THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: December 1, 2016

Sanctions Board Decision No. 91
(Sanctions Case No. 339)

Grant No. TF054435
Mayoralty of Baghdad

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of reprimand on the respondent entity in Sanctions Case No. 339 (the "Respondent") by means of a formal letter of private reprimand issued to the Respondent on the date of this decision. This sanction is imposed on the Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board met in a panel session on September 21, 2016, at the World Bank Group's headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of J. James Spinner (Chair), Teresa Cheng, and Anne van't Veer.

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

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

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")[2] to the Respondent on March 27, 2015 (the "Notice"), and re-sent to the Respondent on August 12, 2015, appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated September 30, 2014;

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

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

ii. Explanation submitted by the Respondent to the EO on September 14, 2015 (the "Explanation");

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on November 12, 2015 (the "Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on January 14, 2016 (the "Reply").

4. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarment with conditional release for the Respondent, together with any entity that is an Affiliate[3] directly or indirectly controlled by the Respondent. The EO recommended a minimum period of ineligibility of one (1) year, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practice for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

5. Effective March 27, 2015, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[4] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[5] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise 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] pending the final outcome of the sanctions proceedings. The Notice

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

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

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

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

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

6. As provided by Section 5.01(a) of the Sanctions Procedures, a respondent may contest INT's allegations and/or the EO's recommended sanction within ninety days of the date on which the Notice is deemed to have been delivered to that respondent. Absent the Respondent's submission of a written response by the applicable due date, the EO issued a Notice of Uncontested Sanctions Proceedings and the Respondent was debarred on June 30, 2015, pursuant to Section 4.04 of the Sanctions Procedures.

7. On August 7, 2015, the EO received correspondence from the Respondent requesting that the Bank "re-send the Notice and thereby re-start the time period" for the Respondent to contest the matter. Based on the Respondent's representations in support of its request, on August 12, 2015, the EO re-sent the Notice to the Respondent; withdrew the Notice of Uncontested Sanctions Proceedings and removed the Respondent from the Bank's public debarment list; and reinstated the Respondent's temporary suspension pending the final outcome of these proceedings.

II. GENERAL BACKGROUND

8. This case arises in the context of the Emergency Baghdad Water Supply and Sanitation Project (the "Project"), which sought to "restore basic water supply and sanitation services for the capital city of Baghdad." On December 4, 2004, the Mayoralty of Baghdad (the "Recipient") and IDA, acting as the administrator of the World Bank Iraq Trust Fund, entered into a grant agreement to provide US$65 million to support the Project (the "Grant Agreement"). The Project became effective on December 4, 2004, and closed on June 30, 2013.

9. In February 2005, the Recipient issued bidding documents to the Respondent under the Project for the "supply and installation of Vertical Pumps sets and spare parts for [the] Abu-Nawas Raw Water Pumping Station." The Respondent was the only firm invited to bid. The Respondent submitted its first bid on March 10, 2005 (the "Initial Bid") and a second, updated bid on April 26, 2005 (the "Final Bid"). The Final Bid's total price of US$2,127,400 was composed of US$93,200 for the "installation and commissioning" of pumps and US$2,034,200 for the equipment itself. The Final Bid disclosed that a separate sum of US$38,870 in "commissions, gratuities, or fees have been paid or are to be paid" to the Respondent's agent (the "Agent"). On August 21, 2005, the Recipient and the Respondent entered into a contract (the "Contract"), which was valued at US$2,127,400.

10. INT alleges that the Respondent engaged in a fraudulent practice by misrepresenting in the Final Bid the commission paid or to be paid to the Agent in relation to the Contract.

