and the First Respondent Firm's representative to the Individual Respondent on October 7, 2003, states that they "agree[d] with the split, the setup and the incorporation of the commercial expenses," and that "[t]he modalities of the settlement of the commercial expenses may be done in line with our earlier proposal."

63. Contrary to the First Respondent Firm's denials, the above evidence supports a finding that the First Respondent Firm, like the other JV partners, was aware of the JV's use of CE to influence the Contract's selection, and agreed to and benefited from that use. In addition, the record indicates that the First Respondent Firm in particular had the ability to wield its experience, reputation, and resources as a commercial advantage to the JV. The First Respondent Firm had a responsibility to monitor the JV's activities from the selection process onward. Yet the record reflects that, despite its awareness of the JV's "arrangements to get the contract," the First Respondent Firm thereafter funded CE payments that all the JV partners understood would be distributed to officials of the Implementing Agency through the Second Respondent Firm's Director.

64. The Second Respondent Firm and the Individual Respondent assert that the JV could not have influenced the selection process because, of the five shortlisted consultants for the Contract, two chose not to submit bids; another two were disqualified for submitting nonresponsive bids; and the JV submitted the lowest-priced and sole responsive proposal. Yet the issue is whether the Respondents intended to influence, not whether the desired influence ultimately materialized or was decisive.<sup>15</sup> As the Implementing Agency issued the RFP to five shortlisted consultants, and the JV was not the sole initial bidder, the Respondents could not have presumed to know the outcome of the selection process. They would still have had an interest in improperly influencing the eventual outcome.

65. The Sanctions Board also finds that it is more likely than not that the Respondents participated in the CE scheme with the intent to influence the Contract's execution – specifically, to expedite the Implementing Agency's payment of the JV's invoices. The record contains both testimonial and documentary evidence to support this finding. For example, INT's record of interview with an engineer from the First Respondent Firm who served as chief engineer for the Contract and later as the JV's second project manager

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<sup>15</sup> Sanctions Board Decision No. 60 (2013) at para. 84 ("As the Sanctions Board has previously observed, evidence that the desired influence actually materialized is not necessary for a finding of corrupt practices, even though it may bolster a showing of the respondent's intent to influence.").

reports that he understood the CE payments, which he perceived as suspicious, to be necessary for the JV to get paid. Contemporaneous email correspondence also reveals that representatives of each of the JV partners, including the Individual Respondent, intended for the CE to facilitate payment of the JV's invoices under the Contract.

66. The Second Respondent Firm and the Individual Respondent argue that the record shows no correlation between the alleged corrupt payments and the Implementing Agency's level of diligence in paying the JV's invoices. These Respondents assert that the length of time that the Implementing Agency took to pay invoices varied according to the Implementing Agency's workload and availability of funds, and exceeded the Contract's prescribed sixty-day payment period only twice during the Project. The record does not reveal a clear correlation between all the apparent CE payments and the Implementing Agency's speed in paying the JV, although the chief engineer from the First Respondent Firm reportedly observed a correlation in the two instances of CE payments he personally authorized as the JV's second project manager. In any event, lack of a more clearly demonstrated correlation between the CE payments and the Implementing Agency's action on JV invoices does not undermine the finding, based on contemporaneous email correspondence and later testimonial evidence, that the Respondents made CE payments with an intention to expedite the Implementing Agency's payments.

### **C. The Respondents' Liability for Corrupt Practices**

67. The Respondents contest liability for corrupt practices on various grounds, particularly asserting that they were only indirect or minor participants in the CE arrangements. The Sanctions Board does not find the Respondents' arguments persuasive, as discussed below.

#### **1. Liability of the First Respondent Firm for corrupt practices**

68. The First Respondent Firm asserts that it did not have any direct involvement in payments to public officials; and that indirect payments are not a sanctionable practice under the May 2002 Consultant Guidelines, which did not contain the phrase "directly or indirectly" as was later introduced into the Bank's definition of corrupt practices. The First Respondent Firm also denies that it may be held liable for any corrupt payments because it did not participate in establishing the corrupt scheme; it played only a limited role in the JV that perpetrated the bribery; and its employees involved in the matter were lower-level staff acting contrary to the firm's corporate policy. INT disputes the First Respondent Firm's arguments as a matter of law and fact. Upon consideration of the parties' arguments and the relevant portions of the record, the Sanctions Board finds that the First Respondent Firm may be held liable for the corrupt practices carried out under the CE scheme.

69. First, the Sanctions Board agrees with INT that the record reveals the First Respondent Firm's involvement to have been direct. The record of involvement by the First Respondent Firm's employees – including its designated representative on the JV Policy Committee as well as its engineer who served as the chief engineer for the Contract and then as the JV's second project manager – includes planning, providing, and releasing funds for CE payments to officials of the Implementing Agency. The First Respondent

Firm's involvement in these respects qualifies as a direct role in the corrupt payments regardless whether its employees personally delivered specific CE payments to the officials. It is therefore unnecessary to address the First Respondent Firm's arguments regarding potential liability for only indirect involvement.

70. The First Respondent Firm's other arguments against liability are likewise unavailing. Consistent with past precedent, the Sanctions Board considers that the First Respondent Firm may be held liable for participating in a corrupt scheme regardless whether it took part in establishing the scheme from its inception.<sup>16</sup> Moreover, the record indicates that the First Respondent Firm was in fact involved from early in the prolonged corrupt scheme, as it had by early October 2003, at the latest, approved the plan for CE payments that apparently began in September 2003 and continued into July 2006. The record also reflects that the First Respondent Firm provided funds for the CE payments, and like each of the other two JV partners had a representative on the three-member JV Policy Committee authorized to make decisions for the JV. Accordingly, the Sanctions Board rejects the suggestion that the First Respondent Firm's role in the JV was so limited as to preclude liability based on either its own conduct or that of the JV.

