

Date of issuance: June 29, 2016

**Sanctions Board Decision No. 87
(Sanctions Cases No. 249 and No. 251)**

**IBRD Loan No. 4807-UA
Ukraine**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 249 (the “First Respondent Firm”), the two individual respondents in Sanctions Case No. 249 (the president and vice-president of the First Respondent Firm, hereinafter referred to as, respectively, the “Respondent President” and the “Respondent Vice-President”), the respondent entity in Sanctions Case No. 251 (the “Second Respondent Firm”), and the individual respondent in Sanctions Case No. 251 (the chairman of the board of directors of the Second Respondent Firm, hereinafter referred to as the “Respondent Chairman”), together with any entity that is an Affiliate² directly or indirectly controlled by any of these Respondents, with a minimum period of ineligibility of twenty-two (22) years and six (6) months for the First Respondent Firm, eleven (11) years and six (6) months for the Respondent President, eight (8) years and six (6) months for the Respondent Vice-President, six (6) years for the Second Respondent Firm, and five (5) years and six (6) months for the Respondent Chairman beginning from the date of this decision. The minimum period of debarment for the First Respondent Firm shall be added to the minimum period of debarment previously imposed on the First Respondent Firm in Sanctions Board Decision No. 71 (2014). These sanctions are imposed on the First Respondent Firm for collusive, corrupt, and obstructive practices; on the Respondent President and Respondent Vice-President for collusive and corrupt practices; and on the Second Respondent Firm and the Respondent Chairman for collusive practices.

I. INTRODUCTION

1. The Sanctions Board met in plenary session in March 2016, at the World Bank Group’s headquarters in Washington, D.C., to jointly review Sanctions Cases No. 249 and No. 251 (the “Cases”). The Sanctions Board was composed of J. James Spinner (Chair), Alison Micheli, Ellen Gracie Northfleet, Catherine O’Regan, and Denis Robitaille.

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).

2. Because the Cases involve related accusations, facts, and matters, the Sanctions Board determined that materials relating to the sanctions proceedings in each of the Cases would be made available to the parties to the other proceedings in accordance with Section 5.04(b) of the Sanctions Procedures. As discussed below in Paragraph 58, written pleadings and evidence were therefore shared between the parties in the Cases. In addition, following the requests of the First Respondent Firm, the Respondent President, and the Respondent Vice-President (together, the “Case 249 Respondents”) and the World Bank Group’s Integrity Vice Presidency (“INT”) for a hearing in Sanctions Case No. 249, and the requests of the Second Respondent Firm and the Respondent Chairman (together, the “Case 251 Respondents”) and INT for a hearing in Sanctions Case No. 251, the Sanctions Board Chair convened a joint hearing in the Cases in accordance with Article VI of the Sanctions Procedures. The hearing was held on March 7, 2016. INT participated in the oral proceedings through its representatives attending in person. The Case 249 Respondents were represented by external counsel attending in person, and the First Respondent Firm was also represented by an advisor attending remotely by video conference. The Case 251 Respondents were represented by external counsel attending in person and remotely by video conference, and the Second Respondent Firm was also represented by its deputy director attending remotely by video conference. The Sanctions Board deliberated and reached its decision in the Cases based on the written record and arguments presented at the hearing.

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

From Sanctions Case No. 249

- i. Notice of Sanctions Proceedings issued by the World Bank’s Evaluation and Suspension Officer (the “EO”)³ to the Case 249 Respondents on March 21, 2014 (the “Case 249 Notice”), appending the Statement of Accusations and Evidence (the “Case 249 SAE”) presented to the EO by INT, dated March 8, 2013;
- ii. Response submitted by the Case 249 Respondents to the Secretary to the Sanctions Board on November 19, 2014 (the “Case 249 Response”); and
- iii. Reply submitted by INT to the Secretary to the Sanctions Board on January 22, 2015 (the “Case 249 Reply”).

From Sanctions Case No. 251

- i. Notice of Sanctions Proceedings issued by the EO to the Case 251 Respondents on September 25, 2014 (the “Case 251 Notice”), appending the

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.

Statement of Accusations and Evidence (the “Case 251 SAE”) presented to the EO by INT, dated April 7, 2014;

- ii. Explanations submitted by each of the Case 251 Respondents to the EO on October 20, 2014 (the “Case 251 Explanations”);
- iii. Responses submitted by each of the Case 251 Respondents to the Secretary to the Sanctions Board on December 24, 2014 (the “Case 251 Responses”); and
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on March 3, 2015 (the “Case 251 Reply”).

4. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarments with conditional release for each of the Respondents in the Cases, together with any entity that is an Affiliate directly or indirectly controlled by any of them. The EO recommended minimum periods of ineligibility of nineteen (19) years for the First Respondent Firm to run consecutively with any sanction imposed in connection with Sanctions Case No. 216, seventeen (17) years for the Respondent President, fourteen (14) years for the Respondent Vice-President, and ten (10) years for the Second Respondent Firm and the Respondent Chairman.

5. Effective September 26, 2012, and pursuant to the Notice of Sanctions Proceedings in Sanctions Case No. 216, the First Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the First Respondent Firm, was temporarily suspended from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;⁴ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁵ 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 to participate further in the preparation or implementation of any project or program financed by the Bank and governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as “Bank-Financed Projects”).⁶

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. See 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. See 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.

6. In addition, the First Respondent Firm was temporarily suspended between May 10, 2012, and August 9, 2012, pursuant to Article II of the Sanctions Procedures, which provides for temporary suspension prior to sanctions proceedings in certain circumstances.

7. On July 9, 2014, the Sanctions Board imposed a sanction of debarment with conditional release on the First Respondent Firm with a minimum period of ineligibility of three (3) years in connection with Sanctions Case No. 216.⁷

8. Pursuant to the Case 249 and Case 251 Notices, and Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent President and the Respondent Vice-President effective March 21, 2014, and the Second Respondent Firm and the Respondent Chairman effective September 25, 2014, together with any entity that is an Affiliate under the direct or indirect control of any of these Respondents, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects, pending the final outcome of these sanctions proceedings. The Case 249 and Case 251 Notices specified that the temporary suspensions would apply across the operations of the World Bank Group.

II. GENERAL BACKGROUND

9. The Cases arise in the context of the Ukrainian Social Assistance System Modernization Project (the “Project”), which sought to improve the effectiveness of Ukraine’s social assistance system by better targeting cash benefits and reducing the burden on beneficiaries. On November 28, 2005, the Bank and Ukraine (the “Borrower”) entered into a loan agreement to provide the equivalent of US\$99.4 million to support the Project (the “Loan Agreement”).

10. In November 2009, the Borrower’s ministry responsible for implementing the Project (the “Ministry”) issued bidding documents under the Project for the supply of hardware and standard software required for the Project’s implementation (“Tender 1”). In response, the First Respondent Firm submitted a bid in June 2010. Only two other companies, the Second Respondent Firm and a third bidder (the “Third Bidder”), submitted bids for Tender 1. Upon recommendation of the bid evaluation committee (the “BEC”), the Borrower and the First Respondent Firm entered into a contract in October 2010 (the “Tender 1 Contract”), which was valued at the equivalent of approximately US\$29.6 million.

11. In April 2010, the Ministry issued bidding documents for the supply of hardware and standard software “for headquarters” (“Tender 2”). In response, the Second Respondent Firm submitted a bid in December 2010. Three other companies, including the First Respondent Firm and the Third Bidder, submitted bids for Tender 2. Upon recommendation of the BEC,

⁷ See Sanctions Board Decision No. 71 (2014).

the Borrower and the Second Respondent Firm entered into a contract in July 2011 (the “Tender 2 Contract”), which was valued at approximately US\$5 million.

12. In September 2010, the Ministry issued bidding documents for the installation of local area networks (“Tender 3”) (together with Tender 1 and Tender 2, the “Tenders”). In response, the First Respondent Firm submitted a bid in December 2010. The Second Respondent Firm (jointly with two other companies) and the Third Bidder submitted the only other bids for Tender 3. Upon recommendation of the BEC, the Borrower and the First Respondent Firm entered into a contract in January 2011 (the “Tender 3 Contract”) (together with the Tender 1 and Tender 2 Contracts, the “Contracts”), which was valued at approximately US\$8 million.

13. INT alleges that the Respondents engaged in collusive practices in connection with Tenders 1 and 2 by working with each other and the Third Bidder to ensure that the First Respondent Firm would win Tender 1 and that the Second Respondent Firm would win Tender 2. In addition, INT alleges that the First Respondent Firm engaged in collusive practices in connection with Tender 3 by arranging with a public official to secure an improper advantage in competing for that tender. INT further alleges that the Case 249 Respondents engaged in corrupt practices in competing for and executing the Tender 1 and Tender 3 Contracts. Finally, INT alleges that the Respondents engaged in obstructive practices in the course of INT’s investigation of potential misconduct with respect to the Project.

III. APPLICABLE STANDARDS OF REVIEW

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

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

16. The Cases involve diverse allegations of sanctionable practices that INT submits occurred at various times during and following the procurement and contract implementation processes. While the bidding documents for the Tenders contained definitions of sanctionable practices that comported with a version of the World Bank’s Procurement Guidelines, the Contracts presented non-standard definitions of sanctionable practices (i.e., definitions that are different from the definitions that appear in any version of the potentially applicable

Guidelines). In identifying the appropriate definition of sanctionable practices, the Sanctions Board takes into consideration the views of the World Bank's Legal Vice Presidency ("LEG"), as contemplated in Section 1.02(b)(iii) of the Sanctions Procedures. In the present Cases, the Sanctions Board concludes that, for each of the Tenders and Contracts, the alleged sanctionable practices are defined by the applicable version of the Bank's Procurement Guidelines as set out below.

- i. For the Tender 1 and Tender 2 Contracts, the Loan Agreement provided that the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) (the "May 2004 Procurement Guidelines") would apply, and the bidding documents for Tenders 1 and 2 defined sanctionable practices in accordance with the same version of the Guidelines. Therefore, allegations of misconduct relating to these contracts are governed by the May 2004 Procurement Guidelines.
- ii. For the Tender 3 Contract, the Loan Agreement provided that the May 2004 Procurement Guidelines would apply. The bidding documents for Tender 3 also referred generally to the May 2004 Procurement Guidelines, but set out definitions of sanctionable practices in accordance with the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (published May 2004 and revised in October 2006) (the "October 2006 Procurement Guidelines"). In accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the Sanctions Board has previously held that the standards agreed between the borrowing or recipient country and the respondent as set forth in the bidding documents or contract forms at issue shall take precedence over conflicting standards agreed between the borrowing or recipient country and the Bank.⁸ The Sanctions Board also notes the views expressed by LEG that where the bidding documents for a particular tender refer generally to one version of the Guidelines, but in their text set out definitions that accord with another version of the Guidelines, the latter definitions shall prevail as set out directly in the text. In these circumstances, the Sanctions Board considers that the allegations of misconduct relating to the Tender 3 Contract are governed by the October 2006 Procurement Guidelines.

17. The applicable definitions of collusive, corrupt, and obstructive practices are set out below in the Sanctions Board's analysis of each of INT's related allegations.

