THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: September 29, 2015

Sanctions Board Decision No. 81
(Sanctions Case No. 215)

MDTF Grant No. TF096654
Republic of Benin

Decision of the World Bank Group[1] Sanctions Board finding insufficient evidence to conclude that it is more likely than not that the two respondent entities (respectively, the "Respondent Firm" and the "Respondent Partner," together the "Respondent Entities") and the individual respondent (the director of the Respondent Firm at the time of the alleged misconduct, hereinafter referred to as the "Individual Respondent") in Sanctions Case No. 215 engaged in the alleged fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board held a plenary session on December 4, 2014, to review this case. The Sanctions Board was composed of L. Yves Fortier (Chair), Ellen Gracie Northfleet, Catherine O'Regan, Denis Robitaille, and J. James Spinner.

2. A hearing was held on December 4, 2014, in accordance with Article VI of the Sanctions Procedures following requests from all respondents in Sanctions Case No. 215 (the "Respondents") and the World Bank Group's Integrity Vice Presidency ("INT"). INT participated in the hearing through its representatives attending in person and via videoconference. The Individual Respondent, representatives of the Respondent Entities, and outside counsel for the Respondents also attended in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")[2] to the Respondents on August 23, 2013 (the "Notice"), as revised on January 15, 2014, appending the Statement of

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[1] 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.

[2] 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.

Accusations and Evidence (the "SAE") presented to the EO by INT, dated March 28, 2013;

ii. Explanations submitted by each of the Respondents to the EO on December 16, 2013 (collectively referred to as the "Explanations");

iii. Responses submitted by each of the Respondents to the Secretary to the Sanctions Board on April 14, 2014 (collectively referred to as the "Responses"), including a set of exhibits common to all of the Responses (the "Response Exhibits");

iv. Replies submitted by INT to the Secretary to the Sanctions Board on June 23, 2014, with respect to each of the Responses (collectively referred to as the "Replies"); and

v. Post-Hearing Submission submitted by the Respondents to the Secretary to the Sanctions Board on December 11, 2014.

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, together with any entity that is an Affiliate[3] directly or indirectly controlled by any of the Respondents. The EO initially recommended a minimum period of ineligibility of three (3) years for each of the Respondents, after which period (a) the Respondent Entities may each 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 (the "ICO") that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank; and (b) the Individual Respondent may be released from ineligibility only if he has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the ICO that (i) he has taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned, (ii) he 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 him has adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

5. Upon review of the Respondents' Explanations, the EO revised the recommended minimum period of ineligibility to two (2) years for each of the Respondents, and changed the basis of her decision to hold the Respondent Partner liable for the alleged sanctionable practice.

6. Effective August 23, 2013, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended each of the Respondents, together with any entity that is an Affiliate

[3] 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).

directly or indirectly controlled by any of the Respondents, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[4] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[5] 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 collectively as "Bank-Financed Projects")[6] pending the final outcome of the sanctions proceedings. The Notice specified that the temporary suspensions would apply across the operations of the World Bank Group.

II. GENERAL BACKGROUND

7. This case arises in the context of the Benin Health System Performance Project (the "Project"), which aims to increase coverage of quality maternal and neonatal health care services in targeted areas, and to strengthen the institutional capacity of the Benin Ministry of Health. On May 25, 2010, IDA, acting as the administrator of the Multi-Donor Trust Fund for Health Results Innovation, and the Republic of Benin entered into a grant agreement for US$11 million to finance certain activities under the Project (the "Grant Agreement"). In September 2010, the agency implementing the Project (the "PIU") issued a request for proposals (the "RFP") for the recruitment of a "technical control assistant for results-based financing" under the Project (the "Contract"). The RFP was issued to six entities, including a consortium composed of the Respondent Firm, the Respondent Partner (which, according to the Respondents, acquired the Respondent Firm in 1997), and two entities that were not named as respondents in this case (the "Consortium").