71. Finally, the Sanctions Board rejects the First Respondent Firm's assertion that it cannot be held liable for any improper acts of its employees involved in this matter, whom it describes as lower-level staff acting contrary to the firm's corporate policy. The Sanctions Board has previously recognized the potential liability of an employer 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.<sup>17</sup> INT need not show that a particular employee was specifically authorized or instructed to engage in the sanctionable practices; rather, the relevant question is whether the employee's actions were "a mode, albeit an improper mode," of carrying out the employee's duties.<sup>18</sup> Where a respondent entity has denied responsibility for an employee's acts 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.<sup>19</sup>

72. The record supports a finding that the First Respondent Firm's employees involved in the CE scheme acted in the course and scope of their employment, which included responsibilities with regard to the JV, and that they were motivated by the First Respondent Firm's interests in having the JV secure the Contract and execute it with

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<sup>16</sup> See Sanctions Board Decision No. 50 (2012) at para. 48 (stating that, whether or not the respondent's director and managing director were personally involved from the inception of the corrupt scheme, "their later participation may be viewed as part of the same scheme to exchange payment for influence").

<sup>17</sup> See, e.g., Sanctions Board Decision No. 61 (2013) at paras. 29-30.

<sup>18</sup> See, e.g., Sanctions Board Decision No. 55 (2013) at para. 52.

<sup>19</sup> See, e.g., id. at paras. 53-54.

timely remuneration. In contrast, the record does not support the First Respondent Firm's arguments that it had adequate corporate policies and controls in place at the time of the corrupt practices, which the individuals circumvented or willfully ignored. The contemporaneous corporate documentation that the First Respondent Firm introduced into the record includes a general statement of "Goals and Values," but does not reveal explicit anti-corruption provisions or specific controls or supervision measures reasonably sufficient to prevent, or more importantly here, to detect and redress corrupt practices. In addition, the Sanctions Board rejects the First Respondent Firm's suggestions that the only staff involved in the corrupt practices were "operational employees" working at the lowest tier of the organization, and that a firm cannot be held liable for the conduct of staff at this level. The doctrine of respondeat superior applies irrespective of the corporate position or level that an employee holds. Layers of supervision do not insulate the corporate entity from liability for the acts of employees further down the structure when the employees act within the course and scope of their employment.<sup>20</sup> In any event, as INT notes, the record indicates that the implicated staff held positions of some authority in the firm and with respect to the JV.

2. Liability of the Second Respondent Firm and the Individual Respondent for corrupt practices

73. The Sanctions Board finds that the Second Respondent Firm and the Individual Respondent may also be held liable for the corrupt practices at issue, despite their claims to have played a subordinate role in the JV without authority over financial matters such as the CE arrangements.

74. First, the record reveals that the Individual Respondent had greater authority and involvement than he claims. The Individual Respondent asserts that his role in the JV related mainly to technical issues, rather than any budgetary or financial matters, and that he participated only intermittently in JV meetings. He contends that his check-signing authority on behalf of the JV did not include genuine approval power over CE payments, as he did not know who the ultimate beneficiaries would be, and he understood that the JV accountant would only bring him a check for signature if it had already been authorized by the First Respondent Firm and the Third JV Partner. The Individual Respondent does not point to any evidence in the record to support these assertions, however. The record reflects that the Individual Respondent acted on behalf of the Second Respondent Firm and as its managing director in signing the Contract and the JV Agreement. Under the JV Agreement, the Individual Respondent was not only the Second Respondent Firm's authorized representative for the JV Policy Committee, but was also appointed by all three JV partners to be the JV's project manager responsible for "overseeing the whole assignment" and acting as a signatory of the JV's local bank account. The record indicates

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<sup>20</sup> See, e.g., Sanctions Board Decision No. 46 (2012) at paras. 29, 37 (holding the respondent firm liable for the actions of its logistics officer in submitting a bid with fraudulent signatures, even though the record revealed that he was not a high-level employee); Sanctions Board Decision No. 47 (2012) at para. 33 (holding the respondent firm liable for the conduct of its employees who carried out their duties without adequate training, oversight, or controls, despite the respondent firm's characterization of the employees as "very junior people working at the lowest rung of the organization").

that the Individual Respondent served as the JV's first project manager from September or October 2003 to mid-January 2006, a period of over two years encompassing most of the CE scheme. Other documents in the record include JV Policy Committee minutes reflecting the Individual Respondent's attendance at several meetings during which CE arrangements were discussed; copies of checks signed by the Individual Respondent for the purpose of CE payments; and email correspondence showing his direct involvement in the CE scheme from planning through implementation. The totality of this evidence supports a finding that the Individual Respondent participated personally in the corrupt scheme so as to warrant individual liability.

75. The evidence of direct participation in the CE scheme by both the Individual Respondent and the Director also supports imposition of direct and/or vicarious liability for the Second Respondent Firm.<sup>21</sup> The Second Respondent Firm does not contest its liability for the acts of the Individual Respondent, who served as the firm's primary owner, managing director, and designated representative on the JV Policy Committee through the course of misconduct. With respect to the Director, the record reflects the Second Respondent Firm's acknowledgment that he joined the firm "as a shareholder, a director and also a single signatory to the bank account" from June 6, 2001, until October 9, 2008 – a period encompassing the misconduct. Although the Second Respondent Firm and the Individual Respondent suggest that the Director acted independently or on behalf of the First Respondent Firm, they do not point to any evidence in the record to support this assertion. The record does not indicate that the Director had any competing affiliation with the First Respondent Firm, or that he took instructions from the First Respondent Firm. Finally, the record does not support the Second Respondent Firm's contention that it had such a limited role in the JV as to preclude its responsibility or liability for the CE arrangements.