III. APPLICABLE STANDARDS OF REVIEW

11. Pursuant to Section 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is "more likely than not" that the respondent engaged in a sanctionable practice. Section 8.02(b)(i) defines "more likely than not" to mean that, upon consideration of

all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

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

13. The alleged sanctionable practice in this case has the meaning set forth in the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) (the "May 2004 Procurement Guidelines"), which governed procurement for the Project under the Grant Agreement. Although the bidding documents for the Contract do not specify a particular version of the Procurement Guidelines as applicable, they set out a definition of fraudulent practice that comports with the May 2004 Procurement Guidelines. Paragraph 1.14(a)(ii) of these Guidelines defines the term "fraudulent practice" as "a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract." This definition does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward.[7] However, the legislative history of the Bank's various definitions of "fraudulent practice" reflects that the October 2006 incorporation of the "knowing or reckless" standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.[8] Accordingly, the Sanctions Board has held that the "knowing or reckless" standard may be implied under the pre-October 2006 definitions.[9]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

14. INT submits that it is more likely than not that the Respondent engaged in a fraudulent practice by knowingly or recklessly misrepresenting the amount of the Agent's commission in the Final Bid. According to INT, the Respondent's representatives stated in the Final Bid that the Respondent would pay the Agent a total of US$38,870 in commissions, despite the fact that the Respondent had previously agreed to pay the Agent (through its parent company) at least US$96,866.67 in commissions. INT argues that the Respondent concealed the actual commission to avoid additional scrutiny in light of the fact that the Respondent was subject to an investigation for paying bribes through the Agent in connection with the United Nation's Oil for Food Program. In the alternative, INT argues that the Respondent misrepresented the

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[7] See, e.g., World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 2006) at para. 1.14(a)(ii) (defining "fraudulent practice" as "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation" (emphasis added).

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

[9] Id.

Agent's commission in response to an express tender requirement, and that this alone is sufficient to establish fraudulent intent.

15. INT asserts that no aggravating factors apply in this case and that mitigation is warranted for the Respondent based on: (i) the corporate compliance program adopted by the Respondent's parent company; (ii) the Respondent's internal investigation; (iii) the Respondent's assistance with INT's investigation; and (iv) the decision of the Respondent's parent company to terminate its relationship with the Agent.

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

16. The Respondent denies that it engaged in a fraudulent practice. According to the Respondent, it accurately disclosed in the Final Bid its intention at the time to pay the Agent a sales commission of US$38,870, or approximately 2% of equipment costs. The Respondent asserts that more than a year after the Final Bid had been submitted, it increased the Agent's commission rate from 2% to 5% in order to compensate the Agent for additional work, which the Agent had only later agreed to undertake. The Respondent argues that, to the extent that it did not disclose the possibility that it might choose to subcontract the Agent to perform additional work, such a misrepresentation was "inadvertent." The Respondent further argues that in past cases where the Sanctions Board has found sufficient evidence of fraudulent intent based on misrepresentations in response to a tender requirement, the respondents in those cases "would not have been awarded the contract without engaging in the fraud"; that there is no evidence in the record that disclosing a higher payment to the Agent "would have made any difference to the contracting decision"; and that INT has otherwise provided no evidence that a misrepresentation was made to influence the procurement process.

17. With respect to any potential sanction, the Respondent asks the Sanctions Board to consider the following additional mitigating factors that were not raised by INT: (i) passage of time and (ii) the period of temporary suspension already served since March 27, 2015.

C. INT's Principal Contentions in the Reply

18. In its Reply, INT reasserts its allegations and arguments as presented in the SAE. In addition, INT argues that the Respondent has offered "significant shifts in explanations of past events," and that, therefore, the Respondent should be deemed less credible. INT asserts that the Respondent's claims are not consistent with contemporaneous documentary evidence and that the claims "lack the evidentiary support that would exist if they were true."

19. With respect to sanctioning factors, INT opposes any additional mitigating credit for passage of time or for the Respondent's period of temporary suspension served.