⁸ Sanctions Board Decision No. 59 (2013) at para. 11.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. The Written Record in Sanctions Case No. 249

1. INT's principal contentions in the Case 249 SAE

18. INT's primary contentions derive from information that a former employee of the First Respondent Firm (the "Former Employee") provided to INT. According to INT, the Former Employee provided INT with an electronic file containing emails detailing the First Respondent Firm's misconduct in relation to contracts under the Project (the "Email File"). INT asserts that it has authenticated the Email File.

a. Allegations of collusive practices

19. *Collusion allegation 1:* INT submits that it is more likely than not that the Case 249 Respondents engaged in collusive practices in connection with Tenders 1 and 2 by working together with the Case 251 Respondents and the Third Bidder to ensure that the First Respondent Firm would win Tender 1 without open competition and that the Second Respondent Firm would win Tender 2 without open competition. According to INT, the First Respondent Firm and the Second Respondent Firm agreed to split profits on the Tender 1 and Tender 2 Contracts, and the Third Bidder agreed to accept a small share of the profits from the Tender 1 Contract for its help.

20. *Collusion allegation 2:* INT further alleges that the First Respondent Firm engaged in collusive practices in connection with Tender 3 by arranging with a Bank-financed consultant working as a senior procurement specialist for the Ministry ("Consultant C") to obtain confidential information and directing Consultant C to add onerous requirements to the bid documents for the tender to disqualify competitors from bidding on the contract.

b. Allegations of corrupt practices

21. *Corruption allegation 1:* INT alleges that the First Respondent Firm and the Respondent President engaged in corrupt practices by offering and paying bribes to a public official, the deputy minister of the Ministry (the "Deputy Minister"), in order to win the bids for Tenders 1 and 3 and to ensure payment under the contracts for those tenders. INT asserts that the First Respondent Firm and the Respondent President offered the Deputy Minister 15% of the value of the Tender 1 Contract and 20% of the value of the Tender 3 Contract.

22. *Corruption allegation 2:* INT submits that the First Respondent Firm offered and paid bribes totaling up to US\$10,000 to a financial consultant with the Ministry with responsibility for the Project ("Consultant A") in order to win the bids for Tenders 1 and 3 and to ensure payment under the contracts for those tenders.

23. *Corruption allegation 3:* INT further alleges that the Case 249 Respondents offered and paid bribes in the form of a US\$1,000 monthly "gratuity" to a consultant with the Ministry who was responsible for monitoring and managing the Tender 1 and Tender 3 Contracts ("Consultant B") from December 2010 to the end of the Project. According to INT,

the Case 249 Respondents made the payments “to ensure Consultant B’s loyalty” to the First Respondent Firm.

c. Allegations of obstructive practices

24. *Obstruction allegation 1:* According to INT, the Case 249 Respondents made false statements to INT investigators to materially impede their investigation. INT asserts that, during its interviews with the Respondent President and the Respondent Vice-President, and with other employees of the First Respondent Firm, the interviewees each denied engaging in or knowing about the alleged corrupt and collusive practices. INT asserts that, in light of the evidence in support of its allegations, the denials constitute false statements amounting to obstruction.

25. *Obstruction allegation 2:* INT alleges that the First Respondent Firm engaged in obstructive practices by materially impeding the exercise of the Bank’s inspection and audit rights by denying INT access to the First Respondent Firm’s computers and refusing to permit INT to conduct an audit in May 2012.

d. Sanctioning factors

26. INT submits as aggravating factors that the Case 249 Respondents engaged in multiple and repeated acts of sanctionable practices; that the First Respondent Firm’s senior management was involved in the alleged misconduct; that the corrupt practices involved public officials; and that the First Respondent Firm intimidated the Former Employee. INT asserts that no mitigating factors apply to the Case 249 Respondents.

2. The Case 249 Respondents’ principal contentions in the Case 249 Response

a. Contentions regarding INT’s allegations of collusive and corrupt practices

27. The Case 249 Respondents argue that INT has failed to provide any credible evidence that they have committed collusive or corrupt acts. The Case 249 Respondents assert that the evidence provided by the Former Employee is unreliable because of his “motives to lie and his admitted lies and forgery.” In support of this assertion, the Case 249 Respondents contend that there was a serious employment conflict between the First Respondent Firm and the Former Employee, that it is uncontroverted that the Former Employee is “a serial forger and liar,” and that another motivation for the Former Employee to continue his practice of “lying and fabricating evidence” is to secure and maintain benefits from INT.

28. The Case 249 Respondents further assert that the Email File from the Former Employee has not been independently authenticated, and must be presumed to have been forged by the Former Employee. According to the Case 249 Respondents, an expert that they had engaged determined that both the emails and their metadata could have been “easily modified” using only Microsoft Outlook.

b. Contentions regarding INT's allegations of obstructive practices

29. *Obstruction allegation 1:* The Case 249 Respondents argue that INT has failed to prove that employees of the First Respondent Firm lied to INT in denying collusive and corrupt practices and questioning the authenticity of emails, because INT has failed in its proof of the underlying matters.

30. *Obstruction allegation 2:* According to the Case 249 Respondents, the First Respondent Firm did not obstruct the May 2012 audit, but rather offered to cooperate upon the arrival of external counsel to coordinate INT's access to corporate data.

c. Sanctioning factors

31. The Case 249 Respondents submit that mitigation is warranted because the First Respondent Firm has taken extensive voluntary corrective action; has already been suspended or debarred since May 2012; and is instrumental in assisting the Borrower in a period of transition. The Case 249 Respondents argue that no aggravating factors are present.

32. In addition, the Case 249 Respondents request that, if the Sanctions Board does find liability, the sanction imposed be a letter of reprimand or conditional non-debarment. The Case 249 Respondents also request that if the Sanctions Board determines that debarment is warranted, the period of debarment "run concurrently with and equal the period of time" that the First Respondent Firm is currently serving pursuant to Sanctions Board Decision No. 71 (2014).

3. INT's principal contentions in the Case 249 Reply

a. Contentions in support of the allegations of collusive and corrupt practices

33. INT argues that its evidence is compelling and that, in the Case 249 Response, the Case 249 Respondents make unsubstantiated claims and "attack" the Former Employee. INT asserts that the Former Employee is credible and has been consistent and forthcoming from his first meeting with INT and that the Case 249 Respondents "have no credibility." INT further asserts that it has authenticated the Email File as much as possible, given the Case 249 Respondents' "refusal to properly authenticate" the emails themselves.

b. Contentions in support of the allegations of obstructive practices

34. *Obstruction allegation 1:* With respect to allegations regarding false statements, INT appears to agree with the Case 249 Respondents that a finding of obstruction on this basis is dependent on the Sanctions Board's findings of sufficient evidence with respect to the other alleged misconduct.

35. *Obstruction allegation 2:* Regarding the alleged obstruction of INT's audit, INT asserts that it took steps to accommodate the Case 249 Respondents' preparation for the audit and contests the credibility of the Case 249 Respondents' statements regarding retention of external counsel.

c. Sanctioning factors

36. INT states that it "disagrees that leniency should be shown" to the First Respondent Firm. INT argues that mitigation should not be given for "charitable work" and that the First Respondent Firm "should not get credit for a debarment period." INT further argues that aggravation should apply as detailed in the Case 249 SAE.

B. The Written Record in Sanctions Case No. 251

1. INT's principal contentions in the Case 251 SAE

37. INT's primary contentions derive from information that the Former Employee provided. According to INT, the Former Employee approached INT with damaging allegations regarding the First Respondent Firm's conduct and provided INT with the Email File containing emails detailing both the First Respondent Firm's and the Second Respondent Firm's misconduct. INT asserts that it has authenticated the Email File.

a. Allegations of collusive practices

38. *Collusion allegation 1:* INT submits that it is more likely than not that the Case 251 Respondents engaged in collusive practices in connection with Tenders 1 and 2 by working together with the Case 249 Respondents and the Third Bidder to ensure that the First Respondent Firm would win Tender 1 without open competition and that the Second Respondent Firm would win Tender 2 without open competition. According to INT, the Second Respondent Firm and the First Respondent Firm agreed to split profits on the Tender 1 and Tender 2 Contracts, and the Third Bidder agreed to accept a small share of the profits from the Tender 1 Contract for its help.

b. Allegations of obstructive practices

39. *Obstruction allegation 3:* INT alleges that the Case 251 Respondents made false statements to INT investigators to materially impede their investigation. INT asserts that, during its interviews with the Respondent Chairman and other employees of the Second Respondent Firm, the interviewees each denied that the Second Respondent Firm engaged in collusion. INT asserts that, in light of the evidence in support of its allegations, the denials constitute false statements amounting to obstruction.

c. Sanctioning factors

40. INT submits as aggravating factors that the Second Respondent Firm engaged in multiple and repeated acts of sanctionable practices and that the Second Respondent Firm's

senior management was involved in the collusive practices. INT asserts that no mitigating factors apply to the Case 251 Respondents.

2. The Case 251 Respondents' principal contentions in the Case 251 Explanations and the Case 251 Responses

a. Contentions regarding INT's allegations of collusive practices

41. *Collusion allegation 1:* The Case 251 Respondents argue that the Email File was collected illegally and is not admissible, asserting that the emails were "stolen" by the Former Employee and then "illegally" transferred to INT. In addition, the Case 251 Respondents challenge the credibility of the Former Employee and his testimony on a variety of grounds. For example, the Case 251 Respondents assert that the Former Employee is not credible given his position as an employee of the Second Respondent Firm's main competitor, his involvement in the alleged misconduct, and his ability to forge the email evidence.

42. The Case 251 Respondents also challenge the authenticity of the Email File, asserting that INT has not provided any foundational proof of the authenticity of the evidence. According to the Case 251 Respondents, an expert engaged by the Second Respondent Firm to assess the validity of the email evidence concluded that Personal Storage Table (.pst) files can be modified and that changes can be made "to any information about a message . . . and also to the content of a message without any trace evidence of such changes."

b. Contentions regarding INT's allegations of obstructive practices

43. *Obstruction allegation 3:* As a threshold matter, the Case 251 Respondents argue that the May 2004 Procurement Guidelines, which appeared in the Loan Agreement and were referenced in the bidding documents for Tender 3, govern INT's allegations in this case. The Case 251 Respondents assert that INT's allegations of obstruction fail because this version of the Procurement Guidelines does not include obstruction as a sanctionable practice. Without prejudice to their jurisdictional argument, the Case 251 Respondents argue in the alternative that the denial of collusion accusations by relevant staff of the Second Respondent Firm does not constitute false statements to INT and that the refusals to admit to misconduct or agree with "ambiguous evidence" could not materially impede INT's investigation.

c. Sanctioning factors

44. The Case 251 Respondents dispute the application of aggravating factors asserted by INT and submit that mitigation is warranted for their adoption of a compliance policy, cooperation with INT's investigation, internal investigation in response to INT's allegations, period of temporary suspension already served, and passage of time. As additional considerations, the Case 251 Respondents assert that in the course of INT's investigation, INT significantly increased the scope of its investigation; that INT displayed a biased attitude to the Case 251 Respondents; that the Second Respondent Firm has a record of good performance; and that the EO's recommended sanctions are punitive and disproportionate.

