THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: September 29, 2015

Sanctions Board Decision No. 82
(Sanctions Case No. 335)

GEF Trust Fund Grant No. TF056599
Honduras

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 335 (the "Respondent"), together with any entity that is an Affiliate[2] directly or indirectly controlled by the Respondent, with a minimum period of ineligibility of three (3) years beginning on the date of this decision. This sanction is imposed on the Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on June 3, 2015, at the World Bank Group's headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of L. Yves Fortier (Chair), Alison Micheli, Ellen Gracie Northfleet, Catherine O'Regan, Denis Robitaille, and J. James Spinner.

2. A hearing was held on June 3, 2015, following requests from the Respondent and the World Bank Group's Integrity Vice Presidency ("INT"), and in accordance with Article VI of the Sanctions Procedures. INT participated in the hearing through its representatives attending in person. The Respondent was represented by two of its officers and outside counsel, all attending in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

3. In accordance with Section 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")[3] to the Respondent on June 5, 2014 (the "Notice"),

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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] 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).

[3] 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.

appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated May 15, 2014, and amended on July 25, 2014;

ii. Explanation submitted by the Respondent to the EO on July 1, 2014, and amended on August 12, 2014 (the "Explanation");

iii. Response and related exhibits submitted in two parts on November 19, 2014, and November 20, 2014 (the "Response") by the Respondent to the Secretary to the Sanctions Board; and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on January 15, 2015 (the "Reply").

4. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The EO recommended a minimum period of ineligibility of four (4) years, after which period the Respondent 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. Effective June 5, 2014, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, 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

[4] For the avoidance of doubt, the scope of ineligibility to be awarded a contract includes, without limitation, (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, consultant, manufacturer or supplier, or service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section 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.

specified that the temporary suspension would apply across the operations of the World Bank Group.

II. GENERAL BACKGROUND

6. This case arises in the context of the Nicaragua-Honduras Corazón Transboundary Biosphere Reserve Project (the "Project"). The Project sought to improve management of the Corazón Transboundary Biosphere Reserve through a variety of means, including the promotion of sustainable management of natural resources using local socio-economic development subprojects (the "Subprojects"). On July 18, 2006, IBRD, acting as an implementing agency for the Global Environment Facility, and the Central American Commission for Environment and Development entered into a trust fund grant agreement (the "Grant Agreement") to provide US$12 million for the Project. In Honduras, implementation of the Project was assigned to two agencies (collectively, the "PIU"). Project funds were to be disbursed to local beneficiaries of specific Subprojects through an intermediary known as the "Special Payer." The Project became effective on November 22, 2006, and closed on December 15, 2012.

7. The Grant Agreement required fund recipients, including Honduras, to maintain financial records relating to transactions under the Project, to obtain independent audits of these records, and to furnish both the records and the audit reports to the Bank. During implementation of the Project, the PIU issued a request for proposals ("RFP") to provide auditing services for the Project's financial statements for the year 2010. The Respondent, an accounting firm in Honduras, competed for and received this 2010 contract. The Respondent subsequently was directly awarded two additional contracts to audit the Project for the years 2011 and 2012 (the "Contracts"), which are at issue in the present case. The Contracts were collectively valued at the equivalent of approximately US$42,000. The Respondent submitted several deliverables under the Contracts, including: (i) a final audit report for the year 2011 (the "2011 Audit Report") on June 11, 2012; (ii) a report from its review of the Subprojects in 2012 (the "2012 Subproject Report") on February 4, 2013; and (iii) a final audit report for the year 2012 (the "2012 Audit Report") on May 16, 2014.

8. The 2011 Audit Report and the 2012 Subproject Report included a number of summary documents pertaining to specific Subprojects, identified as "data sheets." The data sheets included check boxes to show the fulfillment of objectives and disbursements under each of the Subprojects, as well as spaces for comments. The data sheets were accompanied by photographs and other information to demonstrate that the Respondent had visited and reviewed the relevant Subprojects. INT alleges that the Respondent misrepresented certain disbursements and/or Subproject objectives as "[f]ulfilled" in nine of the data sheets.

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 its conduct did not amount to a sanctionable practice.