8. The Consortium's proposal for the Contract identified a proposed team leader (the "Team Leader") and included the Team Leader's curriculum vitae. After the Consortium had been ranked first in the evaluation of technical and financial proposals, representatives of the PIU and the Consortium met on February 1, 2011, to negotiate the terms of the Contract (the "Negotiation Meeting"). The minutes of the Negotiation Meeting (the "Minutes") were signed by all meeting participants, including the Individual Respondent and another individual identified in the Minutes as the regional coordinator for the Respondent Entities (the "Regional

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[4] 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.

[5] 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.

[6] 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.

Coordinator"), who was not named as a respondent in these proceedings. INT alleges that the Respondents misrepresented the Team Leader's availability in order to influence the selection process for the Contract. Specifically, INT asserts that the Minutes certified the Team Leader's availability for the Contract despite the fact that the Team Leader had previously informed the Respondents that he was no longer available for the Contract. As the Respondents note, the Contract was ultimately awarded to another company.

III. APPLICABLE STANDARDS OF REVIEW

9. 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.

10. 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 the respondent's conduct did not amount to a sanctionable practice.

11. The Grant Agreement provides, by reference to a related financing agreement, that the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised in October 2006) shall govern the procurement of consultant services for the activities financed under the Grant Agreement. However, the RFP defined sanctionable practices in accordance with the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (published May 2004) (the "May 2004 Consultant Guidelines"). 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.[7] As a result, the allegations in this case are governed by the May 2004 Consultant Guidelines.

12. Paragraph 1.22(a)(ii) of the May 2004 Consultant Guidelines defines the term "fraudulent practice" as "a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract." This definition does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from

[7] See Sanctions Board Decision No. 59 (2013) at para. 11.

October 2006 onward.[8] 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.[9] Accordingly, the Sanctions Board has held that the "knowing or reckless" standard may be implied under the pre-October 2006 definitions.[10]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

13. INT asserts that it is more likely than not that the Respondents engaged in a fraudulent practice by making a knowing or reckless misrepresentation of fact in the Minutes. Specifically, INT argues that the Minutes certified the Team Leader's availability for the Contract and were signed by the Individual Respondent despite the fact that the Team Leader had previously informed the Respondents that he was not available for the Contract. INT asserts that the Respondents made the misrepresentation in order to avoid jeopardizing the negotiations and therefore to influence the selection process for the Contract. According to INT, the Individual Respondent's actions can be imputed to each of the Respondent Entities, for whom the Individual Respondent was an authorized signatory and representative at the Negotiation Meeting.

14. INT asserts that there are no aggravating factors, and that the Respondents' cooperation with INT's investigation is a mitigating factor.

B. The Respondents' Principal Contentions in Their Explanations and Responses

15. *Jurisdiction*: In a footnote in his Explanation, the Individual Respondent briefly challenges the basis for jurisdiction over him in this matter, asserting that "the prosecution of an individual employee such as [the Individual Respondent] is arguably beyond the scope of the Bank's jurisdiction" because he "was never personally in privity of contract with the Bank or Borrower" and "cannot have personally violated" the May 2004 Consultant Guidelines. The Individual Respondent did not re-assert this argument in his Response or at the hearing; nor did the Respondent Entities raise jurisdictional challenges at any point.

16. *Procedural and evidentiary issues*: The Respondents assert a range of procedural and evidentiary deficiencies in INT's case. They allege that INT failed to properly conduct its interviews with the Individual Respondent and the Secretary General of the PIU (the "Secretary General"), and failed to interview other relevant individuals. The Respondents also allege that

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[8] See, e.g., World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised in October 2006) at para. 1.22(a)(ii) (defining a "fraudulent practice" as "any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation") (emphasis added).

[9] See Sanctions Board Decision No. 41 (2010) at para. 75.

[10] Id.

INT failed to issue show-cause letters to the Respondents prior to initiating sanctions proceedings against them. Finally, they allege that INT withheld exculpatory evidence from the SAE.