D. Presentations at the Hearing

20. At the hearing, INT reiterated its allegation that the Respondent fraudulently misrepresented commissions paid or to be paid to the Agent. INT argued that its allegation is supported by contemporaneous documentary evidence, whereas the Respondent's defense is

principally based on two witnesses who "themselves rely on hearsay and have significant memory gaps." In response to the Sanctions Board's questions, INT argued that the Respondent may have been motivated to disclose a 2% commission rather than a 5% commission because the larger amount may have prompted additional scrutiny from the Recipient or the Bank. INT further argued that, even where motivation is not clear, Sanctions Board precedent provides that a respondent's misrepresentation in response to an express tender requirement is sufficient for a finding of fraudulent intent. On sanctioning factors, INT stated that mitigation for passage of time could be considered in this case, but also asserted that this passage of time does not appear to have affected the Respondent's access to relevant information and ability to defend itself in these proceedings.

21. In its presentation, the Respondent disputed INT's allegation of fraudulent practice, relying in particular on INT's interview with the Respondent's sales engineer (the "Sales Engineer"), who submitted the Final Bid. The Respondent argued that INT's interview with the Sales Engineer reveals that the Respondent had two types of agents at the time of the alleged misconduct – long-term in-country agents who were typically paid a 1-2% commission and case-by-case agents who were typically paid a 5% commission. According to the Respondent, the Sales Engineer was hopeful that the Agent would be a long-term in-country agent and he believed at the time of bid submission that the most likely commission would be in the 1-2% range. The Respondent further argued that INT has presented no evidence that would allow for a reasonable inference that the Respondent believed that stating a 5% commission – in the context of a sole-source contract in which only the Respondent was invited to bid – would have raised questions or otherwise influenced the procurement process. On sanctioning factors, the Respondent reiterated arguments raised in the Response and asserted that, if the Sanctions Board were to find liability, the period of suspension already served would be the appropriate sanction.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

22. The Sanctions Board will first consider whether it is more likely than not that the Respondent engaged in the alleged fraudulent practice. The Sanctions Board will then determine what sanctions, if any, should be imposed on the Respondent.

A. Evidence of Fraudulent Practice

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

1. Misrepresentation of facts

24. The bidding documents for the Contract required the Respondent to disclose the "commissions, gratuities, or fees [that] have been paid or are to be paid with respect to the bidding process or execution of the Contract." On April 26, 2005, the Sales Engineer submitted the Respondent's Final Bid, which listed the Agent as the recipient of US$38,870

(approximately 2% of the total equipment price). The Final Bid did not disclose any other commissions, gratuities, or fees with respect to the Agent or any other third party.

25. For the reasons set out below, the Sanctions Board finds that it is more likely than not that, prior to submission of the Final Bid, employees of the Respondent had agreed to pay the Agent a 5% commission and, therefore, made a misrepresentation of fact in the Final Bid.

26. Contemporaneous email correspondence reflects that employees of the Respondent discussed a 5% commission for the Agent prior to submission of the Final Bid. For instance, approximately two months before submission of the Final Bid, an employee of the Respondent stated in an email to the Sales Engineer that "[o]n this proposal, we included 5% commission." A few days later, the Sales Engineer emailed a representative of the Agent referencing commissions of 5% and 10% for the Agent in connection with the Contract. The record also includes contemporaneous financial records and other documents that reference a 5% commission for the Agent, including the Respondent's internal cost build-up sheets (which pre-date the Final Bid), internal "Order Entry" form, and the agency contracts executed between the Agent and the Respondent. In addition, payment records reveal that the Respondent eventually paid the Agent a commission of approximately 5%. These contemporaneous documents are consistent with the Sales Engineer's statement to INT that the price of the Final Bid included a sales commission of 5% to be paid to the Agent, which he stated was a "typical commission" for the Agent during the 2005-2006 time period.