3. INT's principal contentions in the Case 251 Reply

a. Contentions in support of the allegations of collusive practices

45. *Collusion allegation 1:* INT argues that the Former Employee is credible and that the Case 251 Respondents' claims regarding the Former Employee are not credible. In addition, INT asserts that it has authenticated the emails as much as possible given the Case 251 Respondents' refusal to properly authenticate the emails themselves. INT further asserts that the Case 251 Respondents' expert report should be given very little weight because it is flawed and does not provide any actual evidence that the emails were forged.

b. Contentions in support of the allegations of obstructive practices

46. *Obstruction allegation 3:* With respect to governing definitions of misconduct, INT argues that the bidding documents for Tender 3 used definitions of sanctionable practices from the October 2006 Procurement Guidelines, which include obstruction as a sanctionable practice. As to the underlying evidence of misconduct, INT asserts that its email evidence is compelling and authenticated to the extent possible and that, in light of INT's strong evidence of the misconduct, the Respondent Chairman's "false and misleading" interview statements to INT obstructed the investigation.

c. Sanctioning factors

47. INT submits that mitigation is not warranted for the Case 251 Respondents and that the Sanctions Board should disregard the additional considerations raised by the Case 251 Respondents.

C. Presentations at the Joint Hearing

48. At the outset of the hearing, the Sanctions Board Chair invited INT and the Respondents to address in their respective opening presentations the various procedural and evidentiary requests filed by the parties in the week leading up to the hearing. In its presentation, INT reiterated its argument that the Email File together with the Former Employee's testimony constitute overwhelming evidence that the Respondents engaged in the sanctionable practices alleged. INT asserted that the Email File is authentic as demonstrated by its expert report and that the Respondents' claim that the emails were forged is mere "speculation and insinuation." INT also addressed the Former Employee's credibility, asserting that he had personal knowledge of the misconduct in question and that he had provided a consistent narrative throughout the investigation and these sanctions proceedings.

49. The Case 249 Respondents disputed INT's allegations, arguing that the Former Employee is the only source of evidence against the Respondents and that the evidence he provided is unreliable because the Former Employee is an admitted liar and forger motivated by a vendetta against the First Respondent Firm and financial, employment, and visa-related incentives. In addition, the Case 249 Respondents argued that INT's investigation

demonstrates that it “deviated from its role as a principled fact-finder” and that INT’s obstruction allegations are contradicted by the record.

50. In their presentation, the Case 251 Respondents argued that INT failed to prove its allegations, asserting that the case depends entirely on the credibility of the Former Employee, who is an admitted liar and forger with the ability, opportunity, and motive to alter evidence. The Case 251 Respondents also argued that INT did not authenticate the Email File and that INT put forward no independent evidence to support the Former Employee’s testimony or the Email File. In addition, the Case 251 Respondents argued that INT’s allegation of obstruction against the Case 251 Respondents fails as a legal matter.

51. Given the central significance of the testimony of the Former Employee and the evidence that he provided to INT, the Sanctions Board decided to call the Former Employee as a witness to provide live testimony in accordance with Section 6.03(b)(iv) of the Sanctions Procedures. INT requested that the Former Employee be heard in camera, citing concerns of confidentiality and sensitivity, including under Section 5.04(c) of the Sanctions Procedures. However, INT did not substantiate its confidentiality and sensitivity concerns. Nor did the Former Employee raise any concerns with respect to testifying in the presence of the Respondents. In light of these considerations and the principle of fairness that suggests that litigants should be afforded the opportunity to hear and respond to testimony unless there are compelling reasons to decide otherwise, the Sanctions Board denied INT’s request that the Former Employee be heard in camera. The Former Employee therefore responded to the Sanctions Board’s questions in the presence of the parties.

52. In his testimony, the Former Employee stated that he left his employ with the First Respondent Firm due in part to a conflict with senior management based on his disagreement with the company’s corrupt activities. He also stated that he began receiving threats from the First Respondent Firm after the company learned that he was responsible for disclosing to INT information about the misconduct alleged in the Cases. In addition, the Former Employee asserted that he did not alter or adjust any data in the Email File itself, but acknowledged that he had changed or added commentary to the text of emails that he had copied into a separate letter to INT for the sake of clarification and emphasis.

53. Following the Former Employee’s testimony, the parties reiterated their contentions regarding the merits of INT’s allegations and the Former Employee’s credibility and the authenticity of the evidence that he provided to INT. In response to the Sanctions Board’s questions regarding the parties’ efforts to authenticate the Email File, INT asserted that the only way to “truly validate” the emails would have been to analyze the emails against the Respondents’ email exchange servers. According to INT, it had asked the Respondents for access to their respective servers on numerous occasions, but the Respondents denied the requests. The Case 249 Respondents maintained that they were justified in denying INT access to the First Respondent Firm’s server based on, inter alia, financial constraints on engaging counsel and national laws on state secrets. The Case 251 Respondents asserted that they had reviewed the Second Respondent Firm’s server themselves, but stated that the company had a document retention policy such that the emails in question would not have been on the server.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

54. The Sanctions Board will first address the jurisdictional challenge raised by the Case 251 Respondents and the preliminary evidentiary and procedural matters raised in the course of these sanctions proceedings. The Sanctions Board will then consider whether it is more likely than not that the alleged sanctionable practices occurred, and if so, which of the Respondents may be held liable for each of the sanctionable practices. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on each of the Respondents.

A. Jurisdiction in Sanctions Case No. 251

55. INT and the Case 251 Respondents dispute whether there is a basis for sanctioning the Case 251 Respondents for obstruction as alleged by INT. The Case 251 Respondents argue that the May 2004 Procurement Guidelines, which appeared in the Loan Agreement and were referenced in the bidding documents for Tender 3, govern INT's allegations in Sanctions Case No. 251. The Case 251 Respondents assert that INT's allegations of obstruction fail because this version of the Procurement Guidelines does not include obstruction as a sanctionable practice. INT responds that the allegations are governed instead by the October 2006 Procurement Guidelines, which include a definition of obstruction.

56. The Sanctions Board notes that, although the bidding documents relating to Tender 3 referred to the May 2004 Procurement Guidelines, the bidding documents also contained pertinent definitions of sanctionable practices – including the sanctionable practice of obstruction – in accordance with the October 2006 Procurement Guidelines. The Case 251 Respondents were thus on notice that obstruction would constitute a sanctionable practice in relation to Tender 3. The Sanctions Board accordingly concluded, at Paragraph 16 above, that the definitions of sanctionable practices in the October 2006 Procurement Guidelines were applicable to Tender 3. The Sanctions Board thus finds that there is a sufficient basis for reviewing INT's allegations of obstruction in the Cases – including INT's obstruction allegations against the Case 251 Respondents – under the October 2006 Procurement Guidelines.

B. Procedural and Evidentiary Matters

57. The parties in the course of these proceedings have filed a myriad of procedural motions, evidentiary submissions, and other requests with the Sanctions Board. The Sanctions Board has dealt with all of them.

1. Determinations on joinder and distribution of materials

58. As noted above, because the Cases involve related accusations, facts, and matters, the Sanctions Board joined the Cases and approved the distribution of materials relating to each of the Cases to the respondents in the other case, in accordance with Section 5.04(b) of the Sanctions Procedures. In addition, considering that Sanctions Cases No. 216 (resolved pursuant to Sanctions Board Decision No. 71 (2014)) and No. 338 (uncontested) each present certain accusations, facts, or matters related to the Cases, the Sanctions Board, in accordance with Section 5.04(b), approved the distribution of certain materials from those cases to the

Respondents in the Cases. In order to inform its determinations on distribution, the Sanctions Board invited the parties in the Cases and Sanctions Cases No. 216 and No. 338 to file submissions addressing the sensitive nature of any specific materials within the meaning of Section 5.04(c) of the Sanctions Procedures that should not be distributed and any other potential considerations that may inform the Sanctions Board's exercise of its discretion in this regard. In response to the Sanctions Board's invitation, INT, the Case 249 Respondents, the Case 251 Respondents, and the Respondent in Sanctions Case No. 338 each filed submissions addressing the distribution of materials across the cases. The Sanctions Board subsequently invited the parties to clarify various aspects of their submissions, to which the Sanctions Board received a number of responses. In reaching its final determinations on distribution, the Sanctions Board carefully considered all of the parties' submissions, as well as the relevant provisions of the Sanctions Procedures, including Sections 5.04(b) and 5.04(c).

2. Determinations on the Respondents' redaction challenges

59. The Case 249 Respondents challenged INT's redaction of an attachment to the Case 249 Reply, requesting that the Sanctions Board review the redaction and allow their counsel to review the redacted material in camera. Upon reviewing the unredacted documents in accordance with Section 5.04(d) of the Sanctions Procedures, the Sanctions Board found that the redacted information was not necessary to enable the Case 249 Respondents to mount a meaningful response to the allegations against them, and therefore determined that the unredacted version of the document did not need to be made available to the Case 249 Respondents.

60. Separately, the Case 251 Respondents challenged INT's redaction of a transcript of interview with the Former Employee. According to INT, the transcript was redacted in accordance with the World Bank Group Staff Rules. The Sanctions Board reviewed the unredacted version of the transcript and determined to grant the Case 251 Respondents' challenge in part and to deny it in part. Specifically, the Sanctions Board granted the Case 251 Respondents' challenge with respect to redacted material that the Sanctions Board determined may be considered directly relevant to the Former Employee's credibility and reliability as a key source of testimonial and documentary evidence, and therefore necessary to enable the Case 251 Respondents to mount a meaningful response within the meaning of Section 5.04(d) of the Sanctions Procedures, and potentially exculpatory or mitigating within the meaning of Section 3.02 of the Sanctions Procedures. In reaching this determination, the Sanctions Board took into account that the Sanctions Procedures expressly limit the grounds for restricting the distribution of written materials to the exceptions set out in Section 5.04 of the Sanctions Procedures; and that INT had not asserted or demonstrated a basis for withholding this material as a matter of "life, health, safety, or well-being" under Section 5.04(c) of the Sanctions Procedures. The Sanctions Board then instructed INT to submit a revised version of the transcript for the Case 251 Respondents' in camera review in accordance with Section 5.04(e) of the Sanctions Procedures. The Sanctions Board denied the Case 251 Respondents' challenge with respect to all other redacted material, which the Sanctions Board determined was not necessary to enable the Case 251 Respondents to mount a meaningful response within the meaning of Section 5.04(d) of the Sanctions Procedures.

3. Determinations on INT's requests to withhold materials

61. INT requested to withhold certain materials in the Cases and Sanctions Case No. 338 from the Respondents. INT described the materials in question as "Strictly Confidential Exhibits" pursuant to Section 5.04(c) of the Sanctions Procedures and/or World Bank Group Staff Rule 2.01. INT submitted these exhibits in hardcopy in the Cases and Sanctions Case No. 338. The Sanctions Board notes that INT attached redacted versions of a number of the exhibits that it requested to withhold to the Statement of Accusations and Evidence in at least one of the Cases.

62. Having considered all relevant materials in the records of the Cases, as well as the relevant provisions of the Sanctions Procedures, the Sanctions Board determined that no action was necessary with respect to documents that INT had redacted but had not withheld from the relevant Respondents. The Sanctions Board noted that the redactions had not been challenged by the relevant Respondents, and that the redacted information did not appear necessary to enable the Respondents to mount a meaningful response within the meaning of Section 5.04(d) of the Sanctions Procedures or exculpatory or mitigating in the sense of Section 3.02 of the Sanctions Procedures in light of the record as a whole, including the hearing presentations and testimony. Considering that the remaining materials identify or originate from individuals who were provided confidential witness status by INT or contain information relating to minors, the Sanctions Board also determined to grant INT's request to withhold these documents. However, in the interest of fairness to all parties, the Sanctions Board further determined that these documents shall be afforded no weight in determining the factual disputes before it pursuant to Section 7.01 of the Sanctions Procedures.

