THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: November 21, 2016

Sanctions Board Decision No. 90
(Sanctions Case No. 376)

IDA Credit No. 4902-NP
IDA Grant No. H660-NP
Nepal

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity (the "Respondent Firm") and the individual respondent (the general manager for export of the Respondent Firm, hereinafter referred to as the "Individual Respondent") (together, the "Respondents") in Sanctions Case No. 376, together with any entity that is an Affiliate[2] directly or indirectly controlled by either of the Respondents, with a minimum period of ineligibility of three (3) years and six (6) months beginning from the date of this decision. This sanction is imposed on the Respondents for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board met in person and through virtual means in a panel session to review this case on July 28, 2016. The panel was composed of J. James Spinner (Chair), Catherine O'Regan, and Judith Pearce. Neither the Respondents nor the World Bank Group's Integrity Vice Presidency ("INT") requested a hearing. Nor did the Sanctions Board Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision on the written record.[3]

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

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")[4] to the Respondents on August 25, 2015 (the

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[1] In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (the "Sanctions Procedures"), the term "World Bank Group" means, collectively, the International Bank for Reconstruction and Development ("IBRD"), the International Development Association ("IDA"), the International Finance Corporation ("IFC"), and the Multilateral Investment Guarantee Agency ("MIGA"). For the avoidance of doubt, the term "World Bank Group" includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes ("ICSID"). As in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section 1.01(a), n.1.

[2] The term "Affiliate" means "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." Sanctions Procedures at Section 1.02(a).

[3] See Sanctions Procedures at Section 6.01.

[4] Effective March 31, 2013, the EO's title changed to "IBRD/IDA Suspension and Debarment Officer" ("SDO"). For consistency with the Sanctions Procedures, this decision refers to the former title.

"Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated March 26, 2015;

ii. Explanation submitted by the Respondents to the EO on November 30, 2015 (the "Explanation");

iii. Response submitted by the Respondents to the Secretary to the Sanctions Board on January 8, 2016 (the "Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on February 8, 2016 (the "Reply").

3. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarment with conditional release for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents. The EO recommended a minimum period of ineligibility of three (3) years for each of the Respondents, after which period (a) the Respondent Firm may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer (the "ICO") that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank; and (b) the Individual Respondent may be released from ineligibility only if he has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the ICO that (i) he has taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned, (ii) he has completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and (iii) any entity that is an Affiliate directly or indirectly controlled by the Individual Respondent has adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

4. Effective August 25, 2015, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[5] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[6] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds

[5] For the avoidance of doubt, the scope of ineligibility to be awarded a contract will include, without limitation, (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, consultant, manufacturer or supplier, or service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section 9.01(c)(i), n.16.

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

of any loan made by the Bank or otherwise participate further in the preparation or implementation of any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as "Bank-Financed Projects")[7] pending the final outcome of the sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group.

II. GENERAL BACKGROUND

5. This case arises in the context of the Nepal-India Electricity Transmission and Trade Project (the "Project"), which seeks to facilitate electricity trade between the Republic of India and the Federal Democratic Republic of Nepal (the "Borrower") and to increase the supply of electricity in the territory of the Borrower. On July 15, 2011, IDA and the Borrower entered into a financing agreement for the approximate equivalent of US$100.97 million to finance the Project (the "Financing Agreement"). The Project became effective on September 29, 2011, and is scheduled to close on December 31, 2016.

6. On September 9, 2011, the implementation unit for the Project (the "PIU") issued bidding documents (the "Bidding Documents") for a contract for the "Design, Supply, and Installation of Hetauda-Dhalkebar-Inaruwa 400 KV Transmission Line" (the "Contract"). On December 29, 2011, the Respondent Firm, as part of a joint venture (the "JV") with another company (the "JV Partner"), submitted a bid for the Contract (the "Bid"). On January 3, 2013, the PIU notified the JV that it had been awarded the Contract. On February 3, 2013, the PIU and the JV signed the Contract.

