

Date of issuance: June 30, 2015

**Sanctions Board Decision No. 78  
(Sanctions Cases No. 283 and No. 326)**

**IDA Credit No. 3803-MOG  
Mongolia**

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

- i. **imposing a sanction of reprimand on the respondent entity in Sanctions Case No. 283 (the “Respondent Firm”) by means of a formal letter of private reprimand issued to the Respondent Firm on the date of this decision. This sanction is imposed on the Respondent Firm for corrupt practices.**
- ii. **imposing a sanction of debarment on the individual respondent in Sanctions Case No. 326 (the “Individual Respondent”), together with any entity that is an Affiliate<sup>2</sup> directly or indirectly controlled by the Individual Respondent, for a period of two (2) years beginning from the date of this decision. This sanction is imposed on the Individual Respondent for corrupt practices.**

**I. INTRODUCTION**

1. The Sanctions Board met in plenary sessions in October and December 2014, at the World Bank’s headquarters in Washington, D.C., to jointly review Sanctions Cases No. 283 and No. 326 (the “Cases”). The Sanctions Board was composed of L. Yves Fortier (Chair), Hassane Cissé, Ellen Gracie Northfleet, Catherine O’Regan, Denis Robitaille, and J. James Spinner.

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. As discussed below in Paragraphs 46-47, written pleadings were therefore shared between the parties in both Cases. In addition, following requests of the Respondent Firm and the World Bank Group’s Integrity Vice Presidency (“INT”) for a hearing in Sanctions Case No. 283, the Sanctions Board Chair exercised his discretion in accordance

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<sup>1</sup> In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (the “Sanctions Procedures”), the term “World Bank Group” means, collectively, the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), and the Multilateral Investment Guarantee Agency (“MIGA”). For the 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.

<sup>2</sup> 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.” Sanctions Procedures at Section 1.02(a).

with Section 6.01 of the Sanctions Procedures to call a hearing in Sanctions Case No. 326, to be conducted jointly with the hearing in Sanctions Case No. 283 on October 23, 2014. INT participated in the oral proceedings through its representatives attending in person. The Respondent Firm was represented by one of its vice presidents and external counsel, all attending in person. The Individual Respondent declined to participate in the hearing. 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:

*From Sanctions Case No. 283:*

- i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")<sup>3</sup> to the Respondent Firm on February 11, 2014 (the "283 Notice"), appending the Statement of Accusations and Evidence (the "283 SAE") presented to the EO by INT, dated July 26, 2013;
- ii. Response submitted by the Respondent Firm to the Secretary to the Sanctions Board on May 12, 2014 (the "283 Response");
- iii. Reply submitted by INT to the Secretary to the Sanctions Board on June 11, 2014 (the "283 Reply");
- iv. Supplemental Response submitted by the Respondent Firm to the Secretary to the Sanctions Board on September 11, 2014 (the "283 Supplemental Response"); and
- v. Supplemental Reply submitted by INT to the Secretary to the Sanctions Board on September 18, 2014 (the "283 Supplemental Reply").

*From Sanctions Case No. 326:*

- i. Notice of Sanctions Proceedings issued by the EO to the Individual Respondent on June 9, 2014 (the "326 Notice"), appending the Statement of Accusations and Evidence (the "326 SAE") presented to the EO by INT, dated March 11, 2014;
- ii. Explanation submitted by the Individual Respondent to the EO on June 29, 2014 (the "326 Explanation");
- iii. Response submitted by the Individual Respondent to the Secretary to the Sanctions Board on August 5, 2014 (the "326 Response");
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on September 11, 2014 (the "326 Reply"); and

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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, this decision refers to the former title.

- v. Post-Hearing Additional Material submitted by INT to the Secretary to the Sanctions Board on November 5, 2014 (the “Additional Material”).

4. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarment with conditional release for each of the Respondents in the Cases. The EO recommended a minimum period of ineligibility of two (2) years for the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, after which period the Respondent Firm may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group’s Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

5. The EO recommended a minimum period of ineligibility of three (3) years for the Individual Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Individual Respondent, after which period the Individual Respondent may be released from ineligibility only if she has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group’s Integrity Compliance Officer that (i) she has taken appropriate remedial measures to address the sanctionable practices for which she has been sanctioned; (ii) she has completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics; and (iii) any entity that is an Affiliate directly or indirectly controlled by her has adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

6. Effective January 29, 2013, pursuant to Article II of the Sanctions Procedures, which provides for temporary suspension prior to sanctions proceedings in certain circumstances, the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, was temporarily suspended 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; and (iii) receive the proceeds of any loan made by the Bank or otherwise 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 (referred to

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<sup>4</sup> For the avoidance of doubt, the scope 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, consultant, manufacturer or supplier, or service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section 9.01(c)(i), n.16.

<sup>5</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section 9.01(c)(ii), n.17.

collectively as “Bank-Financed Projects”<sup>6</sup>). Upon submission of the 283 SAE to the EO, the Respondent Firm’s temporary suspension was automatically extended pending the final outcome of the sanctions proceedings pursuant to Sections 2.04(b) and 4.02 of the Sanctions Procedures.

7. Effective June 9, 2014, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Individual Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Individual Respondent, from eligibility 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, pending the final outcome of the sanctions proceedings. The 283 and 326 Notices specified that the temporary suspensions would apply across the operations of the World Bank Group.

## **II. GENERAL BACKGROUND**

8. The Cases arise in the context of the Mongolian Economic Capacity Building Technical Assistance Project (the “Project”), which sought to assist Mongolia with designing and implementing a public sector management reform program. On September 23, 2003, IDA and Mongolia entered into a development credit agreement for the approximate equivalent of US\$7.5 million to finance the Project. On September 30, 2006, the Individual Respondent entered into a Bank-financed “Long Term Individual Consultant Contract” (the “Consultant Contract”) with Mongolia’s Ministry of Finance, pursuant to which the Individual Respondent agreed to serve as the project manager for the Project now at issue as well as another project. As supplemented by INT after the hearing, the record reflects that the Consultant Contract was in effect during the relevant period in the Cases, and that the Individual Respondent served as project manager for the Project at the time of the alleged misconduct.

### *Human Resources Management Information System Contract*

9. *First tender:* In July 2006, Mongolia’s Ministry of Finance issued bidding documents under the Project for a contract to supply, install, integrate, test, and commission a human resources management information system (the “HRMIS Contract”). Only two bidders, the Respondent Firm and another entity (the “Second Bidder”), submitted bids for the contract. In November 2006, the bid evaluation committee for the tender issued its bid evaluation report, which did not recommend awarding the contract to either of the bidders for reasons specific to each bidder.

10. *Second tender:* In September 2007, a second procurement notice was published for the HRMIS Contract. By the bid submission deadline in November 2007, three bidders, including

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<sup>6</sup> For the avoidance of doubt, the term “Bank-Financed Projects” includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section 1.01(c)(i), n.3.

the Respondent Firm and the Second Bidder, had submitted bids for that second tender. In January 2008, the bid evaluation committee for the tender recommended the Respondent Firm for contract award. However, in March 2008, the World Bank determined that the Respondent Firm's bid was not technically responsive and therefore declined to issue a "no objection" to the bid evaluation committee's contract award recommendation.

11. *Third tender:* In October 2008, Mongolia's Ministry of Finance issued a third set of bidding documents for the HRMIS Contract. The Respondent Firm submitted its bid pursuant to that tender before the submission deadline in January 2009. The Second Bidder did not submit a bid for the third tender. Before contract award, the HRMIS bidding process was cancelled at the request of the Government of Mongolia for the purpose of reallocating funds from the human resources management information system to another initiative.