17. *Contentions regarding the alleged fraudulent practice*: The Respondents do not deny that the Individual Respondent signed the Minutes after having been informed of the Team Leader's unavailability. However, the Respondents assert that the applicable definition of "fraudulent practice" requires evidence of a deception intended to induce reliance, and that there is no such evidence in the present case. In support of their contention that the PIU could not have relied on any misstatement in the Minutes, the Respondents assert that "the [PIU] was independently aware of [the Team Leader's] unavailability even before the Respondents," because the Secretary General himself had approved the Team Leader for a conflicting project seven weeks before the Negotiation Meeting. The Secretary General therefore knew that the Team Leader was unavailable for the Project in the present case. The Respondents also assert that they "fully, timely and repeatedly informed" the PIU of the Team Leader's unavailability prior to the Negotiation Meeting, including through the Individual Respondent's communications with the Secretary General and a procurement specialist of the PIU (the "Procurement Specialist"); that the Minutes were drafted by the Procurement Specialist with full knowledge of the underlying facts; and that any representation regarding the experts was superfluous because, according to the Respondents, the Consortium had already been selected for the Contract. According to the Respondents, it was the Secretary General who pressured them to confirm that the Team Leader was available for the Contract and indicated that, should the need arise, he could – and would – order the Team Leader to return to the Project. In addition, the Respondents claim that they understood the Secretary General had communicated the Team Leader's unavailability to the Bank.

18. *Liability of the Respondent Partner*: The Respondent Partner asserts that it cannot be held liable for the Individual Respondent's actions, as the Individual Respondent was not its employee at the time of the alleged misconduct. The Respondent Partner acknowledges that it had granted the Individual Respondent a power of attorney to negotiate the Contract for the Consortium and to "effectuate [the Respondent Partner's] financial backing" (the "POA"), but contends that the POA is not a sufficient basis for holding it liable. The Respondent Partner also contends that it cannot be held liable for the acts of the Regional Coordinator as the Regional Coordinator had no substantive or decision-making responsibility for the Project and was acting only on the Respondent Firm's behalf. The Respondent Partner concludes that it should not be sanctioned.

19. *Sanctions*: The Respondents contend that any sanctions should be limited to a letter of reprimand for the Respondent Firm and the Individual Respondent. They assert that no aggravating factors apply, and claim a number of mitigating factors. In particular, the Respondents assert that (i) they did not initiate any misconduct, but rather acted under pressure to sign the Minutes as instructed by the Secretary General; (ii) the Individual Respondent had fully disclosed the Team Leader's situation, and had no intent to mislead the PIU or obtain any illicit gain from the alleged conduct; (iii) the Respondent Entities have strengthened their corporate compliance programs; (iv) the Respondents cooperated with INT's investigation, and the Individual Respondent admitted to signing the Minutes; (v) the Respondent Entities have

suffered financial losses and reputational harm due to their temporary suspension and would be "destroy[ed]" by the EO's recommended sanction of debarment with conditional release, and a debarment would potentially terminate the Individual Respondent's career; (vi) there was no financial loss or other harm to the Project resulting from the alleged misconduct; and (vii) the Individual Respondent has successfully and ethically participated in projects financed by the Bank and other multilateral development banks over several decades.

C. INT's Principal Contentions in the Replies

20. *Procedural and evidentiary issues*: In reply to the Respondents' challenge to the sufficiency of the investigation, INT asserts that there was "no further work to be done" after INT had obtained sufficient evidence to support its charges against the Respondents. INT further asserts that it met its obligation to present all exculpatory and mitigating evidence in its possession; that it is not obligated "to search for or develop" additional exculpatory evidence; and that the evidence that the Respondents claim was exculpatory and omitted from the record was actually inculpatory and duplicative of evidence already contained in the record.

21. *Contentions regarding the alleged fraudulent practice*: INT asserts that the Respondents' attempt to notify the PIU of the Team Leader's unavailability is irrelevant to the misrepresentation of the Team Leader's availability in the Minutes. INT reiterates that the Individual Respondent was acting within his authority as the Respondent Firm's director, and that the Respondent Firm is therefore liable for the Individual Respondent's misrepresentation in the Minutes. INT additionally contends that, consistent with the EO's finding upon review of the Respondents' Explanations, the Regional Coordinator, rather than the Individual Respondent, is the "actual individual responsible for holding [the Respondent Partner] liable for the misrepresentation in this case." According to INT, the Regional Coordinator acted as an employee and representative of the Respondent Partner when signing the Minutes.