7. INT alleges that the Respondents engaged in a fraudulent practice during the procurement process by knowingly or recklessly misrepresenting in the Bid the Respondent Firm's anticipated role in the execution of the Contract.

III. APPLICABLE STANDARDS OF REVIEW

8. 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.

9. 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

[7] For the avoidance of doubt, the term "Bank-Financed Projects" includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section 1.01(c)(i), n.3.

the respondent to demonstrate that it is more likely than not that its conduct did not amount to a sanctionable practice.

10. The alleged sanctionable practice in this case has the meaning set forth in the World Bank's Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the "January 2011 Procurement Guidelines"), which governed the Project's procurement under the Financing Agreement, and whose definition of fraudulent practice was repeated in the Bidding Documents. Paragraph 1.16(a)(ii) of these Guidelines defines the term "fraudulent practice" as "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation."

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

11. INT alleges that the Respondents misrepresented in the Bid the Respondent Firm's anticipated role in the execution of the Contract. Specifically, INT asserts that the Respondents represented to the PIU that the Respondent Firm would perform certain tasks and approximately 25% of the work under the Contract when, in fact, they expected the JV Partner to perform all of the work under the Contract. According to INT, the Respondent Firm's actual role was to provide its credentials in exchange for a royalty fee to help the JV Partner qualify in the bidding process for the Contract. INT also asserts that the misrepresentation was made knowingly or recklessly to mislead the PIU to the Respondent Firm's benefit.

12. INT submits that aggravation is warranted for the Respondent Firm on account of the Individual Respondent's involvement in the alleged misconduct as a senior manager. INT supports mitigation for the Respondents on the basis of their cooperation with INT's investigation.

B. The Respondents' Principal Contentions in the Explanation and the Response

13. The Respondents assert that their right to a fair process was "diminish[ed]" by the conduct of INT's investigation and by an asserted lack of prior notice for the Respondents as to the main provisions of the governing sanctions framework before the initiation of "investigative proceedings."

14. With regard to INT's allegation of fraud, the Respondents deny that they made any misrepresentation. The Respondents make numerous assertions, including that the representations at issue were estimations and not final; that there were no discrepancies between the Respondent Firm's represented role and the Respondents' expectations at the time; and that the Respondent Firm's represented role was consistent with the Respondent Firm's subsequent conduct during the execution of the Contract. The Respondents also contend that they acted neither knowingly nor recklessly, and that they lacked intent to influence the PIU.

15. The Respondents assert several points that could potentially be considered as mitigating factors. Specifically, the Respondents assert that they "cooperated fully" with INT's

investigation, that the Respondent Firm has implemented certain compliance measures and plans to implement more, that the Respondent Firm has not previously "experienced such an investigation," and that "[b]lack-listing" the Respondent Firm would have "dramatic economic consequences" for the company.

C. INT's Principal Contentions in the Reply

16. In the Reply, INT argues that the Respondents' "procedural arguments" regarding the conduct of INT's investigation and the asserted lack of prior notice do not have any merit. Regarding its fraud allegation, INT asserts that even though the representations at issue were estimations and not final, the Respondents still represented to the PIU that the Respondent Firm would be substantially involved in the execution of the Contract, which was not in line with the Respondent Firm's actual role as reflected in internal documents. INT also asserts that the Respondents only developed an interest in performing services under the Contract after they had been alerted of INT's investigation into the Project and that circumstantial evidence shows that the Respondents at least attempted to mislead the PIU.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

17. The Sanctions Board will first address the procedural challenges raised by the Respondents. The Sanctions Board will then consider whether it is more likely than not that the alleged sanctionable practice occurred, and if so, who may be held liable. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on each of the Respondents.

A. Procedural Determinations

18. As noted in Paragraph 13, the Respondents argue that their right to a fair process was "diminish[ed]" by the conduct of INT's investigation and by an asserted lack of prior notice for the Respondents as to the main provisions of the governing sanctions framework.