4. Determinations on the parties' additional requests

63. In the week leading up to the joint hearing in the Cases, the parties filed numerous additional procedural, evidentiary, and administrative requests. The Sanctions Board dealt with some of these requests prior to the hearing. The Sanctions Board dealt with other requests at the hearing and invited the relevant parties to submit post-hearing comments with respect to the remaining requests. Specifically, the Sanctions Board Chair invited INT and the Case 249 Respondents to submit comments on the Case 251 Respondents' requests that the Sanctions Board admit additional evidence into the record and that the Sanctions Board compel INT to produce exculpatory or mitigating evidence or alternatively sanction INT for the alleged failure to comply with Section 3.02 of the Sanctions Procedures. The Sanctions Board Chair also invited the parties to submit comments on the testimony that the Former Employee provided during the hearing.

64. Considering the relevant provisions of the Sanctions Procedures and all relevant materials in the records of the Cases and Sanctions Cases No. 216 and No. 338, on April 18, 2016, the Sanctions Board Chair determined, as a matter of discretion, that the additional evidence submitted by the Case 251 Respondents shall be admitted into the record of the Cases pursuant to Section 5.01(c) of the Sanctions Procedures; and the Sanctions Board denied the Case 251 Respondents' request that the Sanctions Board compel INT to produce additional evidence or alternatively sanction INT.

5. Weight and admissibility of evidence provided by the Former Employee

65. The record in the Cases includes records or transcripts of over ten interviews with the Former Employee. In addition, the Former Employee is the source of the Email File, which contains all contemporaneous email evidence regarding the alleged collusive and corrupt practices that INT presented in the Case 249 and Case 251 SAEs and referenced during its interviews with the Former Employee, representatives of the Respondent entities, and other witnesses. As their respective primary defenses, the Respondents challenge the credibility of the Former Employee and the authenticity of the evidence that he presented to INT.

66. In assessing the weight of witness statements, the Sanctions Board “takes into account ‘all relevant factors bearing on the witness’s credibility.’”⁹ As noted above, the Case 249 Respondents argue that the Former Employee’s evidence is wholly unreliable because of his “motives to lie and his admitted lies and forgery.” In support of this argument, the Case 249 Respondents assert that there was an employment conflict between the First Respondent Firm and the Former Employee, that it is uncontroverted that the Former Employee is a “serial forger and liar,” and that the Former Employee was motivated by a desire to secure and maintain benefits from INT. The Case 251 Respondents raise similar arguments with respect to the Former Employee’s credibility and also assert that the Former Employee’s reported statements contain material errors and inconsistencies. In response to these arguments, INT asserts that the Former Employee is credible and that the claims against the Former Employee are unsubstantiated.

67. The Sanctions Board takes into account that INT’s record of interview (“ROI”) with the Former Employee of May 2011 refers to a “conflict situation” between the Former Employee and the First Respondent Firm as his former employer regarding “salary and bonus [] issues,” and that the Email File indicates that the Former Employee was himself involved in some of the misconduct alleged in these sanctions proceedings. Consistent with past precedent, including the decision for Sanctions Case No. 216 in which the Former Employee was also the main source of evidence, the Sanctions Board finds that these factors may discount the value of the Former Employee’s testimony, but do not preclude its use.¹⁰

68. The Case 249 Respondents argue that the Sanctions Board should also take into account benefits provided to the Former Employee, asserting that these benefits bear on the Former Employee’s motives and credibility. INT acknowledges that the Bank provided various benefits to the Former Employee, who took a staff position with the Bank in 2012. INT made this same acknowledgment in Sanctions Case No. 216. While the Sanctions Board takes very seriously any appearance of potential inducement to a witness,¹¹ as with that past

⁹ Sanctions Board Decision No. 71 (2014) at para. 54 (quoting Sanctions Board Decision No. 50 (2012) at para. 39).

¹⁰ See Sanctions Board Decision No. 50 (2012) at para. 39; Sanctions Board Decision No. 71 (2014) at para. 54.

¹¹ Sanctions Board Decision No. 71 (2014) at para. 55.

case, the Sanctions Board finds here insufficient evidence to support the Case 249 Respondents' assertion of a quid pro quo arrangement between INT and the Former Employee.¹²

69. However, the Sanctions Board does take into account evidence indicating that the Former Employee tampered with evidence that he submitted to INT. For instance, the Former Employee admits that when he first sought to draw INT's attention to the alleged misconduct at issue in the Cases, he made alterations for emphasis to the copy of one email that he also gave to INT in original, unaltered electronic form. In addition, the Sanctions Board takes into account evidence of the Former Employee's possible falsification of a salary certificate that the Former Employee submitted in regard to a previous employer when he was entering into employment with the World Bank.

70. The Sanctions Board has also considered all arguments raised by the parties with respect to the admissibility and authenticity of the Email File. With respect to admissibility, the Case 251 Respondents argue that INT's email evidence should not be used against the Case 251 Respondents because the emails were stolen by the Former Employee and then "illegally transferred to INT." Without condoning any potentially improper appropriation or transfer of information, the Sanctions Board notes LEG's opinion that it does not see a legal basis for ruling out the use in sanctions proceedings of evidence that may have been obtained illegally by a third party acting independently of the Bank. Regarding authenticity, INT asserts that it has authenticated the Email File. In response, the Respondents argue that the Email File has not been independently authenticated and that the Email File should be presumed to have been forged by the Former Employee. The record indicates that the Email File was composed of approximately 19,000 emails, which appear to be internally consistent. While not impossible, it is highly improbable that the Former Employee could have created or altered the emails in a way that would have ensured that thousands of details – such as information on dates, times, senders, and recipients – were complete and internally consistent. Moreover, the Respondents produced no direct evidence that emails in the Email File were forged, as should have been possible by checking the Email File against the emails on the Respondent entities' respective email servers. Nor have the Respondents provided a colorable explanation for their failure to do so. Having carefully considered the full record presented in the Cases, including the competing expert opinions submitted by the parties, the Sanctions Board concludes that it is more likely than not that the Email File is authentic.

71. Taking into account all of the above factors, the Sanctions Board primarily bases its factual findings in the analysis that follows on the evidence contained in the Email File, rather than on any uncorroborated testimony of the Former Employee.

C. Evidence of Collusive Practices

72. In relation to INT's first collusion allegation in connection with Tenders 1 and 2, and in accordance with Paragraph 1.14(a)(iii) of the May 2004 Procurement Guidelines, INT bears

¹² See id.

the initial burden to show that it is more likely than not that the Respondents engaged in (i) a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, (ii) designed to establish bid prices at artificial, non-competitive levels.

73. With respect to INT's second collusion allegation in connection with Tender 3, and in accordance with Paragraph 1.14(a)(iii) of the October 2006 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents engaged in (i) an arrangement between two or more parties (ii) designed to achieve an improper purpose, including to influence improperly the actions of another party. An explanatory footnote in the October 2006 Procurement Guidelines provides that "[f]or the purpose of these Guidelines, 'parties' refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non-competitive levels."¹³

1. Collusion allegation 1: Alleged scheme between the Respondents and the Third Bidder with respect to Tenders 1 and 2

74. As noted above, INT alleges that the Respondents engaged in collusive practices in connection with Tenders 1 and 2 by working with each other and the Third Bidder to ensure that the First Respondent Firm would win Tender 1 and that the Second Respondent Firm would win Tender 2. The Respondents challenge the credibility of the Former Employee and the authenticity of his evidence, as discussed in Paragraphs 65-71 above, but otherwise do not specifically address the merits of these allegations or put forward any rebuttal evidence.

a. Scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower

75. The record supports a finding that the Respondents entered into an arrangement with each other and the Third Bidder in connection with Tenders 1 and 2, whereby the three entities coordinated their bids for the tenders. According to the Former Employee, the Deputy Minister convened a meeting between the First Respondent Firm and the Second Respondent Firm in May or June 2010 regarding Tender 1. The Former Employee reportedly stated that the meeting was attended by the Deputy Minister, the Respondent President, the Respondent Chairman, and the owner of the First Respondent Firm, and that it was at this meeting that an agreement had been reached that the First Respondent Firm would win the Tender 1 Contract and share its profits with the Second Respondent Firm. Consistent with the Former Employee's testimony, the Email File contains contemporaneous evidence indicating that the Respondents entered into an arrangement with respect to Tenders 1 and 2, as discussed below.

76. Emails provided by the Former Employee reveal that employees of the Respondent entities began communicating and meeting by at least May 2010, i.e., approximately one month before the First Respondent Firm, the Second Respondent Firm, and the Third Bidder submitted bids for Tender 1 and approximately seven months before they submitted bids for Tender 2. While the emails do not specifically reference Tenders 1 or 2, they reveal discussion

¹³ October 2006 Procurement Guidelines at p. 11, n.21.

of bid coordination at a time just before the First Respondent Firm and the Second Respondent Firm submitted bids for Tender 1. The Email File also contains an email between employees of the First Respondent Firm and the Second Respondent Firm – including all three of the individual Respondents – that appears to memorialize the scheme with respect to Tenders 1 and 2. Specifically, in June 2010, the Respondent Vice-President emailed the Respondent Chairman, with copy to the Respondent President, setting out in detail the Respondents’ agreement to coordinate on their bids for Tenders 1 and 2 and to split the profits on the contracts for those tenders (the “Arrangements Email”). The Respondent Vice-President states in the email, “Practically everything discussed earlier [is here], merely gathered in one place. . . . Please approve on your side.” A few days later, the Respondent Chairman responded to the Arrangements Email stating, “Our amendments to the joint venture agreement are highlighted [in] red. When can we meet and discuss?” The Respondents do not offer an alternative or contrary explanation for these emails beyond challenging the overall authenticity of the Email File.

77. According to the Former Employee, the Third Bidder was also a part of the collusive scheme. The Former Employee reportedly stated that, *inter alia*, the First Respondent Firm helped the Third Bidder prepare documents for the Third Bidder’s losing bid for Tender 1. Consistent with the Former Employee’s testimony, contemporaneous email evidence indicates that the First Respondent Firm assisted with preparing the Third Bidder’s bidding documents for Tender 1 and that the First Respondent Firm paid for expenses for the Third Bidder in connection with the Third Bidder’s bid for Tender 1.

78. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the First Respondent Firm and the Second Respondent Firm – including the individual Respondents – engaged in a scheme with each other and the Third Bidder with respect to Tenders 1 and 2.

b. Designed to establish bid prices at artificial, non-competitive levels

79. INT alleges that the Respondents engaged in collusive practices with respect to Tenders 1 and 2 to ensure that the First Respondent Firm won Tender 1 and the Second Respondent Firm won Tender 2 without open competition at artificial non-competitive levels.

80. Contemporaneous email evidence provided by the Former Employee demonstrates that the collusive scheme was designed to stifle competition for Tenders 1 and 2. For instance, an employee of the Second Respondent Firm emailed employees of the First Respondent Firm in May 2010 stating, “The Parties have agreed to start working on technological and organizational shivs, considering the most dangerous competitors. . . . The shivs must make bidding as difficult as possible for any competitor. [The Third Bidder] will play up in the project.” According to a translator’s comment in the English-language version of the email provided by INT, the term “shiv” in the language of the original document may be understood to mean “special requirements, arrangements, criteria that are deliberately introduced into the bidding in order to make it difficult or impossible for other market players to compete.”