11. The Grant Agreement provided that consultants' services under the Project would be governed by the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) (the "May 2004 Consultant Guidelines"). The RFP issued to the Respondent, however, defined sanctionable practices in accordance with the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, revised in September 1997 and January 1999) (the "January 1999 Consultant Guidelines"). Finally, each of the Contracts defined sanctionable practices in a manner consistent with both the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006) (the "October 2006 Consultant Guidelines") and the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006, and May 1, 2010) (the "May 2010 Consultant Guidelines").

12. INT asserted in the SAE that its allegations of sanctionable practices should be considered under the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (January 1995, revised January and August 1996, September 1997, and January 1999) (the "January 1999 Procurement Guidelines"), which INT asserted was consistent with definitions of sanctionable practices included in the RFP. A copy of the January 1999 Procurement Guidelines was therefore attached to the SAE and included in the Notice issued to the Respondent by the EO. Following the Sanctions Board Chair's request for clarifications INT acknowledged that the Consultant Guidelines, not the Procurement Guidelines, would apply.

13. The remaining question is therefore which version of the Consultant Guidelines applies to the present allegations against the Respondent. Although the Contracts use definitions from the October 2006 or the May 2010 Consultant Guidelines, INT argues that the Contracts provide those definitions only for the purpose of contractual remedies and not for sanctions proceedings.[7] However, the definitions of sanctionable practices in each of the Contracts are immediately followed by a subsection that states that the Bank will sanction consultants found to have engaged in sanctionable practices in the selection process or contract execution. Therefore, the Sanctions Board is not persuaded by INT's argument that the definitions of sanctionable practices set out in the Contracts are not applicable in the present proceedings.

[7] These versions contain identical definitions of sanctionable practices.

14. Accordingly, the Sanctions Board considers the definitions of sanctionable practices in the Contracts to be directly relevant. The Respondent was put on notice of the definitions of sanctionable practices in the Contracts, and the Respondent's alleged misconduct took place entirely in the course of the execution of the Contracts. The Sanctions Board therefore concludes that the alleged sanctionable practices in this case have the meaning set forth in the October 2006 Consultant Guidelines and the May 2010 Consultant Guidelines, whose common definitions of sanctionable practices are in the Contracts. Paragraph 1.22(a)(ii) of both Guidelines defines the term "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."[8]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

15. INT asserts that the Respondent engaged in fraudulent practices by falsely confirming the disbursement of funds and/or fulfillment of Subproject objectives on two data sheets appended to the 2011 Audit Report and seven data sheets appended to the 2012 Subproject Report. INT submits that the Respondent's failure to consider all necessary documentation in preparing the reports supports a finding that the Respondent's employees acted knowingly or at least recklessly in making the alleged misrepresentations. INT further asserts that the misrepresentations were intended to influence the execution of the Contracts by falsely indicating that the Respondent "had completed its 2011 and 2012 audit work." According to INT, the Respondent's failure to alert the PIU of the Project's "failings" was detrimental to the Borrower. INT contends that the misrepresentations made by the Respondent's employees therefore constituted fraudulent practices, which should be imputed to the Respondent. With respect to potential sanctioning factors, INT argues that aggravation is warranted because the alleged misrepresentations were repeated and contributed to the continuation of "Project failings." INT submits that it has not identified any mitigating factors.

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

16. In contesting liability for the alleged misconduct, the Respondent asserts that INT has misunderstood or taken out of context statements in the data sheets, none of which contained misrepresentations of fact. Specifically, the Respondent argues that the data sheets' statements that disbursements had been fulfilled referred only to disbursements to the Special Payer, not to disbursements to local beneficiaries under the Subprojects. The Respondent also asserts that the data sheets' statements that Subproject objectives had been fulfilled reflected only preliminary findings. The Respondent submits that INT's testimonial evidence of falsity merits limited weight. Finally, the Respondent contends that INT improperly blames the Respondent for the misconduct of local staff assigned to the Project, and that it was the Bank's "lack of

[8] October 2006 Consultant Guidelines at Paragraph 1.22(a)(ii); May 2010 Consultant Guidelines at Paragraph 1.22(a)(ii).

proper oversight" that facilitated the local staff's misconduct. The Respondent does not explicitly request mitigation or contest aggravation under any sanctioning factors.

