THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: June 21, 2016

Sanctions Board Decision No. 85
(Sanctions Case No. 349)

IDA Grant No. H222-MOG
Mongolia

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. 349 (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 two (2) years and six (6) months beginning from the date of this decision. This sanction is imposed on the Respondent for a corrupt practice.

I. INTRODUCTION

1. The Sanctions Board met in panel session in March 2016 at the World Bank Group's headquarters in Washington, D.C., to review this case. The panel was composed of J. James Spinner (Chair), Catherine O'Regan, and Denis Robitaille. Neither the Respondent nor the World Bank Group's Integrity Vice Presidency ("INT") requested a hearing. Nor did the Sanctions Board Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.[3]

2. 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")[4] to the Respondent on June 1, 2015 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated March 2, 2015;

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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] See Sanctions Procedures at Section 6.01.

[4] 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.

ii. Explanation submitted by the Respondent to the EO on June 25, 2015 (the "Explanation");

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on September 1, 2015 (the "Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on October 1, 2015 (the "Reply").

3. 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 three (3) 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.

4. Effective June 1, 2015, 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;[5] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[6] 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")[7] pending the final outcome of the sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group.

II. GENERAL BACKGROUND

5. This case arises in the context of the Governance Assistance Project (the "Project"), which sought to assist Mongolia in (i) improving the efficiency and effectiveness of governance

[5] 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.

[6] 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.

[7] 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.

processes in the management of its public finances; (ii) promoting transparency and accountability in the performance of public sector functions; and (iii) fostering the investment climate in Mongolia. On June 23, 2006, IDA and Mongolia entered into a financing agreement for the approximate equivalent of US$14 million to finance the Project (the "Financing Agreement"). The Project became effective on July 21, 2006, and closed on December 31, 2014.

6. On June 28, 2010, the implementing agency for the Project (the "Implementing Agency") issued bidding documents under the Project for a contract for the "Supply, Customization, Installation, Commissioning and Support of Tax Administration Information System" (the "Contract"). The deputy director general of the Implementing Agency (the "Deputy Director") was assigned as the project manager for the Contract and the chairman of the bid evaluation committee (the "BEC").

7. On September 14, 2010, the Respondent entered into an agreement for a joint venture with two partners (together, the "JV") to bid for the Contract in Mongolia. The JV submitted its bid on September 20, 2010.

8. On October 12, 2010, the BEC issued its bid evaluation report (the "BER") recommending the award of the Contract to the JV. The BER was submitted to the Bank for its review and no-objection first on October 19, 2010, and then with corrections on December 24, 2010. Each time, the BER recommended award of the Contract to the JV. The Bank issued its no-objection to the award of the Contract to the JV on February 3, 2011. On February 25, 2011, the Implementing Agency and the JV signed the Contract

9. After the BEC issued its initial BER and before the Contract was awarded to the JV, the Deputy Director attended a two-week training course in mid-November 2010 conducted by one of the Respondent's JV partners (the "First JV Partner") in the United Kingdom. The Deputy Director then extended his stay for an extra week of activities in London.

10. INT alleges that the Respondent engaged in corrupt practices during the procurement process for the Contract by offering the Deputy Director a one-week "entertainment trip" in London and soliciting the First JV Partner to pay for this trip in order to influence the award of the Contract.

III. APPLICABLE STANDARDS OF REVIEW

11. 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.

12. 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.

13. The alleged sanctionable practice in this case is based on the definition of corrupt practice set forth in the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (January 1995, revised in January and August 1996, September 1997, and January 1999) (the "January 1999 Procurement Guidelines"). The bidding documents defined corrupt practice, consistently with the definition contained in Paragraph 1.15(a)(i) of the January 1999 Procurement Guidelines, as "the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution."

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

14. INT submits that it is more likely than not that the Respondent engaged in corrupt practices by offering the Deputy Director a one-week entertainment trip in London and soliciting the First JV Partner to pay for this trip in order to influence the award of the Contract. According to INT, the Respondent's employees suggested that the First JV Partner provide a "site visit" with "entertainment," and arranged the Deputy Director's schedule, accommodations, and entertainment during his mostly recreational extended trip. INT asserts that the First JV Partner paid for the trip expenses because the First JV Partner's staff felt that the Respondent's staff had an expectation that the First JV Partner would shoulder the costs. INT submits that the Respondent is liable for its employees' corrupt practices under the doctrine of respondeat superior.