81. In addition, the Arrangements Email indicates that the Respondents coordinated their bids for Tenders 1 and 2 in a way that was designed to establish bid prices at artificial non-competitive levels. The scheme as set out in the email provides, inter alia, that the Second Respondent Firm “plays up to” the First Respondent Firm under Tender 1 by submitting a bid with a higher price so that the First Respondent Firm wins the bid; and the First Respondent Firm “plays up to” the Second Respondent Firm under Tender 2 by submitting a bid with a higher price so that the Second Respondent Firm wins that bid. Consistent with the Arrangements Email, the Second Respondent Firm submitted a higher bid than the First Respondent Firm for Tender 1 – and the First Respondent Firm won that tender; and the First Respondent Firm submitted a higher bid than the Second Respondent Firm for Tender 2 – and the Second Respondent Firm won that tender. While evidence that the desired influence actually materialized is not necessary to establish this element of collusive practices, it may bolster a showing of the respondent’s intent to influence, which is all that is required.¹⁴

82. On the basis of this record, the Sanctions Board finds that it is more likely than not that the scheme discussed under the first element of collusive practices was designed to establish bid prices with respect to Tenders 1 and 2 at artificial, non-competitive levels.

2. Collusion allegation 2: Alleged arrangement between the First Respondent Firm and Consultant C with respect to Tender 3

83. INT alleges that the First Respondent Firm engaged in collusive practices in connection with Tender 3 by arranging with Consultant C to obtain confidential information, and directing Consultant C to add onerous requirements to the bid documents for the tender. The Case 249 Respondents do not specifically address the merits of these allegations beyond their general challenge to the reliability of evidence provided by the Former Employee or put forward any rebuttal evidence.

a. Arrangement between two or more parties

84. As an initial matter, the record reflects that Consultant C was a Bank-financed consultant working as a senior procurement specialist for the Ministry. The record supports a finding that employees of the First Respondent Firm had an arrangement whereby Consultant C discussed the bidding documents for Tender 3 with the First Respondent Firm’s employees prior to their publication and provided the First Respondent Firm’s employees with an advance copy of the bidding documents for that tender. According to the Former Employee’s reported statements, upon the First Respondent Firm’s request, Consultant C “added excessive requirements” to the bidding documents for Tender 3. Consistent with the Former Employee’s reported statements, the Email File contains contemporaneous evidence indicating that employees of the First Respondent Firm received an advance draft of the bidding documents for Tender 3 (the “Advance Draft”) from Consultant C by late July 2010, i.e., approximately one and a half months before the bidding documents were published in September 2010. The Email File also contains internal emails of the First Respondent Firm in

¹⁴ Cf. Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 78 (2015) at para. 56.

which employees of the First Respondent Firm reviewed and commented on the Advance Draft.

85. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the First Respondent Firm entered into an arrangement with Consultant C in connection with Tender 3.

b. Designed to achieve an improper purpose, including to influence improperly the actions of another party

86. INT alleges that the First Respondent Firm colluded with Consultant C in order to “disqualify other competitors from bidding on the project.”

87. Evidence provided by the Former Employee indicates that the arrangement with Consultant C was intended to stifle open competition for Tender 3 by giving the First Respondent Firm an advantage in the bidding process for that tender. As noted above, the Former Employee reportedly stated that Consultant C “added excessive requirements” to the bidding documents for Tender 3 upon the First Respondent Firm’s request. The Former Employee further reportedly stated that the excessive requirements were intended to allow the First Respondent Firm to win and to disqualify any other bidders. As also noted above, the Email File contains contemporaneous evidence indicating that employees of the First Respondent Firm received the bidding documents for Tender 3 approximately one and a half months before the bidding documents were officially issued. Other evidence in the Email File suggests that employees of the First Respondent Firm perceived that they could be advantaged through their arrangement with Consultant C. Following the official issuance of the bidding documents for Tender 3, only the First Respondent Firm, the Second Respondent Firm (jointly with two other companies), and the Third Bidder submitted bids for Tender 3, and the First Respondent Firm won the tender. As noted above, 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 collusive practices.¹⁵

88. On the basis of this record, the Sanctions Board finds that it is more likely than not that the scheme under the first element of collusive practices was designed to achieve an improper purpose, i.e., to stifle open competition for Tender 3.

D. Evidence of Corrupt Practices

89. In accordance with Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines and Paragraph 1.14(a)(i) of the October 2006 Procurement Guidelines, INT bears the initial burden to show that the Case 249 Respondents (i) offered or gave, directly or indirectly, any thing of value to influence the action of a public official in the procurement process or in contract execution in connection with Tender 1 (May 2004 definition),¹⁶ and/or (ii) offered or

¹⁵ Cf. Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 78 (2015) at para. 56.

¹⁶ The definition of “corrupt practice” in the bidding documents for Tender 1 omitted the footnote defining the term “public official.”

gave, directly or indirectly, any thing of value to influence improperly the actions of another party in connection with Tender 3 (October 2006 definition).¹⁷

1. Corruption allegation 1: Alleged payments to the Deputy Minister

90. INT alleges that the First Respondent Firm and the Respondent President offered and paid the Deputy Minister 15% of the value of the Tender 1 Contract and 20% of the value of the Tender 3 Contract – i.e., the equivalent of approximately US\$6 million in bribes – to influence the procurement processes and execution of these Contracts. The Case 249 Respondents do not specifically address the merits of these allegations or put forward any rebuttal evidence.

a. Offering or giving a thing of value, directly or indirectly

91. The record supports a finding that employees of the First Respondent Firm had agreed to make payments – and did make payments – to the Deputy Minister in connection with the Project. With respect to Tender 1, for example, the Former Employee reportedly stated that an agreement had been reached during a meeting convened by the Deputy Minister in June 2010. In particular, it was reportedly agreed that the First Respondent Firm would win the contract and share its profits with the Second Respondent Firm and that “a kickback of 15% of the total contract amount” would be paid to the Deputy Minister. The Former Employee reportedly stated that payments to the Deputy Minister were made in cash and that he personally witnessed two instances of payment.

92. Consistent with the Former Employee’s testimony, the Email File contains contemporaneous evidence indicating that employees of the First Respondent Firm – including the Respondent President – arranged for payments to be made to the Deputy Minister. The Sanctions Board gives considerable weight to the number of emails in the Email File that consistently reflect the scheme to make payments to the Deputy Minister, which outweigh any concern from the Former Employee’s admitted alteration to the copy of one of the relevant emails. For instance, in April 2010, an employee of the First Respondent Firm emailed another employee of the First Respondent Firm in connection with Tender 1, stating that the Deputy Minister “must get 10% from each money transfer to [the First Respondent Firm’s] account under this project.” A few days later, the Respondent President emailed the Respondent Vice-President and others stating that “15% are for [the Deputy Minister], excluding cashing, and he will settle all the issues.” Subsequent emails reference disbursements of 15% in connection with the Tender 1 Contract and 20% in connection with the Tender 3 Contract.

93. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the First Respondent Firm – including the Respondent President – gave a thing

¹⁷ For the purpose of the Bank’s Procurement and Consultant Guidelines, the term “another party” refers to a public official acting in relation to the procurement or selection process or contract execution. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

of value to the Deputy Minister. Because “offering” and “giving” are set out as alternative elements of corrupt practice under the applicable definitions,¹⁸ the Sanctions Board declines to address INT’s separate allegation of an offer.

b. To influence (improperly) the action of a public official in the procurement process or in contract execution

94. The second element of corrupt practices requires a showing that a respondent, in offering or giving a thing of value to another party under the first element, acted with a purpose to (i) “influence the action of a public official in the procurement process or in contract execution” (for matters governed by the May 2004 Procurement Guidelines) or (ii) “influence improperly the actions of another party” (for matters governed by the October 2006 Procurement Guidelines). As the Sanctions Board has previously observed, the focus of the second element of corrupt practices under each of these Guidelines is on the respondent’s purpose and intended target of influence.¹⁹ The Sanctions Board has also observed that explanatory footnotes in both versions of the Guidelines make clear that the target of influence is the same under both definitions: that is, public officials acting in relation to the procurement process or contract execution, including “World Bank staff and employees of other organizations taking or reviewing procurement decisions.”²⁰

95. INT contends that the First Respondent Firm and the Respondent President offered and paid bribes to the Deputy Minister in order to win the bids for Tenders 1 and 3 and to ensure payment under the contracts for those tenders.

96. The record supports a finding that payments were made to the Deputy Minister in order to influence his actions in the procurement processes for Tenders 1 and 3. As noted in Paragraph 91 above, the Former Employee reportedly stated that an agreement had been reached that the First Respondent Firm would win the Tender 1 Contract and that the agreement required “a kickback of 15% of the total contract amount” to be paid to the Deputy Minister. Consistent with the Former Employee’s testimony, the Email File contains contemporaneous evidence demonstrating that, in return for payments from the First Respondent Firm, the Deputy Minister committed to assisting the First Respondent Firm in the procurement process for Tender 1. For instance, in an email from an employee of the First Respondent Firm to another employee of the First Respondent Firm, the sender discusses payments to the Deputy Minister in connection with Tender 1 and states, *inter alia*, that the Deputy Minister has undertaken “to initiate amendments to the bidding documents to strengthen [the First Respondent Firm] in terms of the technical solution” and “to control decisions of the tender committee.” In addition, in an email from the Respondent President to the Respondent Vice-President and other employees of the First Respondent Firm, the

¹⁸ See Sanctions Board Decision No. 60 (2013) at para. 70 (considering the allegation of offering only with respect to those contracts for which the record contained no evidence of payments).

¹⁹ See *id.* at para. 75.

²⁰ *Id.* (quoting May 2004 Procurement Guidelines at Section 1.14(a)(i), n.17; October 2006 Procurement Guidelines at Section 1.14(a)(i), n.19).

Respondent President states that “[w]e have got an arrangement with [the Deputy Minister]: We win” and that “15% are for [the Deputy Minister].”

97. Consistent with the intended arrangement to influence the procurement process, the First Respondent Firm won both Tenders 1 and 3. As the Sanctions Board has previously observed, 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 practices.²¹

98. On the basis of this record, the Sanctions Board finds that it is more likely than not that employees of the First Respondent Firm – including the Respondent President – gave a thing of value to the Deputy Minister in order to influence his actions in the procurement processes for Tenders 1 and 3.

2. Corruption allegation 2: Alleged payments to Consultant A

99. According to INT, the First Respondent Firm offered and paid bribes totaling up to US\$10,000 to Consultant A to influence the procurement processes and execution of the Tender 1 and Tender 3 Contracts. The Case 249 Respondents do not specifically address the merits of these allegations or put forward any rebuttal evidence.

a. Offering or giving a thing of value, directly or indirectly

100. Evidence provided by the Former Employee indicates that employees of the First Respondent Firm made payments to Consultant A. The Former Employee reportedly stated that Consultant A was a lawyer with the Ministry who “could have delayed the contract” and that because Consultant A prepared the contract for timely signing, the First Respondent Firm made a payment to him. Consistent with the Former Employee’s testimony, contemporaneous evidence in the Email File indicates that payments were made to Consultant A in or around December 2010.