#### *Budgeting System Contract*

12. In June 2008, Mongolia's Ministry of Finance issued bidding documents under the Project for a contract to develop and install software for a budgeting system (the "Budgeting System Contract") (together with the HRMIS Contract, the "Contracts"). In response, the Respondent Firm submitted a bid in September 2008. In January 2009, upon the recommendation of the bid evaluation committee for the Budgeting System Contract and the Bank's "no objection" to that recommendation, the Respondent Firm and Mongolia entered into the Budgeting System Contract, which was valued initially at US\$630,000 (and later, with amendments, at US\$1,009,000).

13. INT alleges that the Respondent Firm engaged in corrupt practices by offering and giving a paid internship, and subsequently an employment contract, to the daughter of the Individual Respondent with the intent to influence the procurement processes for the Contracts. INT additionally alleges that the Individual Respondent engaged in corrupt practices by using her position as project manager to solicit employment for her daughter from the Respondent Firm and the Second Bidder, and to receive employment for her daughter from the Respondent Firm, in order to influence the procurement processes for the Contracts.

### **III. APPLICABLE STANDARDS OF REVIEW**

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

15. 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.

*Applicable Guidelines in Sanctions Case No. 283*

16. For cases arising in the context of projects financed by the World Bank in which a respondent is alleged to have engaged in sanctionable practices in competing for or executing a Bank-financed contract for the procurement of goods, works, and non-consulting services, the applicable definitions of sanctionable practices are generally provided by the World Bank's Procurement Guidelines that are specified in the relevant financing agreement as governing the project, or that are referenced in subsequent agreements between the borrowing or recipient country and a respondent.<sup>7</sup> The following Procurement Guidelines are applicable in Sanctions Case No. 283, where INT alleges that the Respondent Firm engaged in corrupt practices in the procurement processes for the HRMIS and Budgeting Systems Contracts.

17. With respect to the HRMIS Contract, the alleged sanctionable practice has the meaning set forth in the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (January 1995, revised in January and August 1996, September 1997, and January 1999) (the "January 1999 Procurement Guidelines"), which governed the Project's procurement according to the development credit agreement and whose definition of corrupt practice was repeated in the successive sets of bidding documents for the HRMIS Contract. Paragraph 1.15(a)(i) of the January 1999 Procurement 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 procurement process or in contract execution."

18. While the relevant development credit agreement stated that the January 1999 Procurement Guidelines would govern the Project's procurement, the bidding documents for the Budgeting System Contract provided that the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) (the "May 2004 Procurement Guidelines") would apply to that contract. In accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the standards applicable in the event of such conflict shall be those agreed between the borrowing or recipient country and the respondent as governing the particular contract at issue, rather than the standards agreed between the borrowing or recipient country and the Bank.<sup>8</sup> Therefore, the alleged sanctionable practice in relation to the Budgeting System Contract has the meaning set forth in the May 2004 Procurement Guidelines. Paragraph 1.14(a)(i) of these Guidelines defines the term "corrupt practice" as "the offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in contract execution" (footnote omitted).

*Applicable Guidelines in Sanctions Case No. 326*

19. INT submits that the above Procurement Guidelines also apply in Sanctions Case No. 326, in which INT alleges that the Individual Respondent engaged in corrupt practices by

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<sup>7</sup> See, e.g., Sanctions Board Decision No. 70 (2014) at para. 10.

<sup>8</sup> See *id.*

using her position as project manager to solicit and/or receive employment for her daughter from the Respondent Firm and the Second Bidder. INT has failed to present a clear case for proceeding against the Individual Respondent under these Guidelines, which, as noted above, refer to respondents that are alleged to have engaged in sanctionable practices in competing for or executing Bank-financed contracts for the procurement of goods, works, and non-consulting services. However, for the reasons set out in Paragraphs 43-44 below, there is a sufficient basis for reviewing INT's allegations against the Individual Respondent under the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, revised in September 1997, January 1999, and May 2002) (the "May 2002 Consultant Guidelines"). Paragraph 1.25(a)(i) of these 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."

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

##### **A. The Written Record in Sanctions Case No. 283**

###### **1. INT's principal contentions in the 283 SAE**

20. INT submits that it is more likely than not that the Respondent Firm engaged in corrupt practices by offering and giving a paid internship, and subsequently an employment contract, to the daughter of the Individual Respondent, a public official who was the project manager overseeing the tenders for the Contracts. According to INT, the Respondent Firm employed the Individual Respondent's daughter in order to win the Individual Respondent's "benevolence."

21. INT asserts that aggravation is warranted for harm to the Project, the involvement of the Respondent Firm's senior officials in the alleged misconduct, and the Respondent Firm's conduct in providing all-expense-paid personal trips to the Individual Respondent and her spouse during the procurement process for the HRMIS Contract. INT submits as mitigating factors that the Respondent Firm cooperated extensively with INT and has taken steps to put in place a compliance program.

###### **2. The Respondent Firm's principal contentions in the 283 Response**

22. The Respondent Firm submits that INT's allegations are the product of an inadequate investigation, as INT failed to interview the Respondent Firm's Vice President ("VP") for Products, "the key witness in this case." The Respondent Firm also contends that INT misled the Respondent Firm as to the purpose of the joint interview with its Chief Financial Officer ("CFO") and VP of Sales for Africa and the Middle East ("VP of Sales"), and that INT's record of interview ("ROI") with those individuals misrepresented the interviewees' statements.

23. The Respondent Firm denies INT's allegations of corrupt practices and primarily asserts the following points in support of its defense: (i) the Respondent Firm did not offer or give a thing of value to the Individual Respondent; (ii) the Respondent Firm did not attempt to influence improperly the action of a public official because it knew that there was no benefit to be gained by offering the Individual Respondent anything of value; (iii) the events in question did not occur in the procurement process or in contract execution; and (iv) testimonial evidence

proves that the decision to hire the Individual Respondent's daughter was made on merit alone, and that the Respondent Firm therefore lacked the intent to influence the Individual Respondent.

24. The Respondent Firm submits that, if the Sanctions Board finds the Respondent Firm liable for corrupt practices, the appropriate sanction would be a letter of reprimand. In support of its request, the Respondent Firm asserts that the imposition of a letter of reprimand would be consistent with the Sanctions Board's past precedent, that the Respondent Firm has made significant contributions to Bank-funded projects around the world, and that it has materially assisted the Bank in fighting corruption. In addition, the Respondent Firm disputes the application of the aggravating factors asserted by INT, and contends that mitigation is warranted for its voluntary corrective action, extensive cooperation with INT, completion of the Budgeting System Contract without charge, time spent in temporary suspension, and subjection to constructive cross-debarment caused by Bank personnel's confidentiality breaches regarding its suspension.

3. INT's principal contentions in the 283 Reply

25. In response to the Respondent Firm's contentions regarding the conduct of INT's investigation, INT asserts that it is not clear what prejudice could have been caused to the Respondent Firm by the fact that INT did not interview the Respondent Firm's VP for Products. In addition, INT contends that its ROI with the Respondent Firm's CFO and VP of Sales is a faithful summary of the interview.