**D. Evidence of Fraudulent Practices (the Respondents in Sanctions Case No. 124)**

76. In accordance with the definition of fraudulent practices under the May 2002 Consultant Guidelines, INT bears the initial burden to show that the Second Respondent Firm and the Individual Respondent (i) made a misrepresentation of facts (ii) that was knowing or reckless (iii) in order to influence a selection process or the execution of a contract (iv) to the detriment of the Borrower.

1. Misrepresentation of facts

77. The record reflects that the JV's Technical Proposal for the Contract included twenty-one Project Reference Sheets ("PRS") presenting the Second Respondent Firm's experience in prior projects. INT asserts that at least seven of the PRS falsely claimed as the Second Respondent Firm's own work the work of another firm that had temporarily employed the Individual Respondent (the "Former Employer"). While these PRS state that the Second Respondent Firm acted as the Former Employer's sub-consultant or associated

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<sup>21</sup> See, e.g., Sanctions Board Decision No. 60 (2013) at paras. 111-112.

consultant, INT asserts that it was only the Individual Respondent who worked on these projects, as an employee of the Former Employer. INT also asserts that the PRS exaggerate the scope of the Individual Respondent's work as performed. The Second Respondent Firm and the Individual Respondent deny that the PRS contained any misrepresentations, and challenge the reliability of INT's evidence and the competence of INT's witnesses.

78. Considered as a whole, the record supports a finding that it is more likely than not that the seven PRS identified by INT contained misrepresentations as to the nature and/or scope of the Second Respondent Firm's past work experience. Each of the seven PRS presents the Second Respondent Firm as the sub-consultant or associated consultant providing services. A letter from the Former Employer's managing director contradicts this aspect of the PRS by stating that it was the Individual Respondent who provided services while "seconded as an employee from our Tanzania office to work on the projects mentioned." In addition, the record supports a finding that several of the PRS overstated the scope of the Individual Respondent's work for the Former Employer. For example, two of the PRS represent that the Second Respondent Firm provided the Individual Respondent's services as "Contract Engineer" for two projects in Ethiopia. In his letter, the Former Employer's managing director states that the Individual Respondent did not serve in this capacity for either project; that he "did not have any role [in the first project] as the project was closed out and our Resident Engineer on the site handled all the functions mentioned by [the Second Respondent Firm]"; and that the Individual Respondent served a more limited role on the second project than claimed, without the site investigation and supervisory responsibilities cited in the PRS. With regard to a third PRS, which claimed ten months' work experience for the Former Employer on an urban-sector project in Tanzania, the managing director's letter acknowledges that the Individual Respondent played a role in the project's final stages, but specifically denies that he acted for the claimed duration and extent of services as "Principal Engineer." On this basis, the Sanctions Board finds that INT has carried its initial burden of proof to show misrepresentations of fact on these points.

79. While the record includes some countervailing assertions and evidence from the Second Respondent Firm and the Individual Respondent, the Sanctions Board finds that these Respondents fail to rebut INT's prima facie showing of the above misrepresentations through credible testimonial or documentary evidence demonstrating that the claimed work relationships and experience were accurately presented in these PRS. The Respondents assert that the statements of the Former Employer's managing director should be discounted because he lacked personal familiarity with the Individual Respondent's work, but the content of the managing director's letter appears to derive from the Former Employer's business records and information, without reliance upon his personal knowledge. Importantly, the Respondents do not provide any evidence to counter the substance of the managing director's statements as to the Individual Respondent's specific roles and responsibilities in relation to the above projects.

80. Nor do the Respondents provide documentation to substantiate their claim that they provided services to the Former Employer on a consultancy basis in the name of the Second Respondent Firm. The record reflects that in March 2007, INT asked the Respondents for any contracts, payment records, correspondence, bank, or tax records



relating to the past projects at issue. The Respondents have asserted that they could not retrieve their only copies of these archived documents dating back to the 1990s, as the facility storing their files “had been vandalized and the person [in charge] had absconded and [the Individual Respondent] decided to sell off the property.” As the Sanctions Board has previously recognized, the passage of time may hinder respondents’ ability to retrieve relevant evidence.<sup>22</sup> In this instance, however, the Sanctions Board does not find that the Respondents credibly explain the complete lack of any business records showing the claimed contractual relationship between the Second Respondent Firm and the Former Employer, which the Respondents had cited when submitting the PRS with the JV’s Technical Proposal in April 2003.