15. INT asserts that aggravation is warranted for the Respondent's central role in the alleged misconduct, the involvement of the Respondent's management, and the involvement of a government official. INT submits that the Respondent's internal investigations upon INT's request may be considered as a mitigating factor.

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

16. The Respondent denies actively offering the Deputy Director an entertainment trip in London or soliciting the First JV Partner to pay for this trip. The Respondent states that the First JV Partner's director of enterprise information technology solutions (the "First JV Partner's Director") said that it was the First JV Partner's idea to have the Deputy Director stay one more week after the training course. The Respondent argues that since the First JV Partner was the primary organizer of the trip, the First JV Partner incurred the expenses without the Respondent's active solicitation, facilitation, or encouragement. Nevertheless, the Respondent submits that it is difficult for several reasons to determine the veracity of INT's allegations. According to the Respondent, the relevant employees have since left the company; it lacks the necessary legal authority to further investigate INT's allegations; and apart from accounting data, it has no other documentation to accept or reject INT's claims.

17. With respect to potential sanctioning considerations, the Respondent asserts that its internal policies and the applicable national laws are sufficient to discourage its employees from misconduct as alleged; the Respondent has fully cooperated with INT's investigation; the Respondent has never before been investigated by a multilateral development bank for unlawful activities; and the recommended sanction could significantly tarnish the Respondent's reputation. In addition, the Respondent notes that the First JV Partner was debarred for six months and contends that, "in the interests of fairness and an objective apportionment of blame," the recommended sanction for the Respondent should be rejected and any debarment should be limited to six months or less.

C. INT's Principal Contentions in the Reply

18. INT contends that communications between the Respondent's employees, including the suggestion by the Respondent's marketing and sales manager (the "Respondent's Sales Manager") of a mostly recreational itinerary, show that the Respondent was an initiator and organizer of a one-week entertainment trip. INT contests the credibility of the First JV Partner's Director, who stated that the extended stay was the idea of the First JV Partner. According to INT, the First JV Partner's Director gave conflicting accounts as to the nature and reason for this trip that often contradicted the written record. With regard to solicitation, INT asserts that if the Respondent was not willing to cover the costs of the trip the Respondent had initiated and planned, then the Respondent must have intended for the First JV Partner to pay those costs and either asked the First JV Partner to pay or conveyed an expectation that the First JV Partner would pay.

19. INT disputes the Respondent's assertions with respect to sanctioning factors. In particular, INT contends that the Respondent's asserted corporate controls are both minimally evidenced and questionable; the Respondent's asserted lack of prior misconduct does not affect the sanctioning decision; INT gave the Respondent an opportunity to settle this case, but that did not occur; and the First JV Partner's six-month debarment was agreed through settlement for a different matter.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

20. The Sanctions Board will first consider whether the record supports a finding that it is more likely than not that the Respondent engaged in the alleged corrupt practices. The Sanctions Board will then determine what sanctions, if any, should be imposed on the Respondent.

A. Evidence of Corrupt Practices

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

1. Offering or soliciting any thing of value

22. The first element of corrupt practice in this case requires a showing that the Respondent offered or solicited a thing of value. As reflected in the Sanctions Board's precedent, the recipient of the thing of value "offered" under this first element of the definition need not be – though may be – the public official who is the intended target of influence under the second element of corrupt practice.[8] Moreover, one firm's pressure on another firm to make improper payment to public officials may constitute "soliciting" under the applicable definition of corrupt practice,[9] as discussed below in Paragraph 26. Finally, as the Sanctions Board's precedent also makes clear, a "thing of value" for purposes of corrupt practice need not be in the form of money, as it can instead be some other type of benefit or advantage.[10]

23. *Offer*: INT alleges that "[d]uring the bid evaluation process, to influence the award of the Contract, [the] Respondent . . . offered benefits to [the Deputy Director] in the form of a one-week entertainment trip in London following a training course" held by the First JV Partner. On the basis of the following evidence, the Sanctions Board finds that it is more likely than not that the Respondent's employees offered the Deputy Director a "thing of value" in the form of an entertainment trip.