19. With respect to the conduct of INT's investigation, the Respondents assert that INT explicitly misled the Respondents about their status in the investigation prior to INT's interview of the Respondent Firm's employees, including the Individual Respondent. The Sanctions Board notes that the Respondents do not point to any evidence in support of this assertion. Although the Bank's sanctions proceedings are not criminal in character, INT has adopted the beneficial practice of informing interviewees of INT's investigative function and the nature of the sanctions proceedings at the beginning of each interview. In the present case, the transcript of INT's interview with the Respondent Firm's employees reveals that INT informed the interviewees that the scope of its inquiry encompassed potential misconduct by "contractors, suppliers or consultants or somebody working for them, like an agent" and that the finding of any such misconduct may lead to public sanctions. On the basis of this record, the Sanctions Board finds that the Respondents were, in fact, put on notice of the possibility of being or becoming the subject of an investigation or sanctions.

20. The Respondents also make a number of other assertions regarding the conduct of INT's investigation, for instance, that INT presented the Respondent Firm's employees only with excerpts of documents, as opposed to more complete versions, at the interview and that INT

selected statements during the interview by repeating questions until a suitable answer was given. The Sanctions Board finds that the Respondents fail to substantiate any of these assertions. Moreover, the Respondents do not offer any explanation as to how INT's asserted conduct during the investigation might have impacted their ability to mount a meaningful response to INT's allegations. Following the investigation, upon receipt of the Notice, the Respondents had the opportunity to explain their conduct in response to INT's formal accusations. In these circumstances, and considering the totality of the record, the Sanctions Board finds that the Respondents have not presented a valid procedural challenge on the basis of INT's investigation.

21. Regarding their asserted lack of prior notice, the Respondents appear to contend that they were only made aware of the Bank's right to conduct audits and sanction firms and individuals when they received the SAE. The record reveals that the Bidding Documents included the applicable definitions of sanctionable practices and referenced the Bank's ability to sanction firms and individuals, and to conduct audits for purposes of sanctions proceedings. In these circumstances, the Sanctions Board finds that the Respondents received sufficient notice of the main aspects of the governing sanctions framework prior to the Bid's submission.

B. Evidence of Fraudulent Practices

22. In accordance with the definition of "fraudulent practice" under the January 2011 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) engaged in any act or omission, including a misrepresentation, (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.[8]

1. Misrepresentation

23. The Bidding Documents required joint ventures to submit, as part of their bids, a final or draft joint venture agreement "indicating at least the parts of the Plant to be executed by the respective partners." The term "Plant" was defined as the "permanent plant, equipment, machinery, apparatus, materials, articles and things of all kinds to be provided . . . under the Contract." The JV submitted with its Bid a joint venture agreement dated October 31, 2011 (the "JV Agreement"). The JV Agreement stated that the JV partners would execute "the complete tender job" jointly and severally, and that the Respondent Firm's "indicative participation" in the execution of the Contract would be 25% of the workload, including design, engineering, and project management services.

24. Contrary to the representations made in the Bid, the record indicates that, at the time of the Bid's submission, the Respondent Firm's employees, including the Individual Respondent, did not expect the Respondent Firm to participate in the execution of the Contract. The record includes an "Internal Agreement" between the JV partners (the "Internal Agreement"), dated October 31, 2011 (the same date as the JV Agreement), and signed by the Individual Respondent as well as one of the Respondent Firm's managing directors. In contrast to the JV Agreement, the Internal Agreement provided that the work under the Contract "shall be

[8] See January 2011 Procurement Guidelines at Paragraph 1.16(a)(ii).

executed by [the JV Partner] in totality," and did not indicate any contribution from the Respondent Firm. Significantly, the Internal Agreement also provided that it would supersede the relevant clauses in the JV Agreement and that the JV partners would "under no circumstance whatsoever" disclose the Internal Agreement to "any other person, authority, client" without the prior written consent of the other partner.