101. On the basis of this record, the Sanctions Board finds that it is more likely than not that employees of the First Respondent Firm gave a thing of value to Consultant A. Because “offering” and “giving” are set out as alternative elements of corrupt practice under the applicable definitions,²² the Sanctions Board declines to address INT’s separate allegation of an offer.

²¹ 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. 78 (2015) at para. 56.

²² See Sanctions Board Decision No. 60 (2013) at para. 70 (considering the allegation of offering only with respect to those contracts for which the record contained no evidence of payments).

b. To influence (improperly) the action of a public official in the procurement process or in contract execution

102. INT contends that the First Respondent Firm offered and paid bribes to Consultant A in order to win the Tender 1 and Tender 3 Contracts and to ensure payment under those contracts.

103. The record supports a finding that employees of the First Respondent Firm acted with intent to influence Consultant A's actions with respect to the procurement processes for Tenders 1 and 3. The Former Employee reportedly stated that payments were made to Consultant A in order to influence his actions in connection with a contract. As noted above, the Former Employee reportedly stated that Consultant A "could have delayed the contract" and that because Consultant A prepared the contract for timely signing, the First Respondent Firm made a payment to him.

104. In addition, evidence of Consultant A's role in the Project and the understanding of employees of the First Respondent Firm regarding that role further supports the conclusion that the employees acted with the required intent.²³ The record reveals that Consultant A was a public official in a position of authority with respect to the Project. The record also indicates that employees of the First Respondent Firm were aware that Consultant A was involved in the Project and had responsibilities related to project finances. The timing of payments made to Consultant A further supports a finding that employees of the First Respondent Firm acted with corrupt intent.²⁴ Email evidence indicates that a payment was made to Consultant A in or around late December 2010, i.e., approximately two months after the First Respondent Firm had entered into the Tender 1 Contract and while the First Respondent Firm's bid for Tender 3 was under consideration by the BEC. Finally, consistent with the corrupt arrangement, the First Respondent Firm won both Tenders 1 and 3. As the Sanctions Board has previously observed, 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 practices.²⁵

105. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the First Respondent Firm gave a thing of value to Consultant A with a purpose to influence his actions with respect to the procurement processes for Tenders 1 and 3.

²³ See Sanctions Board Decision No. 78 (2015) at para. 56 (finding that a respondent entity acted with intent to influence a public official's actions in the procurement process where the record revealed, *inter alia*, that employees of the respondent entity were aware that the public official was in a position of authority over the project and that the public official held influence with respect to the tender processes for the contracts at issue).

²⁴ See *id.* at para. 57 (finding that the timing of the alleged corrupt act relative to the procurement processes at issue supported the conclusion that the respondent acted with the required intent).

²⁵ 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. 78 (2015) at para. 56.

3. Corruption allegation 3: Alleged payments to Consultant B

106. INT alleges that the Case 249 Respondents offered and paid bribes in the form of a US\$1,000 monthly “gratuity” to Consultant B to influence his actions in the procurement processes and contract execution with respect to the Tender 1 and Tender 3 Contracts. The Case 249 Respondents do not specifically address the merits of these allegations or put forward any rebuttal evidence.

a. Offering or giving a thing of value, directly or indirectly

107. The record reflects that Consultant B was responsible for monitoring and managing the Tender 1 and Tender 3 Contracts from December 2010 to the end of the Project. Evidence provided by the Former Employee indicates that employees of the First Respondent Firm made payments to Consultant B. According to the Former Employee’s reported statements, the First Respondent Firm was making payments to Consultant B for his loyalty to the First Respondent Firm. Consistent with the Former Employee’s testimony, the Email File contains contemporaneous evidence indicating that employees of the First Respondent Firm arranged for payments to be made to Consultant B. For example, in December 2010, the Respondent Vice-President emailed the Respondent President asking how to arrange a salary for an unspecified individual. The Respondent President responded by asking the Respondent Vice-President if he is referring to Consultant B and then providing instructions on payment. In subsequent emails, other employees of the First Respondent Firm discussed payments of US\$1,000 and confirmed a disbursement of US\$1,000 with specific reference to Tender 3.

108. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the First Respondent Firm – including the Respondent President and the Respondent Vice-President – gave a thing of value to Consultant B. Because “offering” and “giving” are set out as alternative elements of corrupt practice under the applicable definitions,²⁶ the Sanctions Board declines to address INT’s separate allegation of an offer.

b. To influence (improperly) the action of a public official in the procurement process or in contract execution

109. INT contends that the Case 249 Respondents made payments to Consultant B to ensure Consultant B’s loyalty to the First Respondent Firm.

110. The record supports a finding that employees of the First Respondent Firm made payments to Consultant B in order to influence his actions in connection with the Project. As noted above, the Former Employee reportedly stated that the First Respondent Firm made payments to Consultant B for his loyalty to the First Respondent Firm. In addition, an employee of the First Respondent Firm stated in contemporaneous email correspondence that Consultant B has been appointed “a responsible person representing [the Ministry] under our

²⁶ See Sanctions Board Decision No. 60 (2013) at para. 70 (considering the allegation of offering only with respect to those contracts for which the record contained no evidence of payments).

projects” and that “[t]his is the reason why starting from December we pay him a monthly allowance of 1,000 conventional units [USD].” The record also includes circumstantial evidence that the Respondent President and Respondent Vice-President – both of whom were involved in arranging for payments to be made to Consultant B – knew of Consultant B’s position of authority. Moreover, the timing of payments made to Consultant B further supports the conclusion that employees of the First Respondent Firm acted with corrupt intent,²⁷ as the first payment to Consultant B appears to have been planned for December 2010, i.e., during the execution of the Tender 1 Contract and while the First Respondent Firm’s bid for Tender 3 was under consideration by the BEC. The record indicates that payments to Consultant B were planned to continue thereafter.

111. In light of the above, the Sanctions Board determines that it is more likely than not that employees of the First Respondent Firm – including the Respondent President and Respondent Vice-President – gave a thing of value to Consultant B with a purpose to influence his actions at least with respect to the execution of the Tender 1 Contract and the procurement process for Tender 3.

E. Evidence of Obstructive Practices

112. Paragraph 1.14(a)(v) of the October 2006 Procurement Guidelines defines obstructive practice to include “deliberately . . . making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice,” and “acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Paragraph 1.14(e) [of the October 2006 Procurement Guidelines].”

1. Obstruction allegation 1: The Case 249 Respondents’ false statements

113. INT asserts that the individual respondents in Sanctions Case No. 249 and additional employees of the First Respondent Firm denied INT’s allegations of corrupt, fraudulent, and collusive practices at issue in the Cases and Sanctions Case No. 216, and that some of the First Respondent Firm’s employees also denied the authenticity of email evidence in Sanctions Case No. 249. According to INT, these denials constitute false statements made to INT investigators in order to materially impede their investigation. Yet INT does not assert, and the record does not reflect, that the Case 249 Respondents’ denials were accompanied by any overt acts intended to impede the investigation. The Sanctions Board notes that if it were to apply INT’s broad interpretation of obstructive practice as asserted here, it could lead to a separate finding of sanctionable misconduct in each instance where a respondent is found liable for other misconduct that it had denied. In these circumstances, the Sanctions Board concludes that INT has not sufficiently alleged obstruction as a distinct count of misconduct.

²⁷ See Sanctions Board Decision No. 78 (2015) at para. 57 (finding that the timing of the alleged corrupt act relative to the procurement processes at issue supported the conclusion that the respondent acted with the required intent).

The Sanctions Board will instead look at potential aggravation for the alleged false statements, as discussed in Paragraph 132 below.

2. Obstruction allegation 2: The First Respondent Firm's alleged impediment of the Bank's audit rights

114. INT asserts that the First Respondent Firm obstructed INT's investigation by blocking INT's efforts to conduct an audit and preventing access to the First Respondent Firm's computers and email correspondence. The Case 249 Respondents contest this allegation and assert that the First Respondent Firm fully cooperated with INT's first audit request, but was unable to fully accommodate INT's second request in the limited timeframe allotted and given the involvement of outside counsel and concerns about disclosing state secrets.

115. The audit clauses for the relevant bidding documents and contracts specifically required the First Respondent Firm to permit the Bank to inspect all accounts and records relating to the performance of the contracts and submission of the bids at issue, and to have such accounts and records audited by auditors appointed by the Bank. The record reveals that INT sent the First Respondent Firm a letter on April 23, 2012, notifying the company that INT would be conducting an inspection of accounts and records relating to Tenders 1, 2, and 3 pursuant to the relevant audit clauses. The letter detailed the documents sought by INT and requested that the documents be made available for review by May 21, 2012. On April 28, 2012, the First Respondent Firm's legal director responded that the company believed that the audit had already been carried out and that the First Respondent Firm "has to refuse" the Bank's "repeat access" to documents related to the Project. Following INT's subsequent communications stating that its earlier visit did not constitute a formal exercise of the Bank's audit rights, the First Respondent Firm's legal director reportedly retracted, and apologized for, the First Respondent Firm's initial refusal to permit the audit. The legal director also reportedly stated that the First Respondent Firm had retained counsel and that the audit could begin after external counsel would arrive at the First Respondent Firm's offices on May 27, 2012, and would have had "one or two days" to review the relevant materials. However, the record indicates that when INT arrived at the offices of the First Respondent Firm on May 30, 2012, INT was not permitted to begin the audit. Instead, the legal director stated that the First Respondent Firm required additional time to accommodate its counsel. In a letter of June 1, 2012, external counsel for the Case 249 Respondents informed INT of its view that the proposed audit "cannot go forward in the immediate future" in light of counsel's need to consult with the First Respondent Firm following counsel's engagement that day. The record is not clear as to the nature and extent of any subsequent communications between INT and the First Respondent Firm regarding the audit.

116. Considering the totality of the record, and noting that INT was never provided with access to the requested documents and that the First Respondent Firm refused to authenticate the Email File or provide INT with access to its email server, the Sanctions Board finds that it is more likely than not that the First Respondent Firm engaged in obstruction by impeding the Bank's exercise of its inspection and audit rights.

3. Obstruction allegation 3: The Case 251 Respondents' false statements

117. INT asserts that the Respondent Chairman and other staff of the Second Respondent Firm denied the alleged collusive practices and denied the authenticity of email evidence in order to impede INT's investigation into potential collusion, fraud, and corruption. However, INT does not assert, and the record does not reflect, that the denials were accompanied by any overt acts intended to impede the investigation.

118. For the reasons set out in Paragraph 113 above, the Sanctions Board concludes that INT has not sufficiently alleged obstruction by the 251 Respondents as a distinct count of misconduct. The Sanctions Board will instead look at potential aggravation for the alleged false statements, as discussed in Paragraph 132 below.

F. Liability of the First Respondent Firm and the Second Respondent Firm

119. 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.²⁸ 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.²⁹

120. In the present Cases, the record supports a finding that employees of the First Respondent Firm engaged in collusive, corrupt, and obstructive practices, and that employees of the Second Respondent Firm engaged in collusive practices, in accordance with the scope of their duties and with the purpose of serving the interests of their respective firms. For instance, the record indicates that employees of the First Respondent Firm and the Second Respondent Firm coordinated their bids for Tenders 1 and 2 with each other and the Third Bidder in order to ensure that the First Respondent Firm would win Tender 1 and that the Second Respondent Firm would win Tender 2. Moreover, the Respondents do not present, and the record does not provide any basis for, a rogue employee defense. Thus the Sanctions Board finds the First Respondent Firm liable for collusive, corrupt, and obstructive practices, and the Second Respondent Firm liable for collusive practices, as carried out by their respective employees.