24. First, the record reveals that two days after the Respondent's Sales Manager attended the pre-bid meeting chaired by the Deputy Director, the Respondent's Sales Manager sent the First JV Partner's business development adviser (the "First JV Partner's Adviser") an email referring to the "necessity" of a "reference site visit" for the Deputy Director. The following day, the Respondent's director for global business (the "Respondent's Director") sent the Respondent's Sales Manager and the First JV Partner's Adviser an email specifically asking the First JV Partner to "please recommend [to] us . . . where we can give . . . confidence and entertainment to customer."

25. The record further indicates that the Respondent's employees, together with the First JV Partner, then arranged and facilitated a mostly recreational extended trip for the Deputy Director. For example, correspondence in the record shows that the Respondent's Director and the Respondent's Sales Manager talked to the Deputy Director and discussed his extended stay, as well as his specific requests for his trip; the Deputy Director expected the Respondent or the First JV Partner to pay for his accommodations and organize his extended trip; and the Respondent's Sales Manager proposed a schedule of mostly recreational activities for the Deputy Director's extended stay.

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[8] See Sanctions Board Decision No. 60 (2013) at para. 65; Sanctions Board Decision No. 72 (2014) at para. 43; Sanctions Board Decision No. 78 (2015) at para. 53.

[9] See Sanctions Board Decision No. 50 (2012) at paras. 43-44.

[10] See Sanctions Board Decision No. 66 (2014) at para. 24 (finding that the respondent's predecessor gave a "thing of value" to a Bank staff member by acceding to the staff member's request that the respondent's predecessor hire his son); Sanctions Board Decision No. 78 (2015) at paras. 53-54 (finding that the respondent firm had provided a "thing of value" to a public official by hiring the official's daughter as an intern and then as a full-time employee).

26. *Solicitation*: INT further alleges that the Respondent "solicited [the First JV Partner] to provide and pay for accommodations and entertainment during [the Deputy Director's] extended trip." The Sanctions Board has held that "corrupt practice" may include both the act of soliciting something for oneself in exchange for exerting improper influence, as well as the act of soliciting or enticing another to give something to a third party in exchange for the third party's improper influence.[11] In this case, INT asserts that the First JV Partner's Adviser felt that the Respondent had an expectation that the First JV Partner would bear the costs of the Deputy Director's extended stay.

27. On the record presented, the Sanctions Board does not consider this purported expectation to be sufficient to support a finding of solicitation. The record does not show that it is more likely than not that the Respondent's employees intended, or were perceived, to pressure the First JV Partner to pay for the Deputy Director's extended stay. Instead, correspondence among the employees of the Respondent and the First JV Partner suggests uncertainty as to their arrangements and expectations. For example, the Respondent's Sales Manager inquired with the First JV Partner's Adviser whether the First JV Partner would "support [the] accommodation" of the Deputy Director, and asked that she be informed of the First JV Partner's plans otherwise. The following day, the First JV Partner's Adviser wrote to the First JV Partner's Director expressing hope that the Respondent's Sales Manager would "offer to pick up the bills."

28. In these circumstances, the Sanctions Board finds that INT has not carried its burden of proof to show that it is more likely than not that the Respondent solicited the First JV Partner to pay for the Deputy Director's entertainment trip in London. The Sanctions Board therefore finds that the first element of corrupt practice is satisfied only with respect to INT's allegation of "offer," not "solicitation."

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

29. The second element of corrupt practice requires a showing that a respondent, in offering a thing of value to another party under the first element, acted with a purpose to influence the action of a public official in the procurement process or in contract execution. INT alleges that the Respondent offered the Deputy Director the entertainment trip to favorably influence his decisions as a public official in the bid evaluation process for the Contract.

30. The record supports a finding that the Respondent's employees acted with intent to influence the Deputy Director's actions as a public official in the procurement process for the Contract when they offered him an entertainment trip in London. First, the record reveals that the Respondent's employees were aware that the Deputy Director was in a position of authority over the Contract and the procurement process. For example, the bidding documents explicitly describe the Deputy Director as "Project Manager" for the Contract, and various documents state that he was the chairman of the BEC. The Respondent's Sales Manager also attended a

[11] Sanctions Board Decision No. 50 (2012) at para. 44.

pre-bid meeting for the Contract chaired by the Deputy Director, as well as the public opening of the bids where the Deputy Director and other members of the BEC were introduced.