22. *Sanctions*: In response to the Respondents' contentions regarding possible sanctions, INT generally contends that the debarments recommended by the EO are appropriate for all of the Respondents. In particular, INT asserts that the EO correctly applied mitigation for the Respondent Entities' compliance programs. However, INT seems to oppose the EO's grant of mitigating credit based upon the EO's finding – which INT disputes – that the Individual Respondent had admitted to engaging in the alleged sanctionable practice.

D. Presentations at the Hearing

23. At the hearing, INT reiterated that the Respondents had engaged in a fraudulent practice by knowingly misrepresenting the Team Leader's availability in the Minutes in order to influence the selection process for the Contract. INT asserted that any prior disclosure to the Secretary General would not exculpate the Respondents, and that the official "paper trail," including the Minutes in particular, was critical because other relevant parties were not present during the negotiations. INT asserted that the Respondent Entities did not have controls in place to prevent the alleged fraudulent practice. With respect to the Respondent Partner's liability, INT asserted that the Minutes had been signed on the Respondent Partner's behalf either by the Individual Respondent (as asserted in the SAE) or by the Regional Coordinator (as asserted in

the Replies). When asked to address the apparent shift in its asserted theory of liability for the Respondent Partner, INT stated that the Respondent Partner's Explanation included evidence to support holding the Respondent Partner liable for the Regional Coordinator's acts, although INT still believed that the Respondent Partner could be held liable based also on the acts of the Individual Respondent.

24. The Respondents denied having engaged in a fraudulent practice. In particular, they asserted that the PIU was not – and could not have been – misled because the Secretary General himself had caused the Team Leader to be unavailable, and because the Individual Respondent had reported the Team Leader's unavailability for the Contract to the Secretary General. The Respondents further asserted that, in any event, the Sanctions Board should find that the Respondent Partner was not directly involved. The Respondents also sought mitigation for the Respondent Entities' asserted compliance improvements, including the measures described in their Responses as well as those taken subsequently. The Chair authorized the Respondents to file documentary evidence of its recent compliance improvements in a post-hearing submission.

25. The parties also addressed the sufficiency of INT's investigation. Specifically, the Respondents reiterated their contention that INT failed to clarify critical facts, and thus caused prejudice to the Respondents, by failing to interview the Secretary General in person and failing to interview additional witnesses. In response, INT expressed the view that it did not need to conduct additional interviews with the Secretary General or other witnesses once it had collected sufficient evidence to meet its burden of proof. INT also asserted that while it is required to disclose any exculpatory evidence in its possession, it is not obliged to actively seek out such evidence.

E. The Respondents' Post-Hearing Submission

26. On December 11, 2014, pursuant to the Sanctions Board Chair's authorization at the hearing as mentioned in Paragraph 24 above, the Respondents submitted additional documentation of the Respondent Entities' asserted compliance measures. The Respondent Entities state that their most recent compliance and integrity measures consist of: (i) the appointment of an independent member of the Respondent Partner's Board of Directors as the new compliance officer for the Respondent Entities, with responsibilities designed to ensure that the Respondent Entities' compliance programs address key risks; (ii) new and updated compliance policies, including a new Code of Conduct and Ethics and a "Double Signature Procedure" for documents related to proposals and contracts; and (iii) communication of policies and procedures to employees and compliance training measures.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

27. The Sanctions Board will first address the jurisdictional challenge raised by the Individual Respondent and the procedural and evidentiary contentions raised by the Respondents. The Sanctions Board will then consider whether the record supports a finding of fraudulent practice and, if so, which Respondent(s) may be held liable for the fraudulent practice. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on each of the Respondents.

A. Jurisdiction

28. In a footnote to his Explanation, the Individual Respondent argues that "the prosecution of an individual employee such as [the Individual Respondent] is arguably beyond the scope of the Bank's jurisdiction."[11] In support of this argument, the Individual Respondent asserts that "[i]t is well established that jurisdiction in this matter emanates solely and exclusively from the contractual relationship between the Bank, the Borrower, and the respondents to the [RFP] (which incorporated the [May] 2004 [Consultant] Guidelines)"; that he "was not invited to and did not respond to the RFP in his individual capacity and therefore was never personally in privity of contract with the Bank or Borrower"; and that "the [May] 2004 [Consultant] Guidelines are not by their own terms applicable to employees and therefore do not provide any jurisdictional nexus for [the Individual Respondent] as an employee of [the Respondent Firm]." The Individual Respondent concludes that as he "was not the Consultant, held no shares or financial interest in the Consultant, and held no financial or other stake in the project, he cannot personally be considered a Consultant and cannot have personally violated the [May] 2004 [Consultant] Guidelines." As noted earlier, the Individual Respondent did not re-assert this argument in his Response or at the hearing. The Respondent Entities did not raise any jurisdictional objections.