27. The Sanctions Board is not persuaded by the Respondent's argument that references to a 5% commission in the record – both before and after submission of the Final Bid – should be attributed to the Respondent's decision, in June 2006, to increase the Agent's commission from approximately 2% to 5% to serve as the Agent's negotiated "fee for performing the installation and commissioning work."[10] The record does not include any documentary evidence to show that the Respondent and the Agent ever negotiated or agreed to increase the Agent's commission by 3% as payment for the installation and commissioning work. Indeed, documents in the record demonstrate that both the Agent and the Respondent's employees treated the payment amount associated with the 5% commission as separate and distinct from the fee owed for installation and commissioning services.

28. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent's employees misrepresented in the Final Bid the commission to be paid to the Agent.

2. Made knowingly or recklessly

29. The evidence discussed in Paragraph 26 supports a finding that employees of the Respondent knowingly misrepresented the Agent's commission. As noted above, contemporaneous email correspondence reflects that employees of the Respondent discussed a 5% commission for the Agent prior to submission of the Final Bid, the Respondent's

[10] For clarity, the record indicates that "installation and commissioning" work relates to the assembly and operationalizing of equipment, and that this sort of work is distinct from the type of services for which an agent commission is typically paid.

contemporaneous financial records and other documents consistently reference a 5% commission, and the Respondent's payment records reveal that the Agent was paid a 5% commission. Notably, the day after the Sales Engineer emailed a representative of the Agent referencing commissions of 5% and 10%, the Respondent's managing director submitted the Initial Bid, which stated a commission of only about 2%. The Sales Engineer subsequently signed and submitted the Final Bid, which also stated a commission of approximately 2%. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent's employees knew that the commission stated in the Final Bid was inconsistent with the commission that the employees intended to pay the Agent at that time.

3. In order to influence the procurement process or execution of a contract

30. INT argues that the Respondent misrepresented the Agent's commission in response to an express tender requirement, and that, under Sanctions Board precedent, this alone is sufficient to conclude that the misrepresentation was made to influence the procurement process. As reflected in past Sanctions Board decisions, a finding of intent to influence the procurement process may indeed be based on evidence showing that misrepresentations were made in response to a tender requirement.[11] The Respondent argues that this line of Sanctions Board precedent should be understood as creating a rule that a misrepresentation made in response to a tender requirement is sufficient to establish intent only if "the respondent would not have been awarded the contract without engaging in the fraud." The Sanctions Board is not persuaded by the Respondent's argument. The Sanctions Board has explicitly found this element to have been met where the record revealed that the respondent had made a fraudulent misrepresentation in response to a specific bid requirement "[i]rrespective of the bid requirement's actual significance, and the subjective assessment thereof by a bidder."[12]

31. As discussed in Paragraph 24 above, the bidding documents for the Contract required the Respondent to disclose the "commissions, gratuities, or fees [that] have been paid or are to be paid with respect to the bidding process or execution of the Contract." In response to this tender requirement, the Respondent's employees misrepresented in the Final Bid the commission to be paid to the Agent. On the basis of this record, and consistent with past precedent,[13] the Sanctions Board considers that the Respondent's employees acted with an intent to influence the procurement process. Accordingly, the Sanctions Board need not address INT's separate theory under this element with respect to the United Nation's Oil for Food Program.

32. As the Sanctions Board has found all elements of fraudulent practice proven under the applicable standards, the Sanctions Board concludes that the record supports a finding of fraudulent practice.

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[11] See, e.g., Sanctions Board Decision No. 60 (2013) at paras. 100-101; Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 88 (2016) at para. 37.

[12] Sanctions Board Decision No. 71 (2014) at para. 76.

[13] See, e.g., Sanctions Board Decision No. 60 (2013) at paras. 100-101; Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 88 (2016) at para. 37.