81. The record is less conclusive with regard to other misrepresentations alleged by INT. On the scope of work claimed in four of the PRS at issue, the Respondents have presented corroborating statements from several past employees or sub-consultants of the Former Employer, who assert personal knowledge of the Individual Respondent’s work with the Former Employer at the time. In addition, the Respondents correctly note certain inconsistencies in INT’s evidence. For example, the statements of the Former Employer’s managing director, as reflected in his letter and in INT’s summary records of his interviews, variously confirm or deny that the Individual Respondent served in the claimed role of “Project Manager” for certain projects. When weighing conflicting evidence, the Sanctions Board looks at the totality of the evidence, including all reported interview statements, read in context and weighted for relative credibility.<sup>23</sup> Consistent with past precedent, the Sanctions Board also notes that summary records of interview, which INT uses for a number of witnesses, lack the intrinsic accuracy of verbatim transcripts, particularly in the absence of any indication that the interviewees reviewed or signed the records to confirm their basic accuracy.<sup>24</sup>

82. The Sanctions Board observes that neither INT nor the Respondents provided additional evidence that, according to the parties, could have clarified the issues presented. For example, the record reflects that the Former Employer’s managing director and director offered to provide documentation of the contracts concerned; and that INT was provided contact information for the Former Employer’s previous managing director, who may have interacted directly with the Individual Respondent at the time of the projects in question. The record does not reflect whether INT followed up with these sources. Similarly, the Respondents do not appear to have followed through on their statement that they would provide additional evidence to demonstrate how the PRS template was ambiguous, in their view, and presumably susceptible of good-faith misinterpretation.

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<sup>22</sup> See, e.g., Sanctions Board Decision No. 53 (2012) at para. 65 (stating that the passage of time “clearly impacts Respondent’s ability to investigate the matter, gather evidence and defend itself” where almost ten years had elapsed since the sanctionable practices occurred and almost seven years had elapsed since the Bank became aware of the potential misconduct).

<sup>23</sup> Sanctions Board Decision No. 40 (2010) at para. 25.

<sup>24</sup> See, e.g., Sanctions Board Decision No. 45 (2011) at para. 34; Sanctions Board Decision No. 50 (2012) at para. 40; Sanctions Board Decision No. 53 (2012) at para. 43; Sanctions Board Decision No. 55 (2013) at para. 29.

83. Considering the totality of the evidence presented, the Sanctions Board finds that it is more likely than not that the seven PRS identified by INT misrepresented the nature of the work relationship between the Second Respondent Firm or the Individual Respondent and the Former Employer, and that three of these PRS also misrepresented the scope of past work performed by the Individual Respondent.

2. Made knowingly or recklessly

84. INT asserts that it is more likely than not that the seven PRS at issue were prepared by the Individual Respondent personally or “at his instruction,” and that the Individual Respondent’s actions and knowledge may be attributed to the Second Respondent Firm. The Respondents do not deny that the Individual Respondent was involved in preparation of the PRS.

85. Considering the totality of the evidence, the Sanctions Board finds that it is more likely than not that the Individual Respondent was or should have been aware of the contents of the PRS, and should have taken additional action to ensure their accuracy. Testimonial and documentary evidence in the record indicates that the Individual Respondent was personally involved in preparing the JV’s Technical Proposal. Although the record does not include evidence directly showing that the Individual Respondent prepared the PRS at issue, the fact that the PRS purported to describe his own prior work experience on behalf of the Second Respondent Firm supports a finding that he knew or should have known of the PRS’s representations as to his experience.

86. Consistent with past precedent, the Sanctions Board also finds that the Second Respondent Firm may be held liable for knowing participation in the misrepresentations, or at least for recklessness in failing to prevent them.<sup>25</sup> The Individual Respondent, as owner and managing director of the Second Respondent Firm, acted in the course and scope of his duties, and in the firm’s interest, as the firm’s authorized representative for purposes of the Technical Proposal; and the record does not indicate that the Second Respondent Firm had in place any procedures reasonably sufficient to ensure the accuracy of the information included in its documentation.

3. In order to influence a selection process

87. The RFP required bidders to include forms describing their past experience, and specified that ten points out of a possible one-hundred-point technical score would be allocated for relevant project experience. According to INT’s record of interview with a member of the Proposal Evaluation Committee for the Contract, the Committee would have disqualified the JV had it known that the PRS contained false information as to prior experience. In particular, the interviewee reportedly remarked on the distinction between a

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<sup>25</sup> See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51, 54-55 (finding the respondent firm liable for the inclusion of forged certificates in a bid by the regional business head, who was the respondent firm’s authorized representative for the bid at issue and submitted the bid with the intention of carrying out his duties to the respondent firm, in the absence of evidence that the respondent firm put in place training, supervision, or control measures prior to the misconduct at issue).

firm's experience, as should be reported in the "project sheets," and an individual's personal experience, which "should go in CVs." In a letter on behalf of the Second Respondent Firm, the Individual Respondent himself emphasized the distinction, for both competitive and tax purposes, between experience that could be claimed by the firm versus the personal work experience of an individual. On this record, the Sanctions Board finds that it is more likely than not that the submission of misleading PRS was intended to increase the JV's technical score and thus influence the selection process for the Contract.

#### 4. To the detriment of the Borrower

88. The Sanctions Board has previously held that detriment to a borrowing country may include not only tangible or quantifiable harms, but also intangible harms such as where a respondent's use of forged documents served to distort a selection process, deprived a borrower of the benefits of a fair procurement process, caused a borrower to expend resources to review and evaluate invalid bids, and – where a respondent ultimately received the contract – misled a borrower to contract with a bidder willing to engage in unethical behavior.<sup>26</sup>

89. The record here reveals that the misrepresentations in the PRS distorted the selection process to the detriment of the member country concerned, which then contracted with a bidder willing to engage in unethical behavior. As stated above, bidders could obtain up to ten points for past experience. The minimum technical score to qualify for the Contract was seventy points. With its Technical Proposal, including the misleading PRS, the JV barely met the minimum with its technical score of 70.5 points. Moreover, as noted above, the record indicates that the Proposal Evaluation Committee might have disqualified the JV's bid had it known that the Technical Proposal misrepresented prior experience.