26. INT submits that the Respondent Firm has not provided any evidence in its Response capable of showing that it did not engage in the corrupt practices alleged. INT primarily asserts the following points to rebut the Respondent Firm's defenses: (i) offering to hire and hiring the Individual Respondent's daughter constituted a thing of value to both the Individual Respondent and her daughter, given their mother-daughter relationship; (ii) evidence shows that the request for a position for the Individual Respondent's daughter and the actual hiring occurred during the procurement processes for the Contracts; and (iii) evidence demonstrates that the Respondent Firm hired the Individual Respondent's daughter with the intent to influence the procurement processes for the Contracts.

27. INT states that it does not dispute that some mitigating factors apply, but submits that the EO considered all relevant mitigating factors in determining the recommended sanction, and that the Respondent Firm should be debarred at least to the extent recommended by the EO. With respect to the Respondent Firm's request for mitigation based on the asserted constructive cross-debarment caused by Bank personnel's confidentiality breaches, INT argues that "neither INT nor the Bank has occasioned any confidentiality breaches."

4. The Respondent Firm's principal contentions in the 283 Supplemental Response

28. After the pleadings in the Cases had been joined and distributed 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 283 Supplemental Response, which provided an opportunity to address the arguments and evidence contained in the pleadings in Sanctions Case No. 326, the Respondent Firm reiterates its arguments against liability as presented in the 283 Response and adds that the record in Sanctions Case No. 326 shows that the Individual Respondent did not have the requisite corrupt intent.

5. INT's principal contentions in the 283 Supplemental Reply

29. With the Sanctions Board Chair's authorization, INT filed the 283 Supplemental Reply to address the 283 Supplemental Response. INT asserts that evidence clearly demonstrates a close link between the hiring of the Individual Respondent's daughter and the procurement processes for the Contracts. INT also reiterates its argument that the timeline of the Individual Respondent's request to the Respondent Firm and the Respondent Firm's hiring of her daughter demonstrate the Respondent Firm's intent to influence the procurement processes for the Contracts.

**B. The Written Record in Sanctions Case No. 326**

1. INT's principal contentions in the 326 SAE

30. INT alleges that the Individual Respondent engaged in corrupt practices by using her position as project manager to solicit a thing of value from the Respondent Firm and the Second Bidder and to receive a thing of value from the Respondent Firm in order to influence the actions of a public official in the procurement processes for the Contracts. Specifically, INT asserts that during the procurement processes for the Contracts, the Individual Respondent solicited employment for her daughter from the Respondent Firm and the Second Bidder; and that the Individual Respondent and her daughter received a thing of value when the Respondent Firm hired the daughter, first as a paid intern and later as a full-time employee.

31. INT asserts that aggravation is warranted for the Individual Respondent's conduct in receiving all-expense-paid trips provided by the Respondent Firm to conferences for herself and her husband, and states that it has not identified any mitigating factors.

2. The Individual Respondent's principal contentions in the 326 Explanation and 326 Response

32. The Individual Respondent denies that she engaged in corrupt practices. The Individual Respondent asserts that she introduced her daughter to the two companies with the understanding that "this type of referral is widely used elsewhere in the world" and that the selection process for any position would be conducted properly based on qualifications. The Individual Respondent further asserts that, while she was a member of the bid evaluation committees for the first and second HRMIS tenders, evidence demonstrates that the bid evaluation committee for the first tender rejected the Respondent Firm's bid and that the bid evaluation committee for the second tender rejected the Respondent Firm's bid upon re-evaluation. In addition, the Individual Respondent argues that her role and weight in the decision-making processes for the first two tenders was "proportionally small" and that she could not have influenced decisions of the committees. Finally, the Individual Respondent

asserts that she was not a member of the bid evaluation committees for the third HRMIS tender or for the Budgeting System tender, and that she therefore had no role in those evaluations.

33. The Individual Respondent disputes INT's allegation that aggravation is warranted for her receipt of all-expense-paid trips to conferences provided by the Respondent Firm. She submits that mitigation is warranted for voluntary corrective actions taken and cooperation in the investigation. In addition, the Individual Respondent asserts that she will resign from her position with the Project.

3. INT's principal contentions in the 326 Reply

34. INT argues that the Individual Respondent has not provided any evidence that would support a finding that she did not engage in the corrupt practices alleged. INT asserts that by writing to the Respondent Firm and the Second Bidder with requests to "consider" her daughter for a position, the Individual Respondent solicited a thing of value. INT further asserts that the Individual Respondent received a thing of value when the Respondent Firm hired her daughter. According to INT, the Individual Respondent was in a position to influence the procurement processes for the Contracts, and there is sufficient evidence to show that the Respondent Firm hired the Individual Respondent's daughter to win the Individual Respondent's "benevolence."

35. INT contests the Individual Respondent's argument that aggravation is not warranted for her receipt of all-expense-paid trips to conferences from the Respondent Firm. In addition, INT submits that the EO has adequately taken the existing mitigating factors into account in the recommended sanction.

4. Absence of supplemental submissions in Sanctions Case No. 326

36. As noted above, 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 in accordance with Section 5.01(c) of the Sanctions Procedures. The Individual Respondent declined to file a supplemental response pursuant to the Sanctions Board Chair's determination. Accordingly, INT was not invited to submit a supplemental reply in Sanctions Case No. 326.

**C. Presentations at the Joint Hearing**

37. At the hearing, the Sanctions Board first invited INT to address the basis for jurisdiction in Sanctions Case No. 326. The Sanctions Board asked INT to clarify, among other issues, its rationale for asserting that Procurement Guidelines, as opposed to Consultant Guidelines, provide the basis for jurisdiction against the Individual Respondent, a public official employed pursuant to a Bank-financed consultancy contract. INT submitted that the Individual Respondent is subject to sanctions pursuant to the relevant Procurement Guidelines because the sanctionable misconduct occurred within the context of procurement processes governed by the Procurement Guidelines.

38. In its presentation, INT reiterated its allegations that the Individual Respondent used her position as project manager to solicit employment for her daughter, following which the

Respondent Firm employed the daughter. INT argued that the record in both Cases shows a link between the corrupt hiring of the Individual Respondent's daughter and the procurement processes for the Contracts, and that evidence demonstrates that the Respondent Firm intended to influence the Individual Respondent because it knew that she had extensive decision-making authority over the Contracts. INT also argued that in soliciting and obtaining employment for her daughter, the Individual Respondent intended to influence both herself and other public officials. INT reiterated its arguments regarding applicable sanctioning factors in the Cases, and agreed that additional mitigation is warranted for the Respondent Firm because it completed work under the Budgeting System Contract without charge.

39. The Respondent Firm reiterated its arguments regarding the conduct of INT's investigation, and disputed INT's allegations of corrupt practices. The Respondent Firm argued that there is no evidence that it acted with corrupt intent, asserting that the record shows that it hired the Individual Respondent's daughter through a routine and legitimate hiring process based on her credentials. The Respondent Firm additionally argued that the timing of the events in question demonstrates that the hiring of the Individual Respondent's daughter did not occur during the procurement processes for the Contracts, as there was no open tender at the time of the internship offer or the full-time position offer. The Respondent Firm also asserted that if the Sanctions Board finds it liable for corrupt practices, the appropriate sanction would be a letter of reprimand because the record supports the application of significant mitigation.

#### **D. INT's Additional Material**

40. Following the hearing, the Sanctions Board invited INT to further clarify the factual and legal basis for jurisdiction in Sanctions Case No. 326. In the Additional Material filed pursuant to the Sanctions Board's invitation, INT provides evidence that the Individual Respondent's Consultant Contract was in effect during the relevant period in the Cases, and states that "if Consultant Guidelines are to be considered to apply to [the Individual Respondent's] contract, it would be the [May] 2004 Consultant Guidelines." INT then asserts that, while the May 2004 Consultant Guidelines apply to the Individual Respondent's Consultant Contract, the Bank is of the view that the definitions of sanctionable practices from the January 1999 and the May 2004 Procurement Guidelines apply in Sanctions Case No. 326 "as quasi *lex specialis* because [the Individual Respondent's] activity is focused on the procurement process."