29. As the Sanctions Board has previously stated, "the Bank does not need the consent of or privity with a respondent to assert jurisdiction to sanction."[12] In addition, the Sanctions Board may, as it has previously decided, assert jurisdiction over corporate officers, managers, and directors employed by a firm that competed for or received a contract award – even where the applicable guidelines do not refer directly to the possibility of sanctioning individuals. For example, jurisdiction to sanction such individuals may be asserted where the relevant Sanctions Procedures refer to the possibility of sanctioning individuals as well as contractors, bidders, suppliers, and consultants, and particularly where these provisions have been relied upon to impose sanctions on individuals in previous cases. In this instance, Section 1.01(a) of the applicable Sanctions Procedures states that the sanctions system serves as "a regime for the sanctioning of firms and individuals that are found to have engaged in specified forms of fraud and corruption." In addition, individual officers, managers, and directors of contracting firms have been sanctioned in previous cases under the May 2004 Consultant Guidelines or other guidelines that similarly omit reference to the possibility of sanctioning individuals.[13] Accordingly, an interpretation of the May 2004 Consultant Guidelines to prohibit fraudulent practices by both firms and individual employees, and to permit potential sanctions against the Individual Respondent as well as the Respondent Entities to the extent that any or all of them

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[11] See supra at Paragraph 15.

[12] Sanctions Board Decision No. 64 (2014) at para. 28 (rejecting a jurisdictional challenge by the individual respondent, who asserted that he had not personally contracted with the Bank or signed an undertaking to be bound by the January 1999 Procurement Guidelines) (citing the World Bank Group's Sanctions Regime: Information Note (November 2011) at p. 20, available at: http://go.worldbank.org/CVUUIS7HZ0).

[13] See, e.g., Sanctions Board Decision No. 51 (2012) (sanctioning two respondent entities and the general manager of one of those entities under the May 2004 Consultant Guidelines); Sanctions Board Decision No. 60 (2013) (sanctioning two respondent entities and their director, as well as the commercial manager of one entity and the co-owner of the other entity, under the May 2004 and October 2006 Procurement Guidelines).

may be found liable, would be consistent with the Sanctions Board's precedent and the sanctions framework. The Individual Respondent's objection to jurisdiction is therefore denied.

B. Procedural and Evidentiary Contentions

1. INT's interviews

30. As noted above, the Respondents assert that INT failed to properly conduct its interviews with the Individual Respondent and the Secretary General, and failed to interview other relevant individuals.

31. *Interview with the Individual Respondent*: The Respondents assert that the interview of the Individual Respondent was conducted in an unfair manner. In particular, the Respondents assert that it was carried out in English rather than in the Individual Respondent's native language, and without a translator; and that it was then transcribed from a recording by a person who had difficulty understanding what the Individual Respondent was saying. The Respondents also state that INT did not give the Individual Respondent the opportunity to review and correct the interview transcript afterward. Yet the Respondents do not assert, and the record does not reflect, that the Individual Respondent was unable to understand and communicate in the English language. Nor has the Individual Respondent pointed to any error in the transcript. Accordingly, the Sanctions Board does not find that INT conducted its interview with the Individual Respondent in an unfair manner, or that the language in which INT conducted the interview renders the interview transcript unreliable.