²⁸ See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30.

²⁹ See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at paras. 53-54.

G. Sanctioning Analysis**1. General framework for determination of sanctions**

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

122. 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.³⁰ 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.³¹

123. 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.

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

2. Factors applicable in the Cases**a. Severity of the misconduct**

125. Section 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct, sophisticated means of misconduct, central role in the misconduct, management's role in the misconduct, and involvement of a public official in the misconduct as examples of severity.

³⁰ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

³¹ Sanctions Board Decision No. 44 (2011) at para. 56.

126. *Repeated pattern of conduct:* INT submits that aggravation is warranted under this factor because the Respondents engaged in “multiple and repeated” acts of sanctionable misconduct. The Sanctions Board has found that the Case 249 Respondents engaged in factually distinct types of sanctionable practices with respect to three contracts, and that the Case 251 Respondents engaged in one count of sanctionable misconduct. As discussed in Paragraphs 149-151 below, the Sanctions Board concludes that the plurality of sanctionable practices engaged in by the Case 249 Respondents in Sanctions Case No. 249 warrants multiplication, rather than aggravation, of the base sanction for these Respondents.

127. *Sophisticated means:* Section IV.A.2 of the Sanctioning Guidelines states that this factor may include “the complexity of the misconduct (e.g., degree of planning, diversity of techniques applied, level of concealment); the number and type of people or organizations involved; whether the scheme was developed or lasted over a long period of time; [and] if more than one jurisdiction was involved.” The collusive scheme at issue in the Cases reflects a high degree of planning and diversity of techniques. The record indicates that the scheme was intended to manipulate the procurement process for multiple tenders with different technical specifications; targeted public officials; and used a variety of techniques, including manipulation of bid requirements, collaborative bid preparation and submission, improper payments to a high-level government official, and influence of potential competitors. In addition, the record indicates that the scheme was implemented over the course of more than one year with the active involvement of several corporate entities and their senior staff, including the Respondents. The Sanctions Board finds that aggravation is warranted for the Respondents in these circumstances.

128. *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 “organizer, leader, planner, or prime mover in a group of 2 or more.” The Sanctions Board finds that aggravation is warranted for the First Respondent Firm for its central role in the collusive scheme, as the record reveals that the First Respondent Firm generated the detailed draft agreement to coordinate bids and prepared and arranged for submission of the bid on behalf of the Third Bidder, including coverage of related costs.

129. *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 high-level members of a respondent entity’s management personally participated in a corrupt arrangement.³² Here, the record reveals that, at the time of the sanctionable practices in the Cases, the Respondent President and Respondent Vice-President were top officers of the First

³² See, e.g., Sanctions Board Decision No. 66 (2014) at para. 36 (applying aggravation for the direct involvement of the director of the respondent’s predecessor where the record reflected that the director received and subsequently acceded to a Bank staff member’s solicitation of employment for his son); 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 arrangement).

Respondent Firm and the Respondent Chairman was the chairman and majority owner of the Second Respondent Firm. Accordingly, the Sanctions Board finds that aggravation is warranted for the involvement of the Respondent President and Respondent Vice-President with respect to the First Respondent Firm, and for the involvement of the Respondent Chairman with respect to the Second Respondent Firm.

130. *Involvement of 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 . . . in the misconduct.” INT submits that aggravation is warranted for the Case 249 Respondents, as the corrupt practices in that case “involved public officials.” The Sanctions Board agrees with INT that aggravation is justified on this ground for the Case 249 Respondents, as the record reveals that these Respondents conspired with the Deputy Minister and other public officials with respect to Tenders 1, 2, and 3. The Sanctions Board also finds that aggravation is warranted for the Case 251 Respondents, as the record reflects that the Case 251 Respondents conspired with the Deputy Minister with respect to Tenders 1 and 2.

b. Interference in the Bank’s investigation

131. Section 9.02(c) of the Sanctions Procedures requires that “interference by the sanctioned party in the Bank’s investigation” be considered in determining a sanction. Section IV.C of the Sanctioning Guidelines identifies interference with the investigative process and intimidation or payment of a witness as examples of interference.

132. *Interference with investigative process:* Section IV.C.1 of the Sanctioning Guidelines states that this factor may include “making false statements to investigators in order to materially impede a Bank investigation.” As discussed in Paragraphs 113 and 117 above, INT asserts that the Respondents made false statements to INT investigators in order to materially impede INT’s investigation. The Sanctions Board finds that aggravation is warranted for the Respondents under this factor. The record reflects that the individual respondents in the Cases and additional employees of the First Respondent Firm and the Second Respondent Firm made false statements to INT investigators that directly conflicted with email correspondence that implicated the Respondents in sanctionable misconduct. Rather than offering an alternative or contrary explanation for these emails – some of which identified the respective interviewees as the sender or recipient – the interviewees maintained that the emails at issue were fabricated. However, the Respondents took no steps to prove this assertion, basing it only on their challenge to the credibility and integrity of the Former Employee. As these false statements were made in the context of INT’s investigation of the misconduct at issue in the Cases, the Sanctions Board finds that it is more likely than not that the statements were made in order to materially impede INT’s investigation.

133. *Intimidation or payment of witness:* Section IV.C.2 of the Sanctioning Guidelines states that aggravation may be warranted “[i]f a respondent caused or threatened causing injury to a witness, his or her assets, employment, reputation, . . . family . . . or significant others, or if the respondent offered the witness a payment in exchange for non-cooperation with the Bank.” INT submits that aggravation is warranted for the First Respondent Firm’s alleged threats, harassment, and intimidation of the Former Employee. In support of its

allegations on this point, INT primarily cites to statements or emails from the Former Employee or his spouse. The only additional evidence in the record that might have been construed to support INT's allegations are materials that identify or originate from individuals who were provided confidential witness status by INT – which materials INT requested to withhold from the Respondents. The Case 249 Respondents argue that INT's claims are not credible and not supported by the record. In support of their argument, the Case 249 Respondents cite to statements from employees of the First Respondent Firm, in which the employees assert that the Former Employee reported false threats first as a means to extort the First Respondent Firm and later to facilitate his emigration to the United States.

134. As noted in Paragraph 62 above, the Sanctions Board granted INT's request to withhold the confidential witness materials, but also determined that the documents shall be afforded no weight pursuant to Section 7.01 of the Sanctions Procedures. Accordingly, the only evidence that would support INT's allegations of witness intimidation are statements or emails from the Former Employee or his spouse, which evidence the Case 249 Respondents have contested with their own witness statements. On the basis of this record, the Sanctions Board finds that INT has not provided sufficient evidence of witness intimidation and therefore declines to apply aggravation on this ground.

c. Voluntary corrective action

135. 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.³³

136. *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 previously granted mitigation on this ground upon a finding that a respondent's asserted compliance measures appeared to address the type of misconduct at issue³⁴ and/or at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines (the "Integrity Compliance Guidelines").³⁵ 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

³³ Sanctions Board Decision No. 45 (2011) at para. 72.

³⁴ See, e.g., Sanctions Board Decision No. 71 (2014) at para. 94.

³⁵ 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).

implemented compliance measures,³⁶ or where the evidence did not demonstrate the type of voluntary corrective actions that would prevent or address the type of misconduct at issue.³⁷

137. The Case 249 Respondents request mitigation for the First Respondent Firm's anti-corruption compliance system and internal compliance policies, which they claim are significantly enhanced. The Sanctions Board notes that the First Respondent Firm's written compliance policies, as included in the record, appear to address the types of misconduct in Sanctions Case No. 249 and all of the principles set out in the Integrity Compliance Guidelines. The Sanctions Board also takes into account evidence that the First Respondent Firm has taken steps to implement the compliance policies. Accordingly, the Sanctions Board finds that the asserted voluntary corrective actions, as supported by written policies and implementation measures, warrant mitigation for the First Respondent Firm.

138. Separately, the Case 251 Respondents request mitigation for the Second Respondent Firm's asserted adoption and implementation of internal compliance procedures. The record includes the Second Respondent Firm's written compliance policy, which appears to focus on corrupt practices and general "unethical behavior." The record also includes an administrative order requiring the Second Respondent Firm to implement the compliance policy and form a dedicated committee to monitor ongoing compliance. Although the Second Respondent Firm's written compliance policy appears to address most of the principles set out in the Integrity Compliance Guidelines, the policy does not appear to include specific measures to prevent or detect the type of collusive practices for which the Case 251 Respondents have been found liable in Sanctions Case No. 251. The Sanctions Board finds that some mitigation is justified for the Second Respondent Firm in these circumstances.

139. The above findings are made based on the written record before the Sanctions Board, and therefore without prejudice to any future assessment that the World Bank Group's Integrity Compliance Officer may conduct to more fully evaluate the adequacy and implementation of integrity compliance measures taken by the First Respondent Firm and the Second Respondent Firm, respectively.

d. Cooperation

140. 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 an internal investigation as examples of cooperation.

141. *Assistance and/or ongoing cooperation:* Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance to INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided

³⁶ 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).

³⁷ See Sanctions Board Decision No. 65 (2014) at para. 77; Sanctions Board Decision No. 69 (2014) at para. 39.

substantial assistance,” as well as “the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” The Sanctions Board has previously accorded mitigation where, for example, a respondent’s managers met with INT on several occasions and provided relevant information,³⁸ or corresponded with INT and made relevant personnel available for interviews.³⁹ The Sanctions Board notes that it has previously granted mitigation to some respondents for their cooperation even where the same respondents had separately interfered in the Bank’s investigation so as to warrant aggravation.⁴⁰

142. Here, the Case 249 Respondents submit that the First Respondent Firm fully cooperated with INT, asserting that the company arranged interviews with the First Respondent Firm’s employees, and provided a large number of company documents to INT. INT does not explicitly comment on or oppose mitigation on this basis. The record reflects that INT conducted interviews with nine of the First Respondent Firm’s employees, including the Respondent President and the Respondent Vice-President, and that the company provided INT with access to some documents.

143. The Case 251 Respondents also request mitigating credit for cooperation, asserting that they provided INT with a significant number of documents and detailed information and also provided INT with “unlimited access” to the Second Respondent Firm’s top management and staff. INT opposes the Case 251 Respondents’ request for mitigation on this ground, countering that the Case 251 Respondents did not provide genuine cooperation. INT does not contest the Case 251 Respondents’ assertion that the Second Respondent Firm provided INT with thousands of pages of documents. The record reflects that INT conducted interviews with over a dozen of the Second Respondent Firm’s employees, including the Respondent Chairman.

144. In light of the above, and considering the totality of the record, the Sanctions Board finds that some mitigation is warranted for the Respondents’ cooperation in the course of INT’s investigation, even despite the separate finding of interference through false statements warranting aggravation as discussed in Paragraph 132 above. As reflected in Paragraph 152 below, the Sanctions Board will separately address the Respondents’ lack of cooperation in the course of sanctions proceedings.

145. *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

³⁸ Sanctions Board Decision No. 53 (2012) at para. 58.

³⁹ Sanctions Board Decision No. 56 (2013) at para. 73.