41. The Sanctions Board Chair invited the Individual Respondent to comment on INT's Additional Material. The Individual Respondent did not respond to the Sanctions Board Chair's invitation.

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

42. The Sanctions Board will first address the question of jurisdiction in Sanctions Case No. 326, and then consider procedural and evidentiary matters raised in the course of the sanctions proceedings. The Sanctions Board will next consider whether it is more likely than not that the Respondent Firm and/or the Individual Respondent engaged in the alleged corrupt practices. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on either of the Respondents.

**A. Jurisdiction in Sanctions Case No. 326**

43. As noted above, INT submits that the Bank is of the view that the definitions of sanctionable practices from the January 1999 and the May 2004 Procurement Guidelines apply in Sanctions Case No. 326 “as quasi *lex specialis* because [the Individual Respondent’s] activity is focused on the procurement process.” Yet the text of the Procurement Guidelines refers to firms or individuals that engage in sanctionable practices in competing for or executing Bank-financed contracts for the procurement of goods, works, and non-consulting services – whereas the Individual Respondent neither competed for nor executed a procurement contract. Accordingly, the Sanctions Board is not satisfied that the Procurement Guidelines would provide a basis for proceeding against the Individual Respondent in Sanctions Case No. 326.

44. As also noted above, however, INT’s Additional Material included evidence that the Individual Respondent served under her Bank-financed Consultant Contract as project manager for the Project during the period of the alleged misconduct. While the Individual Respondent was invited to respond to INT’s Additional Material, she did not do so. On the basis of the record as constituted, the Sanctions Board concludes that there is a sufficient basis for reviewing INT’s allegations in Sanctions Case No. 326 under the May 2002 Consultant Guidelines, which governed the Project’s selection and employment of consulting services pursuant to the development credit agreement for the Project. It may be noted that there are no substantive differences between the definitions of “corrupt practice” in the May 2002 Consultant Guidelines, as the Sanctions Board shall apply to the Individual Respondent, and the January 1999 and May 2004 Procurement Guidelines, which INT had asserted should apply.<sup>9</sup>

45. Separately, the Sanctions Board notes that INT’s allegation that the Individual Respondent engaged in sanctionable misconduct in her role as a “public official” is not inconsistent with the Bank’s general policy that “government officials” should not be sanctioned when acting in their official capacity.<sup>10</sup> Consistent with Section 1.02(b)(iii) of the Sanctions Procedures, the Sanctions Board takes into account the view of the World Bank’s Legal Vice Presidency (“LEG”) that the term “public official” bears a meaning within the context of the Bank’s sanctions framework that is not equivalent to the term “government official” for purposes of the general policy excluding government officials from sanctions. An individual may therefore be subject to sanctions as a public official provided that it is determined, as a factual matter, that the individual was not also a government official. As suggested by LEG, relevant factors in determining whether an individual is a government official who is excluded from sanctions may include employment status, eligibility to be hired as a consultant in Bank-financed projects, and liability to criminal prosecution under national laws and codes of ethics. In the present case, there is no indication in the record that the Individual Respondent, who served as a Bank-financed consultant and stated that she was not a

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<sup>9</sup> As noted in Paragraph 40, INT had also asserted that, “if Consultant Guidelines are to be considered to apply to [the Individual Respondent’s] contract, it would be the [May] 2004 Consultant Guidelines.” However, in support of its assertion, INT references a different project for which the Individual Respondent also served as project manager, rather than the Project pursuant to which the Contracts were tendered.

<sup>10</sup> See The World Bank Group’s Sanctions Regime: Information Note (November 2011) at pp. 19-20, available at: <http://go.worldbank.org/HX66HN8060>.

civil servant or paid by the government during the relevant period, was a government official during the time of the alleged misconduct.

**B. Procedural and Evidentiary Matters**

1. INT's and the Respondent Firm's requests to withhold and/or redact certain parts of the record in Sanctions Case No. 283

46. Because the Cases involve related accusations, facts, and matters, the Sanctions Board joined the Cases and approved the distribution of materials relating to each of the Cases to the respondent in the other case, in accordance with Section 5.04(b) of the Sanctions Procedures. In addition, the Sanctions Board invited the parties to file submissions addressing the sensitive nature of any specific materials that should not be distributed. In response to the Sanctions Board's invitation, the Respondent Firm requested that certain parts of the record in Sanctions Case No. 283 be withheld from the Individual Respondent and that other parts be redacted prior to disclosure. INT requested that certain exhibits attached to the 283 SAE be withheld or alternatively be redacted prior to distribution to the Individual Respondent. The Individual Respondent declined to address this evidentiary matter. Pending the Sanctions Board's determination of the requests made by INT and the Respondent, the parts of the record identified in these parties' submissions were provisionally excluded from the initial distribution of materials between the Cases.

47. Pursuant to Section 5.04(b) of the Sanctions Procedures, the Sanctions Board has discretion in determining whether to distribute materials in related cases, but must consider the standard for withholding sensitive materials as set forth in Section 5.04(c), "among other factors." Where a party requests a restriction upon the distribution of specified materials under Section 5.04(b), the Sanctions Board also considers, as "other factors," whether the materials are relevant to the other case and whether disclosure would assist the Sanctions Board's review of either of the cases. In its review of INT's and the Respondent Firm's submissions and related statements during the joint hearing, the Sanctions Board considered this standard and determined that none of the documents provisionally excluded from distribution to the Individual Respondent based on objections from INT and/or the Respondent Firm should be made available to the Individual Respondent. The Sanctions Board also noted that certain challenged materials had already been disclosed to the Individual Respondent by INT through the 326 SAE or were not part of the record in Sanctions Case No. 283 – and thus were not within the scope of materials that the Sanctions Board could distribute. The primary reason for the Sanctions Board's determination was that the challenged materials that could have been distributed were not relevant to Sanctions Case No. 326 and/or the disclosure of such materials to the Individual Respondent would not assist the Sanctions Board's review of the Cases.

2. INT's investigation in Sanctions Case No. 283

a. Adequacy of INT's investigation

48. The Respondent Firm submits that INT's allegations are the product of an inadequate investigation, arguing in particular that INT failed to interview the Respondent Firm's VP for

Products, “the key witness in this case,” despite having been informed about the role of the VP for Products in hiring the Individual Respondent’s daughter. INT asserts that it is not clear what prejudice could have been caused to the Respondent Firm due to the fact that INT did not interview the Respondent Firm’s VP for Products.