C. INT's Principal Contentions in the Reply

17. INT reiterates its allegations made in the SAE and introduces one additional allegation of misrepresentation, which INT asserts is based on new evidence found in the Response. INT's additional allegation relates to one of the data sheets submitted with the 2011 Audit Report, for which INT had originally asserted a misrepresentation relating to disbursement of funds. INT adds in the Reply that the Respondent also misrepresented completion of the Subproject objectives listed in that data sheet.

18. INT rejects the Respondent's defense that the 2012 Subproject Report was intended to be considered as a draft. INT argues that to the extent that the Respondent used preliminary data without identifying it as such, or failed to convey exactly how the 2012 Subproject Report should be interpreted, the Respondent recklessly shared a misleading document. INT additionally denies any impropriety in the conduct of its investigation and defends its sources of testimonial evidence.

19. With respect to sanctioning factors, INT argues that mitigation may be warranted for the Respondent's cooperation with INT's investigation and the Respondent's efforts to notify the Bank of concerns regarding the Special Payer's conduct. INT opposes any mitigation based on past performance, reputation, internal controls, other parties' roles in the Project's performance, and the relatively small value of the Subprojects compared to the overall value of the Project.

D. Presentations at the Hearing

20. At the hearing, INT reiterated its allegations that the Respondent made knowing or at least reckless misrepresentations in the 2011 Audit Report and the 2012 Subproject Report, which INT asserted to be recognized deliverables under the Contracts and not draft submissions. INT additionally asserted that the Respondent's omission of the data sheets in question from its later 2012 Audit Report is, in fact, an admission of the alleged misrepresentations. With respect to sanctioning factors, INT submitted that the Special Payer's role in the Project may attenuate any aggravation applied to the Respondent's sanction.

21. The Respondent reiterated the defenses asserted in its written pleadings, and added that the data sheets were intended only for internal use in tracking the implementation of the Project. The Respondent described the 2011 Audit Report and the 2012 Subproject Report as early "phases" of the audit process; it submitted that the final and definitive findings would be reached in the 2012 Audit Report. The Respondent argued that it had no intent or financial incentive to mislead, since it would have been remunerated for deliverables under the Contracts with or without the alleged misrepresentations. The Respondent asserted that it cooperated fully with INT's investigation, even to its own detriment; and that it had reported problems to INT earlier in respect of the Project's implementation. With respect to INT's investigation, the Respondent complained that INT provided the Sanctions Board with only excerpts of some key evidence and failed to interview some of the knowledgeable witnesses.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

22. The Sanctions Board will first 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 engaged in fraudulent practices. The Sanctions Board will then determine what sanction, if any, should be imposed on the Respondent.

A. Procedural and Evidentiary Matters

23. *Translation of the reports*: During its review of the pleadings, the Sanctions Board noted that the record did not include complete translations of the 2011 Audit Report, the 2012 Subproject Report, or the 2012 Audit Report, all of which the Respondent had originally prepared and submitted to the PIU in Spanish. In correspondence prior to the hearing, the Respondent objected to INT's incomplete translations of the reports. The Sanctions Board Chair invited the Respondent to identify any additional relevant sections of the reports that should be translated. However, the Respondent did not specify any additional excerpts that would be pertinent to the Sanctions Board's determination. Rather, the Respondent submitted that the entire texts of the three reports should have been translated for the Sanctions Board's review. INT, for its part, stated that it provided translations of those extracts of the reports that it considered relevant to the case. In these circumstances, the Sanctions Board accepts INT's representations and denies the Respondent's request for additional translations to be submitted into the record.