31. Furthermore, the timing of the Respondent's offer of an entertainment trip to the Deputy Director supports the conclusion that the Respondent's employees acted with the required intent. The discussions between the employees of the Respondent and the First JV Partner with respect to planning a trip for the Deputy Director, as well as their actions to facilitate the actual trip, began shortly after the Respondent's Sales Manager attended the pre-bid meeting chaired by the Deputy Director and continued through the BEC's initial recommendation, two months later, to award the Contract to the JV. Importantly, correspondence between employees of the Respondent and the First JV Partner shows that their planning for the entertainment trip specifically began after they learned that the Deputy Director had visited the United States at the invitation of the JV's competitor in the bidding process for the Contract.

32. Finally, the fact that the Contract was twice recommended for award to the JV, and ultimately awarded to the JV, also bolsters a finding of improper intent. As the Sanctions Board has previously held, evidence that the desired influence actually materialized may bolster a showing of the respondent's intent to influence, even though it is not necessary for a finding of corrupt practice.[12]

B. Liability of the Respondent for the Acts of its Employees

33. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.[13] 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.[14]

34. In the present case, the record supports a finding that the Respondent's employees offered the Deputy Director an entertainment trip in the course of and in accordance with the scope of their duties and with the purpose of serving the Respondent's interests. For instance, the emails initially sent by the Respondent's Director and Sales Manager to the First JV Partner's employees regarding the suggested "site visit" show that their purpose was to increase the Implementing Agency's confidence in their product and thus boost the JV's chances in the procurement process. The record indicates that the subsequent actions of the Respondent's Sales Manager – including proposing a detailed itinerary for the Deputy Director's mostly recreational trip and meeting him in London – were performed in her official role as "manager for the Project." Thus, for example, the Respondent's Sales Manager was able to claim reimbursements from the Respondent for the expenses she incurred from meeting the Deputy

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[12] See, e.g., Sanctions Board Decision No. 50 (2012) at para. 45; Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 66 (2014) at para. 26; Sanctions Board Decision No. 78 (2015) at para. 56.

[13] See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 29.

[14] See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at paras. 53-54.

Director in London. Finally, the Respondent does not present, and the record does not appear to provide any basis for, a rogue employee defense. Accordingly, the Sanctions Board finds the Respondent liable for the corrupt practice carried out by its employees.

C. Sanctioning Analysis

1. General framework for determination of sanctions

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

36. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.[15] 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.[16]

37. 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 period of three years.

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

2. Factors applicable in the present case

a. Severity of the misconduct

39. Section 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the

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

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

Sanctioning Guidelines identifies a central role in the misconduct, management's role in the misconduct, and the involvement of a public official as examples of severity.

40. *Central role in the misconduct*: Section IV.A.3 of the Sanctioning Guidelines states that this factor may apply to a respondent who acted as the "[o]rganizer, leader, planner, or prime mover in a group of 2 or more." In this case, INT asserts that aggravation is warranted on the ground that the Respondent led the communication with the Deputy Director regarding his trip and solicited the First JV Partner to pay for it. As discussed above, while the record shows that the Respondent offered the Deputy Director the entertainment trip, the Sanctions Board finds that INT did not carry its burden of proof to show that the Respondent more likely than not solicited the First JV Partner to pay for it. Moreover, the record reveals that the employees of both the Respondent and the First JV Partner actively coordinated with each other to plan and support the trip, and directly communicated with the Deputy Director. In contrast to past cases in which the Sanctions Board applied aggravation based on evidence that the respondent had played a lead role and/or initiated the misconduct,[17] the record here does not demonstrate that the Respondent was the leader or prime mover in the corrupt scheme so as to warrant aggravation under this factor.

41. *Management's role in the misconduct*: Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board has previously applied aggravation on this basis where a director or other high-level members of a respondent entity's management personally participated in a corrupt arrangement.[18] Here, the record reveals that the Respondent's Director personally condoned the Deputy Director's extended trip during the procurement process for the Contract. The Sanctions Board finds that aggravation is warranted in these circumstances.