49. In accordance with Section 7.01 of the Sanctions Procedures, the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered. The Sanctions Board has previously held that “[s]uch analysis may include consideration of the manner or timing of a party’s efforts to seek or obtain certain evidence, or failure to seek or obtain other evidence.”<sup>11</sup> The record reveals that the VP for Products was in charge of the hiring process for the internship program through which the Individual Respondent’s daughter was hired as a paid intern, and that he may therefore have been expected to have relevant information regarding the Respondent Firm’s process and motivation in hiring the daughter. It is undisputed that INT did not seek or obtain an interview with the VP for Products. Despite INT’s failure to interview this witness, the Sanctions Board finds the totality of the evidence sufficient to determine the Respondent Firm’s potential liability. The sanctions process as designed permits respondents to submit exculpatory evidence that may not have been gathered by INT in its investigation. In this case, the Respondent Firm submitted a signed declaration from the VP for Products, which provides a detailed account of the events leading to the hiring of the Individual Respondent’s daughter and does not contain any material contradiction of the evidence that was submitted by INT. The Sanctions Board has fully taken into account this signed declaration. Moreover, the extensive record in this case includes, among other evidence, contemporaneous email correspondence relating to the hiring and employment of the Individual Respondent’s daughter; INT’s ROIs with the daughter and three employees of the Respondent Firm; and the signed declarations of seven other employees of the Respondent Firm. The Sanctions Board thus finds no unfairness or fundamental procedural flaw in this respect that affected the Respondent Firm’s ability to mount a meaningful response to INT’s allegations.

b. INT’s interview of the Respondent Firm’s CFO and VP of Sales

50. The Respondent Firm asserts that INT had represented that the purpose of the interview with the Respondent Firm’s CFO and VP of Sales would be to discuss the Respondent Firm’s allegations of corruption against one of its subcontractors in another region, but that during the interview, INT instead focused on personnel matters relating to the Individual Respondent’s daughter. INT responds that the main purpose of the meeting in question was to discuss the allegations of corruption against the Respondent Firm’s subcontractor, but that the parties also discussed the hiring of the Individual Respondent’s daughter. While the record shows that INT had represented to the Respondent Firm that the purpose of the interview would be to discuss allegations of corruption against the Respondent Firm’s subcontractor, INT did not act contrary to the Sanctions Procedures or any other aspect of the governing legal framework by not informing the Respondent Firm that it might also be questioned about other matters, including the hiring of the Individual Respondent’s daughter. Importantly, following the investigation and

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<sup>11</sup> Sanctions Board Decision No. 55 (2013) at para. 27.

upon receipt of the 283 Notice, the Respondent Firm had the opportunity to explain its conduct in response to INT's formal accusations against it. The Sanctions Board finds that the record does not support a valid procedural challenge to the proceedings in these circumstances.

51. The Respondent Firm additionally asserts that INT's ROI with the CFO and VP of Sales misrepresented the interviewees' statements. INT responds that its ROI is a faithful summary of the interview. To the extent that this ROI is ultimately relevant to an analysis of liability and/or sanctions in the Cases, the Sanctions Board takes into account that summary records of interview lack the intrinsic accuracy of verbatim transcripts, particularly where – as here – there is no indication that the interviewees were given the opportunity to review the summary to attest as to its basic accuracy.<sup>12</sup> In assessing the reliability of this ROI, the Sanctions Board also considers the competing evidence in the record, as submitted by the Respondent Firm, that may tend to contradict the accuracy of the ROI.

### **C. Evidence of Corrupt Practices Against the Respondent Firm**

52. In accordance with the definitions of corrupt practice under the January 1999 Procurement Guidelines and the May 2004 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent Firm (i) offered, gave, received, or solicited (directly or indirectly) any thing of value (ii) to influence the action of a public official in the procurement process or in contract execution.

#### **1. Offering or giving any thing of value (directly or indirectly)**

53. The first element of corrupt practices requires a showing that a respondent offered or gave a thing of value. The recipient of the thing of value under this first element of the definition need not be – though he/she may be – the public official who is the intended target of influence under the second element of corrupt practices,<sup>13</sup> as discussed below in Paragraphs 55-59. INT alleges that the Respondent Firm offered and gave a thing of value to both the Individual Respondent and her daughter by employing the daughter. The record reveals that the Individual Respondent emailed the Respondent Firm to request that the Respondent Firm “consider” her daughter for a position and attached her daughter's resume to that email. In the 283 Response, the Respondent Firm confirms that it employed the Individual Respondent's daughter as a paid intern from June 2008 to October 2008 and as a full-time employee from October 2008 until the daughter's resignation in January 2010. The Respondent Firm's confirmation is corroborated by contemporaneous evidence as well as declarations of the Respondent Firm's employees.

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<sup>12</sup> See, e.g., Sanctions Board Decision No. 50 (2012) at para. 40; Sanctions Board Decision No. 65 (2014) at para. 34.

<sup>13</sup> See Sanctions Board Decision No. 60 (2013) at para. 65; Sanctions Board Decision No. 72 (2014) at para. 43.

54. On the basis of this record, and consistent with past precedent,<sup>14</sup> the Sanctions Board finds that it is more likely than not that the Respondent Firm gave a thing of value to the Individual Respondent and her daughter as INT alleges. Because “offering” and “giving” are set out as alternative elements of corrupt practice under the applicable definitions,<sup>15</sup> the Sanctions Board declines to address INT’s separate allegation of an offer.

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

55. The second element of corrupt practice requires a showing that a respondent, in offering or giving a thing of value to another party under the first element, acted with a purpose to influence the action of a public official in the procurement process or in contract execution. INT alleges that the Respondent Firm hired the Individual Respondent’s daughter to influence the actions of the Individual Respondent, as a public official, in the procurement processes for the HRMIS and Budgeting System Contracts.

56. The record supports a finding that the Respondent Firm acted with intent to influence the Individual Respondent’s actions in the procurement processes for the Contracts when it hired her daughter. The record reveals that, prior to hiring the Individual Respondent’s daughter, employees of the Respondent Firm were aware that the Individual Respondent was in a position of authority over the Project and that she held influence with respect to the tender processes for the Contracts. For instance, the bidding documents for the Contracts identified the Individual Respondent as the “Project Manager” and instructed bidders to deliver their bids to her attention. Consistent with this instruction, the Respondent Firm’s bids for the second HRMIS tender and the Budgeting System tender were submitted to the attention of the Individual Respondent. Moreover, the record indicates, as INT asserts, that the Respondent Firm’s expectations of influencing the Individual Respondent were met when the Respondent Firm was recommended for the HRMIS Contract and was awarded the Budgeting System Contract. As the Sanctions Board has previously found, evidence that the desired influence actually materialized may bolster a showing of a respondent’s corrupt intent, although it is not necessary for a finding of a corrupt practice.<sup>16</sup>

57. In addition, the timing of the Respondent Firm’s hiring of the Individual Respondent’s daughter further supports the conclusion that the Respondent Firm acted with the required intent. The Individual Respondent emailed the Respondent Firm through the VP for Operations to solicit a position for her daughter approximately one week after the company had submitted its bid for the second HRMIS tender, at which time the bid was awaiting consideration by the bid evaluation committee for that tender. Approximately two weeks after the bid evaluation committee for the second HRMIS tender (the Individual Respondent was a member of that committee) recommended that the Respondent Firm be awarded the contract, the Respondent

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<sup>14</sup> See Sanctions Board Decision No. 66 (2014) at para. 24 (finding that the respondent’s predecessor gave a thing of value to a Bank staff member by acceding to the staff member’s request to hire his son).

<sup>15</sup> See Sanctions Board Decision No. 60 (2013) at para. 70 (considering the allegation of offering only with respect to those contracts for which the record contained no evidence of payments).

<sup>16</sup> See, e.g., Sanctions Board Decision No. 66 (2014) at para. 26.