32. *Interview with the Secretary General*: The Respondents assert that INT should have interviewed the Secretary General in person, and complain that INT relies on an unverified record of interview with the Secretary General that is inconsistent with documentation in the record. With regard to the sufficiency of the evidence submitted by INT to support its allegations, Section 7.01 of the Sanctions Procedures provides that the Sanctions Board shall have discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered. The Sanctions Board also takes into account, consistent with relevant precedent, that summary records of interview lack the intrinsic accuracy of verbatim transcripts, particularly where – as here – there is no indication that the summary was reviewed or signed by the interviewee to attest to its basic accuracy.[14] Given the Secretary General's material involvement in the underlying facts at issue, the Sanctions Board notes with concern INT's failures to interview him in person or to document his telephone interview more fully than through an unverified, summary record of interview. The Sanctions Board takes these points into account in assessing the weight of this interview.[15]

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[14] See, e.g., Sanctions Board Decision No. 50 (2012) at para. 40.

[15] See Sanctions Board Decision No. 64 (2014) at para. 35 (in assessing the credibility and weight of two interviewees' asserted statements, taking into account the interviewees' apparent direct involvement in the events surrounding the alleged misconduct and the extremely condensed nature of the apparently unverified summary records of interview).

33. *Other individuals*: Finally, the Respondents assert that INT failed to interview other individuals who would have provided additional information regarding the facts of the case. INT replies that once it had obtained sufficient evidence to support the allegations against the Respondents, it had no obligation to search for additional exculpatory evidence not in its possession. The Sanctions Procedures do not require INT to interview all potentially relevant witnesses before initiating sanctions proceedings. Nor is a respondent entitled to demand that INT obtain and provide information that is not in INT's possession. At the same time, an obvious gap in INT's evidence may raise questions about the sufficiency of the evidence in the record. The Sanctions Board notes with concern INT's failure to interview any of the other key individuals involved in the facts and circumstances of this case (e.g., other individuals from the PIU, the Bank, and a competitor firm who were reportedly involved at the time). However, taking into account other evidence presented by INT, including the Minutes, the transcript of the Individual Respondent's interview, and correspondence regarding the Team Leader's unavailability, the Sanctions Board considers that the existing record is sufficient to assess whether it is more likely than not that the Respondents engaged in the alleged fraudulent practice and, if in the affirmative, which Respondent(s) may be held liable.

2. Show-cause letters

34. The Respondents assert that INT failed to issue show-cause letters to them prior to initiating sanctions proceedings against the Respondents, contrary to INT's standard practice. The Sanctions Board notes that the applicable Sanctions Procedures do not require INT to issue show-cause letters to respondents prior to initiating sanctions proceedings. In addition, the Sanctions Board finds that, even in the absence of a show-cause letter, the Respondents were given sufficient opportunity to respond to INT's allegations, both during the investigation and in the course of the present proceedings.

3. Disclosure of exculpatory evidence

35. Finally, the Respondents assert that INT improperly omitted exculpatory evidence from the SAE: specifically, electronic correspondence between the Individual Respondent and the Secretary General, and between the Secretary General and INT. Section 3.02 of the Sanctions Procedures requires INT to present all relevant evidence in its possession "that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability." The electronic correspondence at issue appears to support the Respondents' assertion that they had disclosed the Team Leader's unavailability to the Secretary General. For the reasons set out in Paragraph 43 below, evidence relating to the Respondents' disclosure to the Secretary General may reasonably be considered as exculpatory evidence falling within the scope of Section 3.02.

36. However, the Sanctions Board notes that INT had originally obtained one of the documents from the Respondents themselves, and provided the other document to the Respondents prior to their submission of the Explanations and Responses. The Respondents thus had an opportunity to review all of the correspondence and submit it into the record as part of the Response Exhibits. Accordingly, the Sanctions Board does not find that INT's failure to timely present this evidence in the SAE compromised the Respondents' ability to mount a

meaningful response to INT's allegations.[16]

C. Evidence of a Fraudulent Practice

37. In accordance with the definition of "fraudulent practice" under the May 2004 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents engaged in (i) a misrepresentation or omission of facts (ii) that was knowing or reckless (iii) in order to influence a selection process or the execution of a contract.