24. *Additional allegation*: As noted above in Paragraph 17, INT included in its Reply an additional allegation of misrepresentation in the 2011 Audit Report. At the hearing, the Respondent objected to INT's addition to its original allegations, arguing that the additional allegation was not made to the Respondent in its native language and that there had been no opportunity for the Respondent to reply to their new allegation. The Sanctions Board first notes that Section 5.02(a) of the Sanctions Procedures provides that "[a]ll written materials submitted to the Sanctions Board shall be submitted in English, except that exhibits shall be in the original language with the pertinent parts translated into English." INT thus correctly presented its arguments in English. Secondly, the Sanctions Board observes that the Respondent, represented by counsel, had the opportunity, following INT's Reply, to present any additional arguments that it wished to make in response to the new allegation. The Respondent addressed the additional allegation at the hearing and could have asked for leave to file a post-Reply written submission. Moreover, the Respondent's asserted defenses to liability presented in the Response and at the hearing may be considered to apply equally to all data sheets included in the relevant reports, including the one addressed in INT's Reply. In these circumstances, the Sanctions Board dismisses the Respondent's objections and will consider INT's additional allegation of fraud raised in its Reply.

B. Evidence of Fraudulent Practices

25. In accordance with the definition of "fraudulent practice" under the October 2006 and May 2010 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) engaged in any act or omission, including a misrepresentation,

(ii) that knowingly or recklessly misled or attempted to mislead a party (iii) to obtain a financial or other benefit or to avoid an obligation.

1. Misrepresentation

26. As mentioned earlier, INT asserts that the Respondent misrepresented the completion of disbursements and/or objectives under certain Subprojects in two data sheets appended to the 2011 Audit Report and seven data sheets appended to the 2012 Subproject Report. Specifically, the Respondent placed check marks in boxes titled "[f]ulfilled" following certain listed disbursement amounts and objectives. The Respondent denies the alleged misrepresentations, asserting that the data sheets reflected fulfillment of disbursements to the Special Payer rather than to local beneficiaries and were not final conclusions with respect to completion of specific Subproject objectives. INT asserts that the Respondent's proposed interpretation of the term "[f]ulfilled" is "not intuitive or obvious from the text or the data sheets."

27. The Sanctions Board first considers whether the Respondent represented, in the data sheets identified by INT, that the disbursements to local beneficiaries and Subproject objectives had been completed. A plain reading of the data sheets supports INT's interpretation. With respect to disbursements, each data sheet named the relevant local beneficiaries and/or their legal representatives. Nothing in the data sheets, or other excerpts of the relevant reports, suggests that there was a different recipient. With respect to Subproject objectives, a plain reading of the data sheets indicates that the documents expressed firm conclusions, and nothing in the data sheets or the totality of the record suggests that the data sheets were preliminary. In summary, the record supports a finding that the Respondent's completion of the data sheets with check marks showing certain disbursements and objectives as "[f]ulfilled" represented that those aspects of each Subproject had in fact been completed.

28. The Sanctions Board next considers whether the Respondent's representations were false at the time that they were made. The Sanctions Board concludes that it is more likely than not that each of the nine data sheets in question misrepresented the status of Subproject disbursements and/or objectives, as INT alleges. First, legal representatives of the relevant Subprojects denied that either the objectives and/or the disbursements to local beneficiaries had been completed. Second, the record reflects the Special Payer's admission that he did not make any direct payments to local beneficiaries of the Subprojects. Finally, the 2012 Audit Report that the Respondent later submitted did not confirm that objectives were met for any of the Subprojects. In fact, the 2012 Audit Report expressly indicated that objectives had not been fulfilled for four of the seven Subprojects addressed by the data sheets attached to the 2012 Subproject Report.

29. On the basis of the complete record, the Sanctions Board finds that it is more likely than not that the 2011 Audit Report and the 2012 Subproject Report contained all of the misrepresentations alleged by INT.

2. That was knowing or reckless

30. INT alleges that the Respondent acted at least recklessly, because it appended the relevant data sheets to the 2011 Audit Report and the 2012 Subproject Report without any

additional qualification or clarification. The Respondent submits that it could not, and therefore did not, confirm that disbursements reached local beneficiaries or that objectives were fulfilled.