Firm's VP for Operations forwarded the daughter's resume to the VP for Products – who was then opening the hiring process for the internship program – with a message identifying the candidate as the Individual Respondent's daughter and ending with "Happy interning!" The Respondent Firm interviewed the daughter about two months later and offered her a paid internship approximately a month and a half later in order that her work start at the same time as the other interns. Furthermore, approximately one week after the Respondent Firm submitted its bid for the Budgeting System Contract, the Respondent Firm's Director of Human Resources and the Individual Respondent's daughter corresponded regarding a full-time position for the daughter and her salary expectation. Soon after that exchange, the daughter agreed to the terms of the Respondent Firm's full-time employment offer. About two months after that agreement was reached, the bid evaluation committee for the Budgeting System Contract recommended that the Respondent Firm be awarded the contract.

58. The Sanctions Board does not accept the Respondent Firm's submission that the record demonstrates that the Respondent Firm's decision to hire the Individual Respondent's daughter was based on merit alone, and that the Respondent Firm therefore did not have the intent to influence the Individual Respondent. The Sanctions Board notes that the evidence of the Respondent Firm as to its hiring process is not contemporaneous evidence, but subsequent declarations of its representatives provided during the course of these sanctions proceedings. Moreover, while evidence showing that a prospective hire was clearly unqualified for employment might tend to support an inference of corrupt intent in hiring, evidence of the candidate's possible qualifications does not preclude or negate a finding of corrupt intent on the part of the employer. An employer may well have the intent to influence while, at the same time, recognize a candidate's personal qualifications.

59. Considering the totality of the evidence, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employment of the Individual Respondent's daughter was intended to influence the Individual Respondent's actions in the procurement processes for the Contracts. As the Sanctions Board has found all elements of corrupt practices proven under the January 1999 and May 2004 Procurement Guidelines, the Sanctions Board concludes that the record supports a finding of corrupt practices.

**D. Liability of the Respondent Firm for the Acts of Its Employees**

60. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.<sup>17</sup> Where a respondent entity has denied responsibility for the acts of its employees based on a rogue employee defense, the Sanctions Board has assessed any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.<sup>18</sup>

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

<sup>18</sup> Id.

61. In the present case, the parties raise no arguments as to the potential direct or vicarious liability of the Respondent Firm for acts performed by its employees. Additionally, the Respondent Firm does not present, and the record does not provide any basis for so doing, a rogue employee defense. The record supports a finding that the employees of the Respondent Firm hired the Individual Respondent's daughter in the course of and in accordance with the scope of their duties and with the purpose of serving the interests of the Respondent Firm. Thus, the Sanctions Board finds the Respondent Firm liable for corrupt practices.

**E. Evidence of Corrupt Practices Against the Individual Respondent**

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

1. Soliciting or receiving any thing of value

63. INT alleges that the Individual Respondent used her position as project manager to solicit a thing of value from the Respondent Firm and the Second Bidder and to receive a thing of value from the Respondent Firm. The record reveals that the Individual Respondent separately emailed the Respondent Firm and the Second Bidder on the same day to request that they consider her daughter for a position. The Individual Respondent identified herself in the signature lines of the emails as "Project Manager" and attached her daughter's resume to both emails. As noted earlier, following this email request, the Respondent Firm hired the Individual Respondent's daughter as a paid intern and subsequently as a full-time employee.

64. On the basis of this record, the Sanctions Board finds that the Individual Respondent solicited a thing of value from the Respondent Firm and the Second Bidder by requesting that the companies consider her daughter for employment, and that she received a thing of value, as an interested parent, when the Respondent Firm hired her daughter.<sup>19</sup>

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

65. INT submits that the Individual Respondent solicited and received a thing of value in order to influence the action of public officials, including herself and other public officials, in the procurement processes for the Contracts. It is clear from the definition of "corrupt practice" under the May 2002 Consultant Guidelines that what must be established is that the Individual Respondent received or solicited a thing of value "to influence the action of a public official in the selection process or in contract execution." Here, the phrase "contract execution" must refer in the first place to the execution of the relevant consultant contract governed by the May 2002 Consultant Guidelines. The question then is whether the Individual Respondent solicited and received employment for her daughter "to influence" a public official in the execution of her Consultant Contract, pursuant to which she managed the procurement processes for the HRMIS

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<sup>19</sup> See Sanctions Board Decision No. 66 (2014) at para. 24.

and Budgeting System Contracts. As the Individual Respondent was herself a public official, if it is shown that she solicited or received a thing of value to influence her own behavior in the execution of her Consultant Contract, such conduct would fall within the definition of “corrupt practice” under the May 2002 Consultant Guidelines. As will become clear from the following analysis, the Sanctions Board does not need to decide here whether the Individual Respondent’s alleged solicitation or receipt of a thing of value to influence the behavior of other public officials would also fall within the definition of “corrupt practice” under the May 2002 Consultant Guidelines.

66. A second issue is what evidence will be required to determine whether a public official has solicited or received a thing of value “to influence” himself or herself in contract execution. Evidence that a public official solicited or received a thing of value from a third party potentially interested in a procurement or selection process in respect of which the public official played a significant role pursuant to a Bank-financed consultant contract may support the inference that the public official solicited or received the thing of value in order to influence his or her contract execution. That this is a reasonable inference may be illustrated by observing that a third party that is interested in a procurement or selection process and which has been approached by a public official involved in the procurement or selection process will have a reasonable perception that if it refuses the solicitation, the public official may be negatively influenced toward any potential bids or proposals from the third party. This approach is also consistent with the Sanctions Board’s precedent involving alleged corrupt practices by respondent firms. As the Sanctions Board has previously held, a finding of a respondent firm’s intent to influence the actions of a public official in the selection process or in contract execution may rest on evidence that the public official who solicited or accepted a thing of value was in a position of authority over the contract at issue and that the respondent firm’s desired influence actually materialized.<sup>20</sup> The same reasoning may apply where, as here, the respondent in question is the public official.

67. In the present case, the record indicates that the Individual Respondent used her position of authority over the procurement processes for the Contracts to solicit and/or receive employment for her daughter from firms interested in the Contracts, and that she provided favorable treatment to the Respondent Firm – the firm that employed her daughter and whose expectations of influencing the Individual Respondent were met as discussed above in Paragraph 56. The Individual Respondent emailed the Respondent Firm and the Second Bidder to solicit a position for her daughter approximately one week after the companies submitted their respective bids for the second HRMIS tender, at which time the bids were pending consideration by the bid evaluation committee for that tender. The bid evaluation committee, on which the Individual Respondent sat as a member, thereafter recommended that the Respondent Firm be awarded the HRMIS Contract. Notably, the World Bank determined that the Respondent Firm’s bid was not technically responsive and therefore declined to issue a “no

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<sup>20</sup> See Sanctions Board Decision No. 66 (2014) at para. 26 (finding that the respondent’s predecessor, a firm executing a consultant contract, had acted with intent to influence a public official’s actions where the record revealed that representatives of the respondent’s predecessor had reason to believe that the public official had influence with respect to the contract’s execution and that the expectations of the respondent’s predecessor in terms of influencing the public official were met).

objection” to the bid evaluation committee’s contract award recommendation. In addition, the Individual Respondent chaired the public opening of bids for the Budgeting System Contract, which was eventually awarded to the Respondent Firm after the Individual Respondent’s daughter had secured a full-time position there.