42. *Involvement of a public official*: Section IV.A.5 of the Sanctioning Guidelines states that this factor may apply "[i]f the respondent conspired with or involved a public official or World Bank staff in the misconduct." In a past case, the Sanctions Board found that aggravation was warranted where the respondents, admittedly acting on their own initiative, proactively offered and paid a bribe to a public official.[19] In contrast, the Sanctions Board has declined to apply aggravation where the record did not establish that the respondent initiated the corrupt

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[17] See, e.g., Sanctions Board Decision No. 72 (2014) at para. 57 (applying aggravation for an individual respondent's central role in corrupt and fraudulent practices involving undisclosed agent comissions where the record reveals that he served as the respondents' main interlocutor with the agent, took the lead in negotiating the commissions to be paid to the agent, signed the agency agreements on behalf of one of the respondent entities, and signed the fraudulent bids and three of the four contracts at issue); Sanctions Board Decision No. 78 (2015) at para. 76 (applying aggravation for the individual respondent's central role in the corrupt practices where the record revealed that she initiated the misconduct by soliciting employment for her daughter).

[18] See, e.g., Sanctions Board Decision No. 50 (2012) at para. 61 (applying aggravation based on the personal involvement of the respondent's director and managing director in the corrupt payment scheme); Sanctions Board Decision No. 78 (2015) at para. 77 (applying aggravation for the involvement of the respondent firm's chief executive officer in the corrupt practices).

[19] See Sanctions Board Decision No. 70 (2014) at para. 33.

arrangement[20] or specifically conspired with or involved a public official in the respondent's corrupt scheme.[21] Here, INT asserts that the Respondent's involvement of a public official warrants aggravation. While the record reflects that employees of both the Respondent and the First JV Partner coordinated with the Deputy Director in planning the details of the entertainment trip, the record does not support a finding that the Respondent's employees initiated the corrupt scheme so as to justify aggravation under this factor.

b. Voluntary corrective action

43. 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.[22]

44. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent's "[e]stablishment or improvement, and implementation of a corporate compliance program." The Sanctions Board has declined to afford mitigation in cases where the record contained no evidence that the respondent had in fact implemented compliance measures,[23] or where the evidence did not demonstrate the type of voluntary corrective actions that would prevent or address the type of misconduct at issue.[24] While the Respondent does not explicitly seek mitigation on this ground, it asserts that it "has a very stringent anti-bribery policy which provides for severe penalties for employees" found liable and that its "internal policies and [national] laws are sufficient in effectively discouraging employees from engaging in activities of this nature and it is highly unlikely that an event of this type will recur." Considering that the record does not contain any evidence of the Respondent's asserted anti-bribery policy and related internal policies, the Sanctions Board finds that no mitigation is warranted on this ground.

c. Cooperation

45. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C of the Sanctioning Guidelines identifies a respondent's assistance with INT's investigation and a respondent's internal investigation as examples of cooperation.

46. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance with INT's investigation or ongoing

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[20] See Sanctions Board Decision No. 60 (2013) at para. 126.

[21] See Sanctions Board Decision No. 50 (2012) at para. 62.

[22] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 63 (2014) at para. 104.

[23] See, e.g., Sanctions Board Decision No. 45 (2010) at para. 74 (finding no basis to apply mitigation for the respondent's asserted willingness to pursue corporate compliance measures, absent evidence of actual implementation).

[24] See, e.g., Sanctions Board Decision No. 65 (2014) at para. 77.

cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance," as well as "the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of [the] assistance." In this case, the respondent asserts that it fully cooperated with INT's investigation, and INT does not specifically dispute this point. The record shows that the Respondent timely replied to INT's show-cause letter of December 30, 2013; further corresponded with INT on at least two occasions; and conducted follow-up discussions with INT via conference call. The record also reflects that the Respondent provided INT details of the expenses incurred by the Respondent's employees during the Deputy Director's extended trip. In these circumstances and consistent with past precedent, the Sanctions Board finds that mitigation is warranted under this factor.[25]

47. *Internal investigation*: Section V.C.2 of the Sanctioning Guidelines refers to cooperation where a respondent has "conducted its own, effective internal investigation of the misconduct and relevant facts relating to the misconduct for which it is to be sanctioned and shared results with INT." In determining whether and to what extent an internal investigation warrants mitigating credit, the Sanctions Board considers whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience; whether the respondent shared its investigative findings with INT during INT's investigation or as part of the sanctions proceedings; and whether the respondent has demonstrated that it followed up on any investigative findings and recommendations.[26] Here, INT submits that the Respondent's internal investigations may be considered a mitigating factor. The record suggests that the Respondent conducted at least two rounds of internal investigations, the results of which it shared with INT. However, there is no indication in the record as to whether these internal investigations were conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience. Nor does the record show the Respondent's internal follow-up. Accordingly, consistent with past precedent, the Sanctions Board finds that no mitigation is justified on this ground.

d. Period of temporary suspension

48. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of Respondent's temporary suspension since the EO's issuance of the Notice on June 1, 2015.