⁴⁰ See, e.g., Sanctions Board Decision No. 63 (2014) at paras. 102, 110 (granting mitigation for a respondent firm’s cooperation, notwithstanding the Sanctions Board’s application of aggravation for the same respondent based on its employees’ initial interference with INT’s investigation).

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.⁴¹

146. The Case 251 Respondents assert that, in response to INT's allegations, the Second Respondent Firm conducted a review of relevant corporate documents and interviewed "personnel and management with INT." INT opposes mitigation on this basis and submits that the record does not reveal that the internal investigation was conducted thoroughly and impartially by qualified personnel. The record reveals that the Second Respondent Firm conducted an internal investigation into the misconduct alleged by INT, resulting in two reports that addressed INT's allegations and concluded that there were no significant violation of the Second Respondent Firm's compliance policy. One of the reports states that the internal investigation was conducted by the Second Respondent Firm's "Organization development director/Compliance officer," but provides no other information as to the individual's qualifications or independence. The Sanctions Board finds that mitigation is not justified for the Second Respondent Firm in these circumstances.

e. Periods of temporary suspension

147. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board considers the period of the Case 249 Respondents' temporary suspension since the EO's issuance of the Case 249 Notice on March 21, 2014, and the period of the Case 251 Respondents' temporary suspension since the EO's issuance of the Case 251 Notice on September 25, 2014. The Sanctions Board determines that mitigation is warranted for the Respondent President, the Respondent Vice-President, and the Case 251 Respondents in light of their respective temporary suspensions. However, consistent with past precedent, the Sanctions Board declines to apply additional mitigation for the First Respondent Firm.⁴² The Sanctions Board notes that the entire period of the First Respondent Firm's temporary suspension in Sanctions Case No. 249 is subsumed under the same respondent's periods of temporary suspension and debarment in an earlier case, Sanctions Case No. 216, and that the Sanctions Board has previously credited the First Respondent Firm for its period of temporary suspension in determining the appropriate terms of debarment in the earlier case.⁴³

⁴¹ See, e.g., Sanctions Board Decision No. 74 (2014) at para. 43; Sanctions Board Decision No. 77 (2015) at para. 56; Sanctions Board Decision No. 83 (2015) at para. 97.

⁴² See Sanctions Board Decision No. 72 (2014) at para. 62 (declining to apply additional mitigation for the periods of temporary suspension served where the entire period of the respondents' temporary suspension was subsumed under the same respondents' periods of temporary suspension and debarment in an earlier case and noting that the Sanctions Board had previously credited the respondents for their periods of temporary suspension in determining the appropriate terms of debarment in the earlier case).

⁴³ See Sanctions Board Decision No. 71 (2014) at para. 101.

f. Other considerations

148. 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.”

149. *Plurality of sanctionable practices:* As the First Respondent Firm was found to have engaged in a sanctionable practice in a previous case,⁴⁴ and the Sanctions Board finds that the First Respondent Firm engaged in collusive, corrupt, and obstructive practices and that the Respondent President and the Respondent Vice-President engaged in collusive and corrupt practices in the present Cases, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding “Cumulative Misconduct” (emphasis in original):

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

150. In an earlier decision finding that the respondents had engaged in sanctionable practices in two factually unrelated cases – where, inter alia, the projects, contracts, and allegations of misconduct were all different – the Sanctions Board considered the gravity of each case on its own and determined that the sanctions in the two cases should run on a cumulative basis.⁴⁵ Although the Project and one of the Contracts at issue in Sanctions Case No. 249 were also at issue in the previous case, the specific instances of collusion, corruption, and obstruction by the First Respondent Firm here are distinct from the fraudulent misconduct it was found to have committed in the previous case. In these circumstances, the Sanctions Board determines that the First Respondent Firm’s sanctions in Sanctions Case No. 249 and the previous case (Sanctions Case No. 216) should run on a cumulative basis.

151. The Sanctions Board also considers that the First Respondent Firm engaged in collusive, corrupt, and obstructive practices and that the Respondent President and the Respondent Vice-President engaged in collusive and corrupt practices in Sanctions Case No. 249. The record reflects that – while the misconduct in Sanctions Case No. 249 all related to the same Project – each count of misconduct was distinct from, and not merely a means of furthering, the other counts of misconduct in Sanctions Case No. 249. Accordingly, the Sanctions Board concludes that the plurality of sanctionable practices engaged in by the

⁴⁴ See Sanctions Board Decision No. 71 (2014).

⁴⁵ See Sanctions Board Decision No. 72 (2014) at para. 66.

Case 249 Respondents in Sanctions Case No. 249 warrants multiplication, rather than aggravation, of the base sanction for these Respondents.⁴⁶

152. *Non-cooperation in sanctions proceedings:* The Sanctions Board considers that the conduct of the Respondents in the course of these sanctions proceedings warrants aggravation. In particular, the Sanctions Board notes the Respondents' persistent challenges to the authenticity of the Email File combined with their refusal to provide access to the relevant servers to permit authentication. The Sanctions Board also notes the Respondents' implausible denials of any responsibility for or knowledge of the collusive and corrupt schemes, despite substantial evidence to the contrary.⁴⁷

153. *Passage of time:* The Case 251 Respondents submit that mitigation is warranted for passage of time. The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.⁴⁸ This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents.⁴⁹

154. At the time of the EO's issuance of the Case 249 Notice in March 2014, approximately four years had elapsed since the Case 249 Respondents' initial involvement in the collusive scheme by at least April 2010; and approximately three years had elapsed since the Bank first became aware in April 2011 of potential collusive and corrupt practices involving the Case 249 Respondents. In addition, at the time of the EO's issuance of the Case 251 Notice in September 2014, approximately four years had elapsed since the Case 251 Respondents' initial involvement in the collusive scheme by at least May 2010; and over three years had elapsed since the Bank first became aware in April 2011 of potential collusive practices

⁴⁶ See Sanctions Board Decision No. 63 (2014) at paras. 118-119 (applying separate cumulative sanctions where a respondent's fraudulent conduct was distinct from, and not merely a means of concealing or furthering, the respondent's corrupt practices in the same case).

⁴⁷ See Sanctions Board Decision No. 63 (2014) at para. 121 (applying aggravation to two respondents for their persistent and implausible denials of any responsibility for or knowledge of the corrupt scheme, despite substantial evidence to the contrary); Sanctions Board Decision No. 71 (2014) at para. 107 (applying significant aggravation for the respondent's presentation, in its response and at the hearing, of an uncorroborated version of events lacking in credibility in order to justify the submission of inauthentic documents with its bid).

⁴⁸ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where sanctions proceedings were initiated more than five (and up to nine) years after the misconduct, and more than five (and up to eight) years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 68 (2014) at para. 47 (applying mitigation where sanctions proceedings were initiated more than four and a half years after the sanctionable practices had occurred and more than four years after the Bank had become aware of the potential misconduct).

⁴⁹ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71; Sanctions Board Decision No. 83 (2015) at para. 102.

involving the Case 251 Respondents. At the same time, the Sanctions Board takes into account the evidence, as discussed earlier, that the First Respondent Firm obstructed INT's inspection and audit rights and that all of the Respondents interfered with INT's investigation through false statements. In these circumstances, the Sanctions Board considers that no mitigation is warranted for the Respondents with respect to this factor.

155. *Record of general performance and contributions to development work:* The Case 249 Respondents request mitigating credit for the First Respondent Firm's asserted role in assisting the Borrower in a period of transition, including by fighting corruption. According to the Case 249 Respondents, imposing a severe sanction on the First Respondent Firm would not advance the World Bank's mission with respect to the Borrower. Separately, the Case 251 Respondents request mitigation in light of their asserted long-standing participation in tenders for World Bank development projects, as well as their asserted record of successful cooperation with important public and private stakeholders. Section 9.02(i) of the Sanctions Procedures expressly limits the Sanctions Board's sanctioning analysis to considerations reasonably relevant to a respondent's own culpability or responsibility for the sanctionable practice. The Respondents fail to establish the relevance of their arguments under this framework. Consistent with past precedent declining to grant mitigating credit for respondents' claimed record of general performance and contributions to development work, the Sanctions Board finds no mitigation warranted on these grounds under the current sanctions framework.⁵⁰

156. *Conduct of INT's investigation:* The Case 251 Respondents submit that mitigation is warranted as INT's scope of inquiry was excessive; and INT displayed a "biased attitude" toward the Case 251 Respondents. Taking into account that Section 9.02 of the Sanctions Procedures does not provide for the consideration of INT's conduct in the determination of an appropriate sanction, the Sanctions Board declines to consider the Case 251 Respondents' claims for mitigation on this basis.⁵¹

H. Determination of Liability and Appropriate Sanctions for the Respondents

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

- i. determines that the First Respondent Firm and the Second Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by either of these Respondents, shall be, and hereby declares that they are, 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

⁵⁰ See, e.g., Sanctions Board Decision No. 72 (2014) at para. 68; Sanctions Board Decision No. 78 (2015) at para. 91.

⁵¹ See Sanctions Board Decision No. 71 (2014) at para. 104.

preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of twenty-two (22) years and six (6) months for the First Respondent Firm and six (6) years for the Second Respondent Firm, each of these Respondents 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. The minimum period of debarment for the First Respondent Firm shall be added to the minimum period of debarment previously imposed on the First Respondent Firm in Sanctions Board Decision No. 71 (2014). These sanctions are imposed on the First Respondent Firm for collusive practices as defined in Paragraph 1.14(a)(iii) of the May 2004 Procurement Guidelines and Paragraph 1.14(a)(iii) of the October 2006 Procurement Guidelines, corrupt practices as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines and Paragraph 1.14(a)(i) of the October 2006 Procurement Guidelines, and obstructive practices as defined in Paragraph 1.14(a)(v)(bb) of the October 2006 Procurement Guidelines; and on the Second Respondent Firm for collusive practices as defined in Paragraph 1.14(a)(iii) of the May 2004 Procurement Guidelines.

- ii. determines that the Respondent President, the Respondent Vice-President, and the Respondent Chairman, together with any entity that is an Affiliate directly or indirectly controlled by any of these Respondents, shall be, and hereby declares that they are, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of eleven (11) years and six (6) months for the Respondent President, eight (8) years and six (6) months for the Respondent Vice-President, and five (5) years and six (6) months for the Respondent Chairman, each of these Respondents may be released from ineligibility only if all entities that he directly or indirectly controls have, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented effective integrity compliance programs in a manner satisfactory to the World Bank Group. These sanctions are imposed on the Respondent President for collusive practices as defined in Paragraph 1.14(a)(iii) of the May 2004 Procurement Guidelines and corrupt practices as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines and Paragraph 1.14(a)(i) of the October 2006 Procurement Guidelines; on the Respondent Vice-President for collusive practices as defined in Paragraph 1.14(a)(iii) of the May 2004 Procurement Guidelines and corrupt practices as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines and Paragraph 1.14(a)(i) of the October 2006 Procurement Guidelines; and on the Respondent Chairman for collusive

practices as defined in Paragraph 1.14(a)(iii) of the May 2004 Procurement Guidelines.

158. The ineligibility of the entities and individuals debarred pursuant to the present decision shall extend across the operations of the World Bank Group. The Bank will also provide notice of these declarations of ineligibility to the other multilateral development banks (“MDBs”) that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the “Cross-Debarment Agreement”) so that they may determine whether to enforce the declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.⁵²



J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

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

⁵² 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>).