1. Misrepresentation of facts

38. According to the Minutes, "[t]he Consultant certified the availability of [the proposed] staff" – including the Team Leader – "at the beginning of the technical assistance mission." Copies of contemporaneous correspondence demonstrate, and the Respondents acknowledge, that the Team Leader had informed the Respondents prior to the Negotiation Meeting that he was no longer available for the Contract. On the basis of this record, the Sanctions Board finds that the certification of the Team Leader's availability in the Minutes was false and that the Individual Respondent therefore made a misrepresentation of fact by signing the Minutes.[17]

2. Made knowingly or recklessly

39. The Sanctions Procedures state that the Sanctions Board has discretion to infer knowledge on the part of a respondent from circumstantial evidence, and that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.[18]

40. As noted in Paragraph 38 above, the record reflects that the Team Leader informed the Respondents prior to the Negotiation Meeting that he was no longer available for the Contract. The Team Leader communicated his unavailability in unequivocal and definitive terms. In addition, the Respondents acknowledge that while the Individual Respondent attempted to revise the draft Minutes to "more accurately reflect the state of affairs regarding the availability of the key personnel," he ultimately signed the Minutes "as [the Procurement Specialist] had drafted, indicating that the experts would be available." Moreover, the Individual Respondent concedes that agreeing to sign the Minutes was a mistake. Accordingly, the Sanctions Board finds that it is more likely than not that when the Individual Respondent signed the Minutes, he was aware that the Minutes misstated the Team Leader's availability, and that he therefore

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[16] See Sanctions Board Decision No. 63 (2014) at para. 41 (stating that the Sanctions Board did not find that INT's belated disclosure of relevant and potentially exculpatory or mitigating evidence ultimately compromised the respondents' ability to mount a meaningful response, where all respondents had the opportunity to review and respond to the belatedly disclosed evidence prior to the Sanctions Board's consideration of all arguments).

[17] The Sanctions Board notes the parties' various contentions as to the role of the Regional Coordinator and whether his conduct may support a finding of liability for the Respondent Entities. As the remainder of this decision reveals, however, the Sanctions Board's determinations as to the Respondents' liability do not rest on the conduct of the Regional Coordinator. Accordingly, the Sanctions Board's analysis on the merits need not address the role of the Regional Coordinator.

[18] Sanctions Procedures at Section 7.01.

knowingly engaged in a misrepresentation.

3. In order to influence a selection process

41. The Sanctions Board notes the Respondents' assertions that the Consortium had already been selected for the Contract at the time of the Negotiation Meeting held on February 1, 2011, based on the Consortium's lead ranking in the evaluation of technical and financial proposals, and that the Respondents therefore could not have attempted to influence the selection process through the misrepresentation in the Minutes as signed on February 3, 2011. Yet the record does not support the Respondents' contention that the selection process had already been concluded by the time of the Negotiation Meeting and prior to the misrepresentation in the Minutes. The Sanctions Board notes that under Paragraph 2.2(k) of the May 2004 Consultant Guidelines, the "selection process" is defined to include a final step of "negotiations and award of the contract to the selected firm." In addition, the record reveals that the proposed Contract remained in draft form until at least late March 2011, and was ultimately awarded to another firm. The Sanctions Board thus concludes that the timing of the misrepresentation in the Minutes immediately following the February 2011 Negotiation Meeting does not preclude the finding of an intent to influence the selection process.

42. Since the selection process was ongoing at the time of the Negotiation Meeting, the Sanctions Board will now consider whether the misrepresentation in the Minutes regarding the Team Leader's availability was made with the intent to influence that process. INT refers to provisions of the RFP and the May 2004 Consultant Guidelines addressing availability and substitutions of proposed project staff, and concludes that the Respondents misrepresented the Team Leader's availability because they would have "faced the risk of delaying or losing the Contract" if they had disclosed the Team Leader's unavailability.