25. Email correspondence from before the Bid's submission between the JV Partner's general manager for business development (the "JV Partner's General Manager") and the Individual Respondent also suggests that the Respondent Firm was not expected to participate in the execution of the Contract. On May 27, 2011, the JV Partner's General Manager sent an email to the Individual Respondent (the "May 2011 Email") stating that the JV Partner was looking for a company that would let the JV Partner use its credentials in exchange for a royalty fee to help the JV Partner qualify in the bidding process for the Contract. The JV Partner's General Manager clarified that the Respondent Firm would not have any responsibilities regarding the execution of the Contract. On that same day, the Individual Respondent answered: "Ok. I understand. I know such practice. . . . I will discuss with my [Managing Director]." Evidence from after the Bid's submission further indicates that the JV partners did not intend to comply with the JV Agreement. For instance, the record reveals that on the day the JV signed the Contract, the JV partners revised their JV Agreement to reflect a need-based, and thus only potential, involvement of the Respondent Firm in the execution of the Contract.

26. With respect to the Respondents' defenses, the Sanctions Board does not accept the argument that the Respondents did not misrepresent facts because the representations at issue were estimations and not final. Even though the JV Agreement expressed that the JV partners would do the final work allocation after the award of the Contract, the JV Agreement still represented to the PIU that the Respondent Firm would be involved in the execution of the Contract in a range of approximately 25% of the workload. As set out in Paragraphs 24 and 25, this representation was not in line with the JV partners' actual roles as reflected in the Internal Agreement and the May 2011 Email. The Sanctions Board is also not persuaded by the Respondents' assertion that, if interpreted correctly, there were no discrepancies between the JV Agreement and the Internal Agreement. As stated in Paragraphs 23 and 24, the relevant provisions of the two documents were clearly in conflict as the JV Agreement indicated a 25%-participation of the Respondent Firm in the execution of the Contract and the Internal Agreement indicated that the Respondent Firm would not participate at all. Lastly, evidence that the Respondent Firm later performed some services under the Contract does not rebut the evidence discussed in Paragraphs 24 and 25. Indeed, evidence such as the Individual Respondent's cautious post-Bid inquiries to the JV Partner about an opportunity for the Respondent Firm to "participate also active[ly] in [the] [P]roject" appears to reaffirm that the Respondent Firm was not expected to be involved as indicated in the JV Agreement.

27. Considering all of the parties' arguments and the totality of the evidence, the Sanctions Board finds that it is more likely than not that the Individual Respondent and other employees of the Respondent Firm misrepresented in the JV Agreement, submitted as part of the Bid, the Respondent Firm's anticipated role in the execution of the Contract.

2. That was knowing or reckless

28. INT asserts that the Respondents either knew or were recklessly indifferent to the fact that they misrepresented in the Bid the Respondent Firm's anticipated role in the execution of the Contract. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.[9]

29. In the present case, the record supports a finding that it is more likely than not that the Individual Respondent and other employees of the Respondent Firm acted knowingly. As noted in Paragraph 25, in May 2011, the Individual Respondent discussed with the JV Partner's General Manager a potential credentials-for-royalties arrangement in relation to the Contract. The Respondent Firm's employees finalized the JV Agreement, which provided for a 25%-involvement of the Respondent Firm in the execution of the Contract; and the Internal Agreement, which provided that the JV Partner would do all of the work under the Contract. The Individual Respondent signed both agreements on behalf of the Respondent Firm. During INT's interview, the Individual Respondent acknowledged that both agreements had been prepared in parallel and that the JV Agreement was the "external" agreement that would be submitted to the PIU.

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

30. INT asserts that the misrepresentation was made in order to obtain a financial benefit as the Respondent Firm's participation under the Contract was necessary for the JV to qualify in the bidding process. The Respondents assert that INT failed to establish that the Respondent Firm's participation was even a factor to the PIU. The Sanctions Board has previously found sufficient evidence of intent to obtain a financial or other benefit or to avoid an obligation where the record showed that misrepresentations were made in response to a tender requirement.[10] In the present case, the Bidding Documents required joint ventures to disclose their final or draft joint venture agreements indicating the partners' respective roles in the execution of the Contract. Accordingly, the Sanctions Board finds that the misrepresentation in the JV Agreement, as submitted with the Bid, was more likely than not made to enable the Respondent Firm to benefit from the award of the Contract.