31. In assessing recklessness, the Sanctions Board considers whether circumstantial evidence indicates that a respondent was or should have been aware of a substantial risk – such as harm to the integrity of the Bank's procurement process due to false or misleading bid documents – but nevertheless failed to act to mitigate that risk.[9] Where circumstantial evidence is insufficient to infer subjective awareness of risk, the Sanctions Board has measured a respondent's conduct against the common "due care" standard of the degree of care that the proverbial "reasonable person" would exercise in the circumstances.[10] In other words, the question is whether the respondent knew or should have known of the substantial risk.[11] In the context of Bank-Financed Projects, the standard of care should be informed by the Bank's procurement policies, as set out in the applicable Procurement or Consultant Guidelines and the standard bidding documents for the contract at issue.[12] Industry standards or customary or firm-specific business policies, procedures, or practices may also be relevant in certain cases.[13]

32. The record reveals that the Respondent was on notice of a substantial risk of inaccuracies in the Respondent's deliverables under the Contracts, including the apparently conclusive representations in the data sheets attached to the reports. According to the Respondent, implementation of the Subprojects could not have been verified until at least June 2013, well after both the 2011 Audit Report and the 2012 Subproject Report had been submitted. Notably, the Respondent's audit process apparently relied on information that the Respondent itself had separately identified as insufficient to evaluate Subproject transactions and implementation. The record also reveals that the Respondent's staff, in describing their methodology for the audits, stated that "decentralized projects generally tend to be risky" and that the absence of documentation was "very limiting" to their review. With respect to the 2011 Audit Report, the Respondent asserts that certain financial documentation relating to the two relevant Subprojects was not available and that these Subprojects were in an "intermediate stage[] of execution" at the time of the Respondent's field visit. Subsequently, in the 2012 Audit Report, the Respondent asserted that the documentation was insufficient and declined to identify any of the referenced objectives as fulfilled. In summary, it appears to the Sanctions Board that the Respondent's difficulties in obtaining complete and timely information demonstrated a substantial risk of misrepresentations, and that the Respondent's staff were apparently aware of this risk when they submitted the data sheets in question.

33. The standard of care that the Respondent's staff should have exercised may be informed by the terms of the Contracts, in virtue of which the Respondent's statements regarding fulfillment of Subproject objectives and/or disbursement of approved funds to the local beneficiaries appeared to be critical. However, the record does not reflect that the Respondent

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[9] See, e.g., Sanctions Board Decision No. 51 (2012) at para. 33.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

took adequate steps to verify the statements and key findings in the reports before submission to the PIU and the Bank.

34. In these circumstances, the Sanctions Board finds that the failure of the Respondent's staff to confirm or correct the content of the data sheets at issue constitutes a reckless failure to mitigate a substantial risk of misrepresentation with respect to a number of Subprojects, as presented in both the 2011 Audit Report and the 2012 Subproject Report.

3. To obtain a financial or other benefit or to avoid an obligation

35. INT asserts that, in submitting the 2012 Subproject Report "as a final document," the Respondent sought to benefit from payment under the Contract. INT makes no assertion with respect to the Respondent's possible intent to obtain a benefit, or avoid an obligation, by submitting the misleading data sheets with the 2011 Audit Report.

36. As the record reveals, and the parties do not dispute, the 2011 Audit Report and the 2012 Subproject Report were specific deliverables listed in the respective payment schedules under the Contracts between the Respondent and the PIU. The Respondent's completion of the data sheets submitted with the reports appeared to corroborate the Respondent's field visits and related Subproject analysis in accordance with the Contracts. Importantly, the Respondent itself cited its completion of these two reports as specific deliverables warranting payments under the Contracts. The Sanctions Board notes that the Respondent may not have been paid if it had failed to include any data sheets documenting the Subproject site visits or appended data sheets revealing that the status of Subproject disbursements and objectives was "unknown" or "unascertained." In these circumstances, the Sanctions Board finds that the Respondent's submission of the misleading data sheets was made to obtain a financial benefit in the form of remuneration for contracted work.

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

37. INT asserts that misrepresentations made by the Respondent's employees under the 2011 Audit Report and the 2012 Subproject Report should be imputed to the Respondent. 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.[14] Where a respondent entity has denied responsibility for the acts of its employees based on a rogue employee defense, the Sanctions Board has considered any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.[15]

38. In the present case, the record indicates that the Respondent's officers or employees conducted field visits to the relevant Subprojects, prepared the data sheets at issue, and

[14] See, e.g., Sanctions Board Decision No. 61 (2013) at para. 30; Sanctions Board Decision No. 68 (2014) at paras. 30-31.