68. The record also reveals the Individual Respondent’s knowledge of potential impropriety in the Respondent Firm’s employment of her daughter. Contemporaneous emails demonstrate that, based on her awareness of the conflict of interest, the Individual Respondent took affirmative steps to limit disclosure of her daughter’s employment relationship with the Respondent Firm. For instance, a few days after her daughter agreed to the terms of the Respondent Firm’s full-time employment offer, the Individual Respondent emailed the Respondent Firm’s VP for Products and wrote that “[b]ecause of close b[u]siness relations between [the Respondent Firm] and [the Ministry of Finance] and my projects I am hesitant to contact you and your people in relation to my girl. And I wish [the Ministry of Finance’s] people and even [the Respondent Firm’s] people do not know about my girl. Otherwise it may lead to conflict of interest.” The Sanctions Board finds that the Individual Respondent’s obvious awareness of the potential conflict, and her attempts to hide it, provide additional evidence for a finding of corrupt intent.

69. Considering the totality of the evidence, including evidence of the Individual Respondent’s position of authority over the Project and the timing of events as discussed above in Paragraphs 56-57, the Sanctions Board finds that it is more likely than not that when the Individual Respondent solicited and received employment for her daughter, she acted with intent to influence her own actions in the execution of her Consultant Contract. Having found all elements necessary to establish a corrupt practice under the May 2002 Consultant Guidelines, the Sanctions Board concludes that it is more likely than not that the Individual Respondent engaged in corrupt practices.

70. In light of the above, the Sanctions Board must determine an appropriate sanction for each of the Respondents.

## **F. Sanctioning Analysis**

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

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

72. As reflected in Sanctions Board precedents, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an

appropriate sanction.<sup>21</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>22</sup>

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

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

2. Factors applicable in the Cases

a. Severity of the misconduct

75. Section 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a central role in the misconduct and management’s role in the misconduct as examples of severity.

76. *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 that aggravation is warranted for the Individual Respondent’s central role in the corrupt practices, as the record reveals that she initiated the misconduct in the Cases by soliciting employment for her daughter from both the Respondent Firm and the Second Bidder soon after they had submitted their bids for the second HRMIS tender, at which time the bids were pending consideration by the bid evaluation committee of which she was a member.

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

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<sup>21</sup> Sanctions Board Decision No. 40 (2010) at para. 28.

<sup>22</sup> Sanctions Board Decision No. 44 (2011) at para. 56.

entity's management personally participated in a corrupt arrangement.<sup>23</sup> Here, the record reveals that the Respondent Firm's Chief Executive Officer ("CEO") shared his views with the Director of Human Resources and VP for Operations on issues relating to the Respondent Firm's employment of the Individual Respondent's daughter and compensation in connection with the daughter's transition to full-time employment, and that the daughter's employment contract was submitted to the CEO for his approval. The record also indicates that the CEO was aware, during this correspondence, of the daughter's relationship to the Individual Respondent. The Sanctions Board finds that aggravation is warranted for the Respondent Firm in these circumstances.

b. Magnitude of harm

78. Section 9.02(b) of the Sanctions Procedures requires consideration of "the magnitude of the harm caused by the misconduct" in determining a sanction. Section IV.B of the Sanctioning Guidelines identifies harm to public safety/welfare and harm to the project as examples of such harm. INT submits that harm to the Project is an aggravating factor for the Respondent Firm, asserting that the Budgeting System Contract experienced problems and significant delays due to the Respondent Firm's lack of a clear understanding of the design of the system and inadequate personnel. Yet the record does not indicate that the problems and delays were "caused by the misconduct," i.e., the corrupt hiring of the Individual Respondent's daughter. Rather, the record reflects that there were various reasons for the lack of progress with the Budgeting System Contract, including issues relating to project supervision and the initial design of the system. Accordingly, the Sanctions Board declines to apply aggravation on this ground.

c. Voluntary corrective action

79. Section 9.02(e) of the Sanctions Procedures provides for mitigation where the sanctioned party took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies several examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of those actions to be considered as potential indicia of the respondent's genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.<sup>24</sup>

80. *Effective compliance program:* Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record reveals the "[e]stablishment or improvement, and implementation of a corporate compliance program" by a respondent. INT submits that mitigation is warranted for the Respondent Firm's steps to put in place a compliance program. According to the Respondent Firm, it has significantly enhanced its compliance program, which

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<sup>23</sup> See, e.g., Sanctions Board Decision No. 50 (2012) at para. 61 (applying aggravation based on the personal involvement of the respondent's director and managing director in the corrupt payment scheme); Sanctions Board Decision No. 66 (2014) at para. 36 (applying aggravation for the direct involvement of the director of the respondent's predecessor where the record reflected that the director received and subsequently acceded to a Bank staff member's solicitation of employment for his son).

<sup>24</sup> See, e.g., Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 63 (2014) at para. 104.

was designed with advice and support from compliance experts and incorporates best practices from a variety of sources, including international financial institutions, U.S. enforcement actions under the Foreign Corrupt Practices Act, and Transparency International's Business Principles for Countering Bribery. The Respondent Firm presents documentary evidence to support its assertions, including a copy of its anti-corruption policy (which includes sections on bribery and corruption, fraud, the public sector, and international financial institutions), a document that describes the main responsibilities and reporting lines for its Chief Compliance Officer (indicating a direct reporting line to the CEO and Board of Directors), and its due diligence policy (which provides a detailed description of its due diligence framework and attaches form background questionnaires for potential business partners).

81. The Sanctions Board notes that the Respondent Firm's asserted compliance measures appear to address the type of misconduct at issue in this case and many of the principles set out in the World Bank Group's Integrity Compliance Guidelines.<sup>25</sup> Accordingly, based on the record in these proceedings, the Sanctions Board finds that the asserted voluntary corrective actions, as supported by written policies and implementation measures, warrant mitigation.

82. *Restitution or financial remedy:* Section V.B.4 of the Sanctioning Guidelines states that mitigation may be appropriate "[w]hen the respondent voluntarily addresses any inadequacies in contract implementation or returns funds obtained through the misconduct." The Respondent Firm asserts that mitigation is warranted because it voluntarily completed work under the Budgeting System Contract without charge. At the hearing, INT agreed that mitigation is justified for the Respondent Firm under this factor. Consistent with the Respondent Firm's assertion, the record includes an agreement between the Respondent Firm and Mongolia's Ministry of Finance, which provides that the Respondent Firm shall complete the Budgeting System Contract and that the balance of the contract price, approximately one half of total contract price, shall be waived in its entirety by the Respondent Firm. The Sanctions Board finds that mitigation is warranted in these circumstances.

83. *Other voluntary corrective actions asserted by the Individual Respondent:* The Individual Respondent submits that mitigation is warranted for the voluntary corrective action of "removing/resigning my daughter from [the Respondent Firm] in 2009 after one year contract when I understood the potential conflict of interest." However, the Individual Respondent provides no details or corroborating evidence to show that she caused the daughter to leave her employment with the Respondent Firm. Moreover, the record reveals that the Individual Respondent was aware of the apparent conflict of interest by September 2008 when she requested that the Respondent Firm limit disclosure of its employment relationship with her daughter, yet the daughter continued her employment with the Respondent Firm for over a year after that. In the absence of evidence supporting the Individual Respondent's factual claim, there is no need for the Sanctions Board to determine whether the Individual Respondent's asserted corrective action, even if proven, would have been sufficient to justify mitigation.

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<sup>25</sup> See generally Summary of World Bank Group Integrity Compliance Guidelines, available at: [http://siteresources.worldbank.org/INTDOII/Resources/IntegrityComplianceGuidelines\\_2\\_1\\_11web.pdf](http://siteresources.worldbank.org/INTDOII/Resources/IntegrityComplianceGuidelines_2_1_11web.pdf).