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

31. 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

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[9] Sanctions Procedures at Section 7.01.

[10] See, e.g., Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 88 (2016) at para. 37.

motivated, at least in part, by the intent of serving their employer.[11] 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.[12]

32. In the present case, the record supports a finding that the Individual Respondent, as supported by other employees of the Respondent Firm, engaged in a fraudulent practice in accordance with the scope of his duties and with the purpose of serving the interests of the Respondent Firm. The record indicates that the Individual Respondent was the Respondent Firm's designated representative for the preparation of the Bid. He signed the JV Agreement and the Internal Agreement on behalf of the Respondent Firm. Because of his actions, the JV Partner agreed to pay the Respondent Firm a royalty fee of 1.8% of the Contract price. Moreover, the Respondents do not present, and the record does not provide any basis for, a rogue employee defense. Thus, the Sanctions Board finds that the Respondent Firm is liable for the fraudulent practice as carried out by its employees, including the Individual Respondent.

D. Sanctioning Analysis

1. General framework for determination of sanctions

33. 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.

34. 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.[13] 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.[14]

35. 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

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[11] See, e.g., Sanctions Board Decision No. 61 (2013) at paras. 29-30; Sanctions Board Decision No. 88 (2016) at para. 42.

[12] See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at paras. 53-54; Sanctions Board Decision No. 61 (2013) at paras. 29-30.

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

[14] See, e.g., Sanctions Board Decision No. 44 (2011) at para. 56.

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 debarment of three years.

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

2. Factors applicable in the present case

a. Severity of the misconduct

37. 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 various types of severity, including central role and management's role in the misconduct.

38. *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 an "[o]rganizer, leader, planner, or prime mover in a group of [two] or more." The record indicates that the Individual Respondent, together with the JV Partner's General Manager, planned and implemented the credentials-for-royalties arrangement for the Contract. The Individual Respondent was the lead contact point between the Respondent Firm and the JV Partner. He responded to the May 2011 Email from the JV Partner's General Manager seeking a company that would let the JV Partner use its credentials and promised that he would discuss the proposal with his managing director. He also signed the JV Agreement and the Internal Agreement on behalf of the Respondent Firm. In these circumstances, the Sanctions Board finds that aggravation is appropriate for the Individual Respondent for his central role in the misconduct.

39. *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." INT seeks aggravation for the Respondent Firm based on the involvement of the Individual Respondent as a "senior manager." The record reflects that at the time of the misconduct the Individual Respondent was the head of the Respondent Firm's export division. He reported directly to the Respondent Firm's managing directors, the two top officials in the company. Accordingly, the Sanctions Board finds that aggravation is warranted for the Respondent Firm based on the Individual Respondent's role in the misconduct.

b. Voluntary corrective action

40. 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.[15]

41. *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 issue[16] and/or at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines.[17] Conversely, the Sanctions Board has declined to afford mitigation in cases where there was no evidence in the record that the respondent had in fact implemented compliance measures,[18] or where the evidence did not demonstrate the type of voluntary corrective actions that would prevent or address the type of misconduct at issue.[19]

42. The Respondents assert that they "place[] great value [on] compliance." According to the Respondents, the Respondent Firm has a "well-developed compliance department" and plans to appoint a "dedicated Compliance Officer." In support of their assertions, the Respondents submit the Respondent Firm's Code of Conduct. However, this Code of Conduct does not set out any specific integrity compliance standards or control mechanisms, and does not address the type of misconduct at issue in this case. Considering that the record does not contain any other evidence of the Respondent Firm's asserted compliance measures, the Sanctions Board finds that no mitigation is warranted on this ground.

c. Cooperation

43. 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 as an example of cooperation.

44. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance and/or ongoing cooperation, "[b]ased on INT's representation that the respondent has provided substantial assistance in an investigation," with consideration of the "truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of

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[15] Sanctions Board Decision No. 45 (2011) at para. 72.

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

[17] 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).

[18] 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).