90. Considering all the above elements, the Sanctions Board concludes that it is more likely than not that the Second Respondent Firm and the Individual Respondent engaged in fraudulent practices in the selection process for the Contract.

#### E. Sanctioning Analysis

##### 1. General framework for determination of sanctions

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

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<sup>26</sup> See, e.g., Sanctions Board Decision No. 47 (2012) at para. 29.

92. 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.<sup>27</sup> 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.<sup>28</sup>

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

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

## 2. Factors applicable in the Cases

95. Section 9.02 of the Sanctions Procedures identifies a number of factors potentially relevant to one or more of the Respondents in the Cases, as addressed below.

### a. Severity of the misconduct

96. Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining an appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern, sophisticated means, a central role, and management’s role in the misconduct as examples of severity.

97. *Repeated pattern of conduct:* Section IV.A.1 of the Sanctioning Guidelines refers to a repeated pattern of conduct as potential grounds for aggravation. INT submits that the repetitive nature of the Respondents’ corrupt practices, entailing at least twelve corrupt payments to public officials over a period of several years, warrants aggravation for all Respondents. The First Respondent Firm argues that INT does not allege separate counts of corrupt conduct but a “single isolated scheme . . . uninterrupted for a period of time.” Under the circumstances presented, the Sanctions Board does not find aggravation warranted under this factor for the Respondents’ use of multiple payments pursuant to a single scheme under the Contract. However, the Sanctions Board considers these facts under the next factor, sophisticated means. In addition, the Sanctions Board considers

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<sup>27</sup> Sanctions Board Decision No. 40 (2010) at para. 28.

<sup>28</sup> Sanctions Board Decision No. 44 (2011) at para. 56.

separately below the multiplicity of sanctionable practices (fraud and corruption) for the Respondents in Sanctions Case No. 124.

98. *Sophisticated means*: Section IV.A.2 of the Sanctioning Guidelines states that this factor may include “the complexity of the misconduct (*e.g.*, degree of planning, diversity of techniques applied, level of concealment); the number and type of people or organizations involved; whether the scheme was developed or lasted over a long period of time; [and] if more than one jurisdiction was involved.” INT did not specifically assert this aggravating factor in its submissions. Nevertheless, considering the duration of the corrupt scheme over several years, and the number of individuals and organizations actively involved in planning and executing the scheme, the Sanctions Board finds that the conduct presented here warrants aggravation under this factor.

99. *Central role in misconduct*: Section IV.A.3 of the Sanctioning Guidelines states that this factor may apply to a respondent who acted as the “[o]rganizer, leader, planner, or prime mover in a group of 2 or more.” The Sanctions Board finds aggravation appropriate for the central role played in the corrupt scheme by the Individual Respondent, insofar as the record not only reflects that he participated in the initial establishment and implementation of the CE arrangements together with the Third JV Partner’s owner, but also supports a finding that he personally facilitated disbursement of the majority of the CE payments as the JV’s project manager for most of the period encompassing the corrupt scheme.

100. *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 considers that the evidence indicating the Individual Respondent’s direct involvement in the corrupt and fraudulent practices supports aggravation for the Second Respondent Firm, for which he served as owner and managing director. With respect to the First Respondent Firm, however, the record does not support a finding that the specific employees who evidently knew of and participated in the corrupt practices qualified as “high-level personnel” so as to merit aggravation on this ground.

b. Interference in the Bank’s investigation

101. Section 9.02(c) of the Sanctions Procedures requires that the Sanctions Board consider “interference by the sanctioned party in the Bank’s investigation.” Section IV.C.1 of the Sanctioning Guidelines describes this factor as including “[d]eliberately destroying, falsifying, altering, or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation,” as well as “acts intended to materially impede the exercise of the Bank’s contractual rights of audit or access to information.”

102. The Sanctions Board finds aggravation on this ground appropriate for the First Respondent Firm. The record reflects, and the First Respondent Firm does not dispute, that employees of the First Respondent Firm sought to impede the Bank’s investigation by initially making false statements to INT; and by destroying or tampering with documents

from the JV's project files that referred to CE payments. The extent of aggravation for these actions is tempered, but not nullified, by the undisputed lack of involvement by the First Respondent Firm's management, which later discovered and sought to correct the employees' actions. Contrary to the First Respondent Firm's suggestion, aggravation may apply to acts taken with the purpose of materially impeding a Bank investigation whether or not this purpose is ultimately achieved.

103. The Sanctions Board does not find aggravation warranted under this factor for the Second Respondent Firm and the Individual Respondent, who allegedly frustrated the Bank's audit by refusing to provide INT access to JV correspondence and other documents. On the record presented, INT fails to show that the Respondents' restrictive interpretation of the Bank's audit rights under the relevant provision of the Contract, which required access to the "accounts and records relating to the performance of the Consultant," constituted deliberate interference meriting aggravation.

c. Voluntary corrective action

104. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a sanctioned party took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies a respondent's cessation of misconduct, internal action against the responsible individual, and establishment or improvement and implementation of an effective corporate compliance program as some examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of the 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 show voluntary corrective actions.<sup>29</sup>

105. *Cessation of misconduct:* As INT acknowledges, the record reflects that when the First Respondent Firm's senior management became aware of the alleged misconduct through INT's investigation, the First Respondent Firm took action at the next JV Policy Committee meeting, and through written instructions from its President and CEO, to ensure that the JV would stop making CE payments or other unsupported payments to officials of the Implementing Agency. These actions warrant mitigation for the First Respondent Firm.