84. The Individual Respondent also appears to seek mitigation on the ground that she resigned from her position with the Project as of September 8, 2014. At the time of the asserted resignation, the record demonstrates that approximately six years had elapsed since the Individual Respondent's awareness of the apparent conflict of interest, and approximately three years had elapsed since the Individual Respondent's awareness of INT's investigation into the matter. The Sanctions Board finds that mitigation is not justified in these circumstances.

d. Cooperation

85. 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.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance with INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance" as well as "the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of [the] assistance."

86. *Assistance and/or ongoing cooperation:* The Sanctions Board has previously accorded varying levels of mitigation in cases where a respondent's managers met with INT on several occasions and provided relevant information and documentation;<sup>26</sup> corresponded with INT and made relevant personnel available for interviews;<sup>27</sup> or engaged in more limited forms of cooperation, e.g., by replying to INT's show-cause letter.<sup>28</sup> The Respondent Firm submits that mitigation is warranted under this factor because it made available all of its employees and officers for interviews and provided documents to INT. INT agrees that mitigation is justified because the Respondent Firm provided INT with documents and "cooperated extensively" throughout INT's investigation. The record reveals that INT interviewed several representatives of the Respondent Firm, and that the Respondent Firm provided extensive internal documentary evidence to INT, including relevant contemporaneous email correspondence relating to the hiring and employment of the Individual Respondent's daughter. On the basis of this record, the Sanctions Board finds that mitigation is justified for the Respondent Firm's assistance with INT's investigation.

87. The Individual Respondent also seeks mitigation in respect of this factor, asserting that she provided "documents and verbal answers as requested by INT." INT responds that the EO has adequately taken the existing mitigating factors into account in her recommendation for a sanction. The record reveals that the Individual Respondent responded to INT's show-cause letter and to email inquiries from INT investigators. The Sanctions Board finds that some mitigation is warranted for the Individual Respondent in these circumstances.

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<sup>26</sup> Sanctions Board Decision No. 53 (2012) at para. 58.

<sup>27</sup> Sanctions Board Decision No. 56 (2013) at para. 73.

<sup>28</sup> Sanctions Board Decision No. 37 (2010) at para. 45; Sanctions Board Decision No. 51 (2012) at para. 90.



e. Period of temporary suspension

88. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the Respondent Firm has been suspended since January 29, 2013, pursuant to Article II of the Sanctions Procedures, which provides for early temporary suspension by the EO prior to sanctions proceedings; and that the Individual Respondent has been temporarily suspended since the EO's issuance of the 326 Notice on June 9, 2014.

f. Other considerations

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

90. *Passage of time:* The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.<sup>29</sup> Such passage of time may affect the weight that the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents.<sup>30</sup> At the time of the EO's issuance of the 283 Notice in February 2014, approximately five years and nine months had elapsed since the Respondent Firm initially hired the Individual Respondent's daughter as a paid intern in May 2008; and approximately five years and eight months had elapsed since the Bank first became aware in June 2008 of potential corrupt practices involving the Respondent Firm and the Individual Respondent, though not the specific corrupt practices alleged in this case. In addition, at the time of the EO's issuance of the 326 Notice in June 2014, approximately six years and six months had elapsed since the Individual Respondent requested in December 2007 that the Respondent Firm and the Second Bidder consider her daughter for a position; and approximately six years had elapsed since the Bank first became aware in June 2008 of potential corrupt practices involving the Respondent Firm and the Individual Respondent. In these circumstances, the Sanctions Board finds that mitigation is warranted for both of the Respondents with respect to this factor.

91. *The Respondent Firm's contributions to the work of the World Bank:* The Respondent Firm submits that it has made significant contributions to Bank-funded projects around the world and has materially assisted the Bank in fighting corruption. Consistent with past precedent declining to grant mitigating credit for respondents' claimed record of general

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<sup>29</sup> See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where sanctions proceedings were initiated more than five (and up to nine) years after the misconduct, and more than five (and up to eight) years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 68 (2014) at para. 47 (applying mitigation where the Notice of Sanctions Proceedings was issued more than four and a half years after the sanctionable practices had occurred and more than four years after the Bank had become aware of the potential misconduct).

<sup>30</sup> See Sanctions Board Decision No. 50 (2012) at para. 71.

performance and contributions to development work, the Sanctions Board finds no mitigation warranted on these grounds.<sup>31</sup>

92. *The Individual Respondent's receipt of trips to conferences sponsored by the Respondent Firm:* INT alleges that the Respondent Firm provided, and the Individual Respondent received, all-expense-paid trips for the Individual Respondent and her spouse to attend conferences, and asserts that such conduct is improper and should be considered an aggravating factor for both of the Respondents. However, INT concedes that it has not established a link between the trips and the Contracts or the specific allegations of misconduct in this case. Accordingly, the Sanctions Board declines to apply aggravation on this basis.

93. *Constructive cross-debarment caused by World Bank personnel's alleged confidentiality breaches:* The Respondent Firm asserts that mitigation is justified because, according to the Respondent Firm, Bank personnel have repeatedly violated the Sanctions Procedures by disclosing the temporary suspension publicly, including in particular to the Respondent Firm's "non-Bank customers," which the Respondent Firm asserts has led to a "constructive cross-debarment." As noted earlier, Section 9.02(i) of the Sanctions Procedures expressly limits the Sanctions Board's sanctioning analysis to considerations reasonably relevant to a respondent's own culpability or responsibility for the sanctionable practice. As the Respondent Firm fails to establish the relevance of its arguments under this framework, and considering that Section 13.06 of the Sanctions Procedures ("Confidentiality") does not provide for mitigation or other consequences for breaches of confidentiality by the World Bank, the Sanctions Board declines to apply mitigation on this basis for the Respondent Firm. However, as a general matter, the Sanctions Board reminds all parties to these Cases, including in particular INT, of the paramount importance of maintaining the confidentiality of case-related information as required under the sanctions framework in order to ensure the integrity of sanctions proceedings.

**G. Determination of Liability and Appropriate Sanctions for the Respondents**

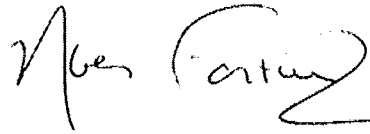
94. Considering the full record and all the factors discussed above, the Sanctions Board:

- i. issues a formal letter of private reprimand to the Respondent Firm on the date of this decision, without prejudice to the Respondent Firm's eligibility to participate in Bank-Financed Projects. This sanction is imposed on the Respondent Firm for corrupt practices as defined in Paragraph 1.15(a)(i) of the January 1999 Procurement Guidelines and Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines; and
- ii. determines that the Individual Respondent, together with any entity that is an Affiliate that she directly or indirectly controls, shall be, and hereby declares that she 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,

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<sup>31</sup> See, e.g., Sanctions Board Decision No. 48 (2012) at para. 50; Sanctions Board Decision No. 60 (2013) at para. 139; Sanctions Board Decision No. 72 (2014) at para. 68.

consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, for a period of two (2) years. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Individual Respondent for corrupt practices as defined in Paragraph 1.25(a)(i) of the May 2002 Consultant Guidelines. The Bank will provide notice of this declaration of ineligibility to the other multilateral development banks (“MDBs”) that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the “Cross-Debarment Agreement”) so that they may determine whether to enforce the declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.<sup>32</sup>



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L. Yves Fortier (Chair)

On behalf of the  
World Bank Group Sanctions Board

L. Yves Fortier  
Hassane Cissé  
Ellen Gracie Northfleet  
Catherine O'Regan  
Denis Robitaille  
J. James Spinner

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<sup>32</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>).