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[25] See, e.g., Sanctions Board Decision No. 72 (2014) at para. 61 (applying mitigation where the respondents cooperated by, inter alia, providing internal email correspondence and documents to INT, including financial spreadsheets relating to the contracts at issue); Sanctions Board Decision No. 73 (2014) at paras. 47-48 (applying mitigation, despite INT's contention that the individual respondent's cooperation was limited in other respects, where the individual respondent participated in two interviews with INT, responded to subsequent inquiries from INT, and provided a document).

[26] See, e.g., Sanctions Board Decision No. 74 (2014) at para. 43; Sanctions Board Decision No. 77 (2015) at para. 56.

e. Other considerations

49. 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."

50. *Asserted absence of past misconduct*: The Respondent asserts that it has "never before been investigated by the World Bank Group or other multilateral development banks for unlawful activities." The Sanctions Board does not find that the Respondent's purported lack of prior misconduct warrants mitigation credit. While a record of past sanctionable misconduct may merit treatment as an aggravating factor, the Sanctions Board considers its absence a neutral fact.[27]

51. *Record of general performance*: The Respondent asserts that it is dedicated to the implementation of industry-leading compliance initiatives and business practices. The Respondent adds that it has a "significant profile and stellar reputation" and is "often praised for promoting higher standards of competence and compliance to [its] clients and [its] own employees." Consistent with past precedent denying mitigation on the basis of a respondent's claimed record of general performance,[28] the Sanctions Board does not find mitigation to be warranted in this case.

52. *Adverse consequences of debarment*: The Respondent argues that the recommended sanction could significantly tarnish its reputation. Noting past precedent denying mitigation for the expected adverse impacts of a sanction on a respondent's operations or its employees' reputations, the Sanctions Board declines to apply mitigation for the potential reputational impact of a debarment on the Respondent.[29]

53. *Proportionality*: The Respondent contends that the recommended sanction is "overly harsh and not commensurate with the degree of wrongdoing"; and since the First JV Partner was debarred only for six months, the recommended sanction should be rejected or "any ineligibility . . . be limited to a period of six (6) months or less." As previously noted, the Sanctions Board determines appropriate sanctions on a case-by-case basis,[30] taking into account the totality of the circumstances and all potential aggravating and mitigating factors for each respondent.[31] Considering all relevant circumstances in this case, the Sanctions Board does not

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[27] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 64; Sanctions Board Decision No. 52 (2012) at para. 46; Sanctions Board Decision No. 56 (2013) at para. 85.

[28] See, e.g., Sanctions Board Decision No. 72 (2014) at para. 68 (denying mitigation where the respondent firm claimed that it has had a long working relationship with the World Bank and has always delivered good value and completed projects); Sanctions Board Decision No. 79 (2015) at para. 55 (denying mitigation where the respondent asserted its reputation and record of completed projects and social responsibility).

[29] See, e.g., Sanctions Board Decision No. 66 (2014) at para. 48 (rejecting a respondent entity's request for mitigation based on the expected adverse impacts of debarment on its ongoing and prospective business operations, and the reputations of its staff).

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

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

find it appropriate to cap any ineligibility at six months or less. In particular, the Sanctions Board declines to consider the outcome of INT's settlement with the First JV Partner as a benchmark. As INT asserts, the First JV Partner's settlement and resulting debarment arose from an unrelated case. More generally, the Sanctions Board has declined to consider the sanctions agreed between settling parties to bear upon its own determination of contested sanctions for respondents, as the final sanctions in settlements may be shaped by considerations extrinsic to the sanctioned party's relative culpability or responsibility for misconduct.[32]

D. Determination of Liability and Appropriate Sanction

54. 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 two (2) years and six (6) months 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, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for a corrupt practice as defined in Paragraph 1.15(a)(i) of the January 1999 Procurement Guidelines.

[32] See Sanctions Board Decision No. 56 (2013) at para. 82 (declining to take into account the negotiated sanction imposed on settling parties in determining the appropriate sanction for a contesting respondent).

55. 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 declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[33]

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Catherine O'Regan
Denis Robitaille

[33] 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).