[15] See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 53-53; Sanctions Board Decision No. 63 (2014) at para. 72.

submitted the 2011 Audit Report and the 2012 Subproject Report with those data sheets as annexes. The record reflects involvement by two key personnel in particular: the audit supervisor under the 2011 Contract, also named as the Respondent's representative in the majority of field visits to the concerned Subprojects; and the "Partner in Charge" of the 2011 Contract, who also signed the Respondent's cover letter to the 2012 Subproject Report. The Respondent does not deny its responsibility for the acts of these employees or contest that the involvement of these individuals was within the course and scope of their employment and in the Respondent's interest. In these circumstances, the Sanctions Board finds that the Respondent is liable for the fraudulent misrepresentations in both reports.

D. Sanctioning Analysis

4. General framework for determination of sanctions

39. 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 set out in Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.

40. As reflected in Sanctions Board precedents, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors in order to determine an appropriate sanction.[16] 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.[17]

41. 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 a minimum of three years.

42. 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 the respondent.

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[16] See Sanctions Board Decision No. 40 (2010) at para. 28.

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

5. Factors applicable in the present case

a. Severity of the misconduct

43. *Repeated pattern of conduct*: Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction. Section IV.A.1 of the Sanctioning Guidelines identifies a repeated pattern of conduct as one example of severity. INT submits that aggravation is warranted for the Respondent's submission of the 2011 Audit Report and the 2012 Subproject Report, which made misrepresentations regarding the fulfillment of Subproject disbursements and/or objectives "on two occasions, to the PIU and the Bank."

44. In recent decisions, the Sanctions Board applied aggravation where the record showed that a respondent submitted identical forged documents with two separate bids for two Bank-financed contracts under the same project, on two consecutive days,[18] but has declined to apply aggravation where a respondent submitted the same forged document in multiple bids in a single course of action.[19] Here, the Sanctions Board notes that the Respondent's misrepresentations appear to arise from the same general modus operandi by which the Respondent recklessly failed to verify key components of its successive reports under the same Project. However, the record also demonstrates that this was not a one-time failure. The data sheets in question were submitted on different dates several months apart, with separate deliverables, and under two different contracts. The Sanctions Board therefore finds that some aggravation is warranted for repetition.

b. Magnitude of harm

45. Section 9.02(b) of the Sanctions Procedures requires the Sanctions Board to consider the magnitude of the harm caused by the misconduct. Section IV.B.2 of the Sanctioning Guidelines identifies the degree of harm to the project through poor contract implementation or delay as an example of such harm.

46. While submitting that some harm to the Project arose from the role of the Special Payer rather than the Respondent, INT asserts that the Respondent contributed to "Project failings . . . occurring without correction" by failing to alert the PIU. The Respondent asserts that the Project's "operational failure" is attributable to the PIU, and was facilitated by the apparent lack of oversight from the Bank. The Respondent contends that approved disbursements to the Subprojects represented only 1% of total disbursements under the Project.

47. In past cases, the Sanctions Board has applied aggravation on the basis of substantial delays to contract implementation or project closing, and waste of the member country's time and resources occasioned by the respondent's misconduct.[20] The Sanctions Board notes that

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[18] Sanctions Board Decision No. 68 (2014) at para. 37.

[19] Sanctions Board Decision No. 63 (2014) at para. 97; Sanctions Board Decision No. 79 (2015) at para. 39.

[20] Sanctions Board Decision No. 44 (2011) at para. 63.

aggravation does not require that the magnitude of harm should exceed a certain value threshold or that the Respondent be the sole cause of harm to the Project.