43. The Sanctions Board notes that the record includes a letter from the Individual Respondent informing the Secretary General that the Team Leader was no longer available for the Project and proposing a replacement. The letter was sent to the Secretary General via courier and electronic mail a few days before the Negotiation Meeting. The Respondents concede that they did not address the proposed replacement at the Negotiation Meeting itself, but assert that the Individual Respondent was only following the Secretary General's instructions, with the Secretary General's assurance that he had discussed the course of action with the Bank, and on the understanding that other members of the evaluation committee for the Contract had been informed of the Team Leader's unavailability. The Respondents provide no contemporaneous evidence to show what the Secretary General told the Individual Respondent. The Sanctions Board notes, however, that the Secretary General was identified as the contact person for bidders in the RFP issued by the PIU. The Sanctions Board has formed the view that the Individual Respondent could reasonably assume that the Team Leader's unavailability had been communicated and addressed given the Individual Respondent's written disclosure to the Secretary General, his meeting with the Secretary General, and the proposed replacement. In these circumstances, the record does not support a finding that the Individual Respondent would have expected any contrary statement in the Minutes to have an impact on the selection process. Accordingly, the Sanctions Board finds that it is not more likely than not that the Individual Respondent signed the Minutes with the intent to influence the selection process.

44. In light of the above, the Sanctions Board finds that it is not more likely than not that the Respondents engaged in the alleged fraudulent practice.

D. Termination of Sanctions Proceedings

45. Section 8.01(a) of the Sanctions Procedures requires that "if the Sanctions Board determines that it is not more likely than not that the Respondent engaged in a Sanctionable Practice, the proceedings shall be terminated." Accordingly, the Sanctions Board declares that the sanctions proceedings against the Respondents in Sanctions Case No. 215, including the temporary suspensions imposed by the EO for the pendency of such proceedings, are hereby terminated.

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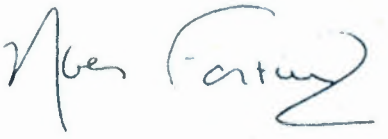
Denis Robitaille appends a dissenting opinion to this decision.



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

L. Yves Fortier
Ellen Gracie Northfleet
Catherine O'Regan
J. James Spinner

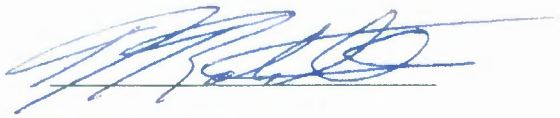
DISSENTING OPINION OF DENIS ROBITAILLE

1. I respect the views of my colleagues, and agree with the majority's findings on jurisdiction in Part V.A, procedural and evidentiary issues in Part V.B, and the first two elements of fraudulent practice in Parts V.C.1 and 2. As the majority opinion clearly explains, the record shows that it is more likely than not that the Individual Respondent engaged in a misrepresentation of facts and did so knowingly.

2. However, I respectfully disagree with the majority's conclusion in Part V.C.3 that the third and final element of the alleged fraudulent practice – that is, intent to influence the selection process – has not been shown. The record reflects that the Individual Respondent informed some members of the PIU of the falsity of the Minutes, but then signed the false Minutes without correction. While the record is not clear as to any reasons for the PIU's handling of the Minutes, I believe that the record supports a finding that the Individual Respondent signed the Minutes without correction in order to avoid jeopardizing the Respondents' chances of obtaining the Contract – in other words, to influence the final selection process. Whether or not the Respondents may have misled the PIU through the Minutes, the false Minutes had the potential to mislead others involved in the selection process for the Contract – e.g., those involved in the Project from the Bank's side. Otherwise, there would have been no reason to sign the Minutes as prepared. In my opinion, signing a false statement as part of the selection process, to influence its outcome, is fraud.

3. For the above reasons, I would conclude that the record supports a finding that it is more likely than not that the Individual Respondent engaged in a fraudulent practice. I would also conclude that the Respondent Firm and the Respondent Partner should be held liable for the acts of the Individual Respondent as an employee and/or authorized representative of each entity, and that each of the Respondents should therefore be sanctioned.

4. Given the range of mitigating factors that would be relevant to the Respondents' degree of culpability or responsibility, a relatively light sanction would in my view be appropriate for all Respondents. For example, the record would support mitigating credit for the Respondents in terms of their limited role in initiating the misconduct, evidence of certain compliance improvements, and cooperation with INT's investigation. The record also reflects that the Respondents have been temporarily suspended for a prolonged period of time, due in part to the Respondents' requests for multiple extensions to file pleadings and for the postponement of an earlier scheduled hearing. In these circumstances, I would have considered a letter of reprimand to be an appropriate sanction for each of the Respondents.



Denis Robitaille