106. *Internal action against responsible individual:* The First Respondent Firm asserts that it took disciplinary action against each of the three employees implicated in the CE scheme, two of whom subsequently left the First Respondent Firm. INT acknowledges that when the First Respondent Firm became aware of INT's investigation, it recalled the third employee – the chief engineer who served as the JV's second project manager – from Tanzania, and no longer permitted him to work for the First Respondent Firm internationally. The record reflects that the First Respondent Firm implemented "provisional employment law measures" against the involved staff members, pursuant to which they received written warnings for failing to notify management about what they

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<sup>29</sup> Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 60 (2013) at para. 129.

“knew or ought to have understood concerning unlawful business practices and possible bribes in relation to the project,” and were suspended from any roles as auditor/controller or project manager for any of the company’s overseas projects. The Sanctions Board finds these measures to warrant some mitigation, limited by their stated provisional nature and lack of evidence as to final employment actions taken.

107. *Effective compliance program:* The First Respondent Firm also seeks mitigating credit for its asserted improvements to its corporate compliance program. Relevant evidence in the record indicates an enhanced emphasis on anti-corruption compliance, including through the firm’s tone at the top, code of ethics and amended Goals and Values statement, mandatory staff training, new tendering guidelines, limits on use of joint ventures or agents, and enhanced controls with respect to affiliates and sub-contractors. Considering this evidence in light of the World Bank Group’s Integrity Compliance Guidelines,<sup>30</sup> and noting that the First Respondent Firm appears to have initiated these improvements after its staff had been interviewed by INT in 2006, but before it received the 119 Notice in 2011, the Sanctions Board finds that the First Respondent Firm’s enhanced corporate compliance program warrants mitigation.

d. Cooperation

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

109. *Assistance and/or ongoing cooperation:* Section V.C.1 of the Sanctioning Guidelines suggests that cooperation may take the form of assistance with INT’s investigation and/or ongoing cooperation, with consideration of “INT’s representation that the respondent has provided substantial assistance” as well as “the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.”

110. As documentary and testimonial evidence in the record reveals, and as INT agrees, the First Respondent Firm substantially assisted INT’s investigation. For example, the record reflects that the First Respondent Firm provided INT with detailed evidence of corrupt payments, identified the implicated employees, instructed its employees to cooperate with INT, enabled INT’s exercise of audit rights despite resistance from the other JV partners, and facilitated local bank disclosures to INT. The Sanctions Board’s earlier finding that employees of the First Respondent Firm initially sought to interfere with INT’s investigation does not preclude mitigation for the firm’s subsequent

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<sup>30</sup> World Bank Group’s Integrity Compliance Guidelines, available at:  
[http://siteresources.worldbank.org/INTDOII/Resources/Integrity\\_Compliance\\_Guidelines.pdf](http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf).

cooperation.<sup>31</sup> In addition, although INT suggests that the Sanctions Board take into account the First Respondent Firm's extrinsic motivation to cooperate due to media attention, it remains that the First Respondent Firm adopted a proactive and cooperative approach that yielded detailed admissions against self-interest and other critical inculpatory evidence.

111. With respect to the Second Respondent Firm and the Individual Respondent, the record does not reflect sufficient cooperation to warrant mitigation. Although the Individual Respondent corresponded with INT during the investigation and participated in interviews with INT, the Second Respondent Firm and the Individual Respondent did not provide additional documents that INT had requested. While the Sanctions Board has declined to consider these Respondents' restrictive interpretation of the Bank's audit rights as deliberate interference warranting aggravation, the Sanctions Board may consider the Respondents' reaction to INT's asserted audit rights in assessing their degree of cooperation.

112. *Internal investigation:* Section V.C.2 of the Sanctioning Guidelines recognizes that mitigation may be warranted for cooperation where a respondent has "conducted its own, effective internal investigation of the misconduct and relevant facts . . . and shared results with INT." The Sanctions Board finds additional mitigation appropriate on this ground for the First Respondent Firm, as the record indicates that it conducted an adequate internal investigation, first by a designated officer reporting directly to the President and CEO, and then by external counsel, and shared detailed findings with INT as well as national authorities.

113. *Admission or acceptance of guilt or responsibility:* Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent's admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance merit more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. The Sanctions Board applies partial mitigation on this ground in view of the First Respondent Firm's early and detailed admissions concerning its employees' involvement in the CE scheme in the course of INT's investigation, limited by its denials of responsibility or culpability for corrupt practices in the course of sanctions proceedings.<sup>32</sup>

e. Period of temporary suspension

114. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by the sanctioned party. The First Respondent Firm has been temporarily suspended since the EO's issuance

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<sup>31</sup> See Sanctions Board Decision No. 56 (2013) at paras. 62, 73 (granting limited mitigation for cooperation where the record reflected that a respondent had corresponded with INT and made relevant personnel available for interview, notwithstanding the Sanctions Board's earlier finding that the respondent had in other respects interfered with the investigation so as to warrant aggravation); Sanctions Board Decision No. 60 (2013) at para. 133.

<sup>32</sup> Sanctions Board Decision No. 60 (2013) at para. 134.



of the 119 Notice on September 1, 2011— a period extended in part due to multiple requests for stays and extensions by both INT and the First Respondent Firm, the consolidation of the Cases, and the parties’ post-hearing submissions of additional documents through mid-2013. The Second Respondent Firm and the Individual Respondent have been temporarily suspended since the EO’s issuance of the 124 Notice on June 1, 2012. The Sanctions Board takes into account the extended periods of temporary suspension for all Respondents.

f. Other potential considerations

115. Under Section 9.02(i) of the Sanctions Procedures, the Sanctions Board shall consider “any other factor that . . . the Sanctions Board reasonably deems relevant to the sanctioned party’s culpability or responsibility in relation to the Sanctionable Practice.”