48. The Sanctions Board does not find that misrepresentations in the 2012 Subproject Report harmed the Project, given that the Project closed before the Respondent delivered the report. With respect to misrepresentations in the 2011 Audit Report, however, the record supports a finding that the Respondent's misrepresentations harmed the Project by concealing problems in disbursements and fulfillment of Subproject objectives described in the 2011 Audit Report. The Sanctions Board particularly notes that the Respondent was hired to assist the PIU and the Bank to verify implementation of numerous Subprojects intended to benefit vulnerable communities in remote areas. In this high-risk environment, the Respondent's task was critical to the Project's success. The Sanctions Board thus concludes that aggravation for magnitude of harm to the Project is warranted.

c. Voluntary corrective action

49. 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.[21]

50. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines suggests that mitigation may be appropriate where the record shows a respondent's "[e]stablishment or improvement, and implementation of a corporate compliance program." The Sanctions Board has previously granted mitigation on this ground upon a finding that a respondent's asserted compliance measures appeared to address the type of misconduct at issue[22] and/or at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines (the "Integrity Compliance Guidelines").[23] Conversely, the Sanctions Board has declined to afford mitigation in cases where there was no evidence in the record that the respondent had in fact implemented compliance measures,[24] or where the evidence did not demonstrate the type of voluntary corrective actions that would prevent or address the type of misconduct at issue.[25]

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[21] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 71 (2014) at para. 92.

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

[23] See, e.g., Sanctions Board Decision No. 56 (2013) at para. 69 (finding that the asserted compliance measures addressed, at least in part, some of the elements suggested in the Integrity Compliance Guidelines); Sanctions Board Decision No. 71 (2014) at para. 94 (finding that the asserted compliance measures appeared to address most of the principles set out in the Integrity Compliance Guidelines).

[24] See, e.g., Sanctions Board Decision No. 75 at para. 31 (declining to apply mitigation where the respondent provided no evidence that asserted compliance measures were implemented).

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

51. In this case, the Respondent asserts that it operates in "strict compliance" with an "Internal Quality Control Manual" on standards related to ethics, anti-corruption, and quality control. The Respondent also asserts that it uses a rigorous annual training program "encompassing ethics and independence standards." The Respondent further submits that it intends to apply improvements to its field visit procedures and documentation and to develop a compliance system in the future. However, the Respondent did not provide any documentation to corroborate the establishment or improvement of any compliance program. Accordingly, the Sanctions Board declines to apply any mitigation on this basis.

d. Cooperation

52. *Assistance and/or ongoing cooperation*: 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 suggests 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, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." For example, the Sanctions Board has previously applied mitigation in cases where a respondent's senior staff met with INT, agreed to participate in recorded interviews, and provided relevant information and documentation to INT.[26]

53. INT acknowledges that the Respondent cooperated with INT's investigation and supports mitigation on this basis. The record demonstrates that the Respondent made its staff available to INT for an interview at its office in Honduras, responded to INT's show-cause letter, and provided additional documents useful to INT's investigation following the Respondent's meeting with INT. Accordingly, the Sanctions Board finds that the Respondent's cooperation merits mitigating credit.

e. Period of temporary suspension

54. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the Respondent's temporary suspension since the EO's issuance of the Notice on June 5, 2014. The Sanctions Board notes that the length of the sanctions proceedings, and therefore the period of temporary suspension, was prolonged by approximately three months due to extension requests by the Respondent and INT.

f. Other considerations

55. 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."

56. *Respondent's notification to the Bank*: In its Reply, INT submits that the Respondent's notification to the Bank may constitute a mitigating factor. The Sanctions Board notes that

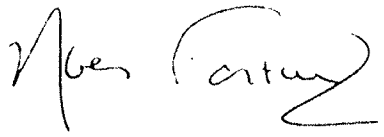
[26] Sanctions Board Decision No. 72 (2014) at para. 61.

despite the Respondent's misrepresentations in the reports, the Respondent sought in several instances, both during and after INT's investigation, to inform the Bank of apparent gaps in the Project's implementation and documentation. The Sanctions Board finds that some mitigation is warranted in these circumstances.

E. Determination of Liability and Appropriate Sanction

57. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (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 Project provided, however, that after a minimum period of ineligibility of three (3) years beginning on the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated that it has taken appropriate remedial measures to address and prevent the type of sanctionable practices found here. This ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for fraudulent practices as defined in Paragraph 1.22(a)(ii) of the October 2006 Consultant Guidelines and of the May 2010 Consultant Guidelines.

58. The Bank will also 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 declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[27]



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

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

[27] 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).