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

assistance." In past cases, the Sanctions Board has granted mitigation where a respondent met with INT on several occasions and provided relevant information and documentation,[20] or replied to INT's show-cause letter and follow-up inquiries.[21]

45. INT submits that mitigation should be afforded to the Respondents for their cooperation with INT's investigation. The record reflects that the Respondent Firm made relevant personnel, including the Individual Respondent, available for a recorded interview and that the Respondent Firm responded to INT's show-cause letter in a detailed and timely manner. On the other hand, the record indicates that the Individual Respondent and other employees of the Respondent Firm continued to deny the clear contradictions between the JV Agreement and the Internal Agreement during INT's interview and in response to the show-cause letter. The record also indicates that after the Individual Respondent had learned about INT's investigation into the Project, he and an employee of the JV Partner brainstormed ways to make the Respondent Firm appear to be more involved in the execution of the Contract than it actually was, for instance, by setting up a sign with the JV's logo at the construction site. In these circumstances, the Sanctions Board finds that limited mitigation is warranted for both Respondents for their cooperation with INT's investigation.

d. Period of temporary suspension

46. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondents' temporary suspensions since the EO's issuance of the Notice on August 25, 2015.

3. Other considerations

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

48. *Non-cooperation in proceedings before the Sanctions Board*: The Sanctions Board has previously applied aggravation based on the respondents' non-cooperation in sanctions proceedings, due to the respondents' persistent and implausible denials of any responsibility for or knowledge of the sanctionable practice alleged, despite substantial evidence to the contrary.[22] Consistent with earlier denials during the course of INT's investigation, the Respondents deny in their Response that they made any misrepresentation in the Bid, despite the clear contradiction between the relevant provisions of the JV Agreement and the Internal Agreement.

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[20] See, e.g., Sanctions Board Decision No. 53 (2012) at para. 58; Sanctions Board Decision No. 87 (2016) at para. 141.

[21] See, e.g., Sanctions Board Decision No. 37 (2010) at para. 45; Sanctions Board Decision No. 52 (2012) at para. 42.

[22] See, e.g., Sanctions Board Decision No. 63 (2014) at para. 121; Sanctions Board Decision No. 71 (2014) at para. 107; Sanctions Board Decision No. 87 (2016) at para. 152.

The Sanctions Board finds that such conduct demonstrates a lack of candor in these proceedings that warrants aggravation for both Respondents.

49. *Absence of past misconduct*: The Respondents' assertion that the Respondent Firm has not previously "experienced such an investigation" could be construed as seeking mitigation for absence of past misconduct. However, as previously held by the Sanctions Board, a lack of prior misconduct does not warrant mitigating credit. While a record of past sanctionable misconduct may merit treatment as an aggravating factor, the Sanctions Board considers its absence a neutral fact.[23]

50. *Adverse consequences of debarment*: The Respondents assert that "[b]lack-listing" the Respondent Firm would have "dramatic economic consequences" for the company. Consistent with past precedent, the Sanctions Board declines to apply mitigation on this ground.[24]

E. Determination of Liability and Appropriate Sanctions

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

i. determines that the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of three (3) years and six (6) months beginning from the date of this decision, the Respondent Firm may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent Firm for a fraudulent practice as defined in Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines.

ii. determines that the Individual Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Individual Respondent, shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise

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[23] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 64; Sanctions Board Decision No. 52 (2012) at para. 46; Sanctions Board Decision No. 56 (2013) at para. 85; Sanctions Board Decision No. 85 (2016) at para. 50.

[24] See, e.g., Sanctions Board Decision No. 53 (2012) at para. 69; Sanctions Board Decision No. 79 (2015) at para. 56.

participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of three (3) years and six (6) months beginning from the date of this decision, the Individual Respondent may be released from ineligibility only if (i) 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; and (ii) the Individual Respondent has completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics. This sanction is imposed on the Individual Respondent for a fraudulent practice as defined in Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines.

52. The Respondents' ineligibility 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.[25]

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Catherine O'Regan
Judith Pearce

[25] 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 website (http://go.worldbank.org/B699B73Q00).