116. *Passage of time*: Consistent with past precedent, the Sanctions Board considers as a mitigating factor the passage of a significant period of time from the commission of the alleged misconduct, or from the Bank’s awareness of the potential misconduct, to the Bank’s initiation of sanctions proceedings.<sup>33</sup> Mitigation applies to all Respondents on these grounds. By the issuance of the 119 Notice in September 2011, over five years had elapsed from the time that the Bank apparently became aware of the First Respondent Firm’s potential involvement in corrupt practices in August 2006, and five to eight years had passed since the corrupt payments were made between September 2003 and July 2006. Mitigation applies to the Second Respondent Firm and the Individual Respondent for the passage of time in relation to both the corruption and fraud allegations. By the issuance of the 124 Notice in June 2012, nearly six years had elapsed from the Bank’s awareness of the potential corrupt practices; and six to nine years had elapsed since the corrupt payments. In addition, approximately eight years had elapsed since the Bank’s awareness of the potential fraudulent practices, and over nine years had elapsed since the submission of the fraudulent misrepresentations in the JV’s Technical Proposal of April 2003.

117. *Proportionality*: Consistent with past precedent, the Sanctions Board takes into account the relative degrees of culpability or responsibility among the Respondents.<sup>34</sup> Considering the evidence regarding corrupt practices as discussed earlier, the Sanctions Board finds greater sanctions appropriate for the Second Respondent Firm and the Individual Respondent, who played a more active role in initiating and executing the corrupt scheme, than for the First Respondent Firm.

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<sup>33</sup> See, e.g., Sanctions Board Decision No. 48 (2012) at para. 48 (applying mitigation where almost three years had elapsed between the Bank’s awareness of the potential misconduct and the initiation of sanctions proceedings); Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where approximately five years had elapsed between the Bank’s awareness of the potential misconduct and the initiation of sanctions proceedings); Sanctions Board Decision No. 53 (2012) at para. 65 (applying mitigation where the Notice of Sanctions Proceedings was issued almost ten years after the sanctionable practices occurred and almost seven years after the Bank had become aware of the potential misconduct).

<sup>34</sup> See, e.g., Sanctions Board Decision No. 60 (2013) at para. 141 (“In past cases involving multiple respondents and/or affiliates, the Sanctions Board has considered the proportionality of sanctions amongst parties based on their respective roles in the misconduct.”).

118. *Plurality of sanctionable practices*: As the Sanctions Board finds that the Second Respondent Firm and the Individual Respondent engaged in both corrupt and fraudulent practices, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding “Cumulative Misconduct” (emphases in original):

Where the respondent has been found to have engaged [in] factually distinct[] incidences of misconduct (e.g., corrupt practices and collusion in connection with the same tender) or in misconduct in different cases (e.g., in different projects or in contracts under the same project but for which the misconduct occurred at significantly different . . . times), each separate incidence of misconduct may be considered separately and sanctioned on a cumulative basis. In the alternative, the fact that the respondent engaged in multiple incidences of misconduct may be considered an aggravating factor under Section IV.A.1 [“Repeated Pattern of Conduct”] below.

119. INT contends that aggravating treatment would be appropriate for the multiple types of sanctionable practices carried out by the Second Respondent Firm and the Individual Respondent. While Section III of the Sanctioning Guidelines recognizes the possibility of imposing one aggravated sanction for multiple practices, as INT suggests, the Sanctions Board considers that the use of separate, cumulative sanctions beginning with the three-year baseline for each type of sanctionable practice is more appropriate in this instance. The fraudulent misrepresentations regarding the Second Respondent Firm’s prior work experience under the JV’s Technical Proposal were distinct from, and not merely a means of concealing or furthering, the JV’s corrupt practices that began in the selection process and continued into contract execution.<sup>35</sup>

120. INT also asserts that aggravation is warranted for false “declarations of propriety” submitted by the Second Respondent Firm and the Individual Respondent with the Technical and Financial Proposals, which state that the Second Respondent Firm did not contact or bribe officials of the Implementing Agency during bid preparation. The record reflects that the First Respondent Firm made the same type of declarations. However, INT did not pursue separate allegations of fraudulent practices on these facts for any of the Respondents. Considering the circumstances, the Sanctions Board determines that any misrepresentations in these “declarations of propriety” are subsumed under the corrupt practices carried out by the same Respondents.<sup>36</sup>

121. *Non-cooperation in sanctions proceedings*: The Sanctions Board considers that the conduct of the Second Respondent Firm and the Individual Respondent in the course of

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<sup>35</sup> Cf. Sanctions Board Decision No. 41 (2010) at para. 89 (considering the gravity of each incidence of misconduct on its own and determining that the sanctions for each offense should run on a cumulative basis where the respondents were found to have engaged in corrupt and fraudulent practices in two factually unrelated cases).

<sup>36</sup> See Sanctions Board Decision No. 60 (2013) at para. 113 (considering a given respondent’s fraudulent practices as subsumed under the same respondent’s corrupt practices, where the fraud allegations were based on that respondent’s failure to disclose the corrupt arrangement in which he personally participated).

sanctions proceedings, including at the Sanctions Board's hearing, warrants aggravation due to their persistent and implausible denials of any responsibility for or knowledge of the corrupt scheme, despite substantial evidence to the contrary.<sup>37</sup>

122. *Adverse financial consequences:* The First Respondent Firm asserts that it received no financial or other benefits from the Contract, has instead incurred significant losses in its efforts to complete the work and through its temporary suspension, and accordingly may not be able to continue its beneficial work in Africa and much of Asia. In accordance with past precedent, the Sanctions Board declines to treat the asserted economic factors as grounds for mitigation.<sup>38</sup>

123. *Potential disincentive to VDP participation:* As noted earlier, the First Respondent Firm asserts that it disclosed its internal investigative findings to INT after INT had referred it to the VDP, which the First Respondent Firm states led to the reasonable assumption that it was eligible to participate in the VDP. Only later, the First Respondent Firm asserts, was it informed that it was ineligible for the VDP due to INT's ongoing investigation. The First Respondent Firm now argues that sanctioning it would undermine the purpose of the VDP by sending a message that "those who attempt to participate in the VDP in good faith . . . will nonetheless be punished harshly based upon the information they provide." INT disputes the First Respondent Firm's assertions, and contends that contemporaneous documentary evidence reflects that INT merely informed the firm about the VDP's existence and referred it to the Bank's website for more information. INT also disputes the First Respondent Firm's claim that it was unaware it was under Bank investigation at that time.

124. The record reflects that the First Respondent Firm was aware of INT's investigation into the JV by August 2006. The published VDP eligibility criteria at the time stated that the VDP was available only to firms not already under active investigation. The record also supports INT's assertion that it only informed the First Respondent Firm on a general basis of the VDP's existence, as indicated by the First Respondent Firm's internal notes of its meetings with INT on August 31 and September 1, 2006. The passage of at least eight months from that point until the First Respondent Firm's VDP application in May 2007 indicates that the First Respondent Firm had ample time to consider the

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<sup>37</sup> See Sanctions Board Decision No. 61 (2013) at para. 51 (applying aggravation where the record indicated multiple changes of position by the respondents, whose successive statements asserted varying internal investigative findings and inconsistent explanations in response to the allegations). See also Sanctions Procedures at Section 6.03(c) (providing that in the context of Sanctions Board hearings, "A party's refusal to answer [questions by members of the Sanctions Board], or failure to answer truthfully or credibly, may be construed against that party.").

<sup>38</sup> See, e.g., Sanctions Board Decision No. 56 (2013) at para. 86 (denying mitigation for a respondent's asserted losses in contract execution and reimbursement delays, and claimed costs of subsequent investigation and cooperation); Sanctions Board Decision No. 60 (2013) at para. 140 (denying mitigation for a respondent's projected losses in business opportunities due to debarment); Sanctions Board Decision No. 61 (2013) at para. 50 (declining to consider as a sanctioning factor the respondents' unsupported assertions that debarment would have anticompetitive effects on the national market and significantly limit the Bank's choice of partners).

potential advantages and disadvantages of its disclosures and application to the VDP. On this record, and considering the substantial mitigation already granted for the First Respondent Firm's cooperation with INT, the Sanctions Board finds that no additional mitigation is warranted for the firm's application to the VDP or the disclosures it made in that process.

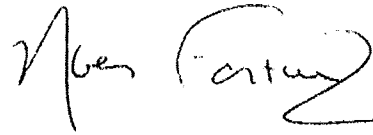
3. Determination of liability and appropriate sanctions for the Respondents

125. Considering the full record and all the factors discussed above, including, in particular, the significant aggravating factors relevant to the Second Respondent Firm and the Individual Respondent as well as the important mitigating factors relevant to the First Respondent Firm, the Sanctions Board:

- i. determines that the First Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the First Respondent Firm, shall be ineligible to (i) be awarded a contract for any Bank-Financed or Bank-Executed Projects; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed or Bank-Executed Projects for a period of six (6) months. This sanction is imposed on the First Respondent Firm for corrupt practices as defined in Paragraph 1.25(a)(i) of the May 2002 Consultant Guidelines. The period of ineligibility is deemed to have been served retroactively, beginning six (6) months prior to the date this decision issues.
- ii. determines that the Second Respondent Firm and the Individual Respondent, together with any entity that is an Affiliate directly or indirectly controlled by either of these Respondents, shall be, and hereby declares that each is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of five (5) years and six (6) months for each of these Respondents, the Second Respondent Firm may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group; and the Individual Respondent may be released from ineligibility only if all entities that he directly or indirectly controls have, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented effective integrity compliance programs in a manner satisfactory to the World Bank Group. These sanctions are imposed on the Second Respondent Firm and the Individual Respondent for corrupt and fraudulent practices as defined in Paragraphs 1.25(a)(i) and

1.25(a)(ii) of the May 2002 Consultant Guidelines. The periods of ineligibility shall begin on the date this decision issues.

126. Consistent with Sections 9.01(c) and 9.01(d) of the Sanctions Procedures, ineligibility of any entities and individuals debarred pursuant to the present decision shall extend across the operations of the World Bank Group. The Bank will also provide notice of the declarations of ineligibility to the other multilateral development banks (“MDBs”) that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the “Cross-Debarment Agreement”) so that they may determine whether to enforce the declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.<sup>39</sup>



L. Yves Fortier (Chair)

On behalf of the  
World Bank Group Sanctions Board

L. Yves Fortier  
Marielle Cohen-Branche  
Patricia Diaz Dennis  
Catherine O'Regan  
Denis Robitaille  
Randi Ryterman

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<sup>39</sup> At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The Cross-Debarment Agreement provides that, subject to the prerequisite conditions set forth in the Cross-Debarment Agreement, unless a participating MDB (i) believes that any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the “opt out” clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank’s external website (<http://go.worldbank.org/B699B73Q00>).