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

33. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.[14] Where a respondent entity denies responsibility for the acts of its employees based on a rogue employee defense, the Sanctions Board has assessed any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.[15]

34. In the present case, the record supports a finding that employees of the Respondent engaged in the fraudulent practice in accordance with the scope of their duties and with the purpose of serving the interests of the Respondent. For instance, the record reveals that the Sales Engineer acted as an authorized representative of the Respondent when he signed the Final Bid – which included the misrepresentation – and that this action was undertaken with the purpose of serving the Respondent's interests (e.g., so that the Respondent would benefit financially from the Contract). Moreover, the Respondent does not present, and the record does not provide any basis for, a rogue employee defense. Thus, the Sanctions Board finds the Respondent liable for the fraudulent practice as carried out by its employees.

C. Sanctioning Analysis

1. General framework for determination of sanctions

35. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section 8.01(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.

36. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.[16] The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented in each case.[17]

37. The Sanctions Board is required to consider the types of factors set forth in Section 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition,

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[14] See, e.g., Sanctions Board Decision No. 61 (2013) at para. 30; Sanctions Board Decision No. 68 (2014) at para. 72.

[15] See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at paras. 52-54.

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

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

the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. The Sanctioning Guidelines further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after a minimum period of three years.

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

2. Factors applicable in the present case

a) Voluntary corrective action taken

39. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a 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.[18]

40. *Cessation of misconduct*: Section V.B.1 of the Sanctioning Guidelines states that mitigation may be appropriate where a respondent ceases to engage in misconduct. The Respondent seeks mitigation for the termination of its relationship with the Agent. However, the misconduct did not arise from the fact of the Respondent's relationship with the Agent, but rather from the Respondent's misrepresentation of the commission to be paid to the Agent. Accordingly, the cessation of this misconduct would occur only upon appropriate disclosure. The record does not indicate that the Respondent at any time disclosed to relevant parties the actual commission that it had intended to pay, and did eventually pay to, the Agent. In these circumstances, and consistent with past precedent,[19] the Sanctions Board declines to apply any mitigation on this ground.

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." INT submits that the Respondent's improvement of its compliance program constitutes a mitigating factor. While the record does not include documentation of the Respondent's compliance measures – such as written compliance policies or a code of conduct – the Respondent provided a detailed description of its program in response to INT's show-cause letter. Based on INT's

[18] See, e.g., Sanctions Board Decision No. 63 (2014) at para. 104.

[19] See Sanctions Board Decision No. 83 (2015) at para. 90 (declining to apply mitigation where "the misconduct with respect to the [consultant] was not based on the existence of a relationship with the [consultant], but rather based on the [respondent's] failure to disclose its relationship with and payments to the [consultant]" and no disclosure had been made at any time).

representation and the Respondent's detailed and credible description of its compliance program, the Sanctions Board finds that some mitigation is warranted under this factor.

b) Cooperation

42. 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.

43. *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 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 granted mitigation where, for example, a respondent's managers met with INT on several occasions and provided relevant information,[20] or corresponded with INT and made relevant personnel available for interviews.[21] INT supports mitigation for the Respondent's assistance with INT's investigation, stating that the Respondent provided requested materials and documents and made employees available for interviews. The record reflects that INT conducted interviews with numerous employees of the Respondent, that the Respondent provided INT with access to relevant documents, and that the Respondent submitted a timely response to INT's show-cause letter. The Sanctions Board finds that mitigation is warranted for the Respondent in these circumstances.

44. *Internal investigation*: Section V.C.2 of the Sanctioning Guidelines refers to cooperation where a respondent has "conducted its own, effective internal investigation of the misconduct and relevant facts relating to the misconduct for which it is to be sanctioned and shared results with INT." In determining whether and to what extent an internal investigation warrants mitigating credit, the Sanctions Board considers whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience; whether the respondent shared its investigative findings with INT during INT's investigation or as part of the sanctions proceedings; and whether the respondent has demonstrated that it followed up on any investigative findings and recommendations.[22]

45. INT supports mitigation under this factor, asserting that the Respondent voluntarily conducted an internal investigation based in part on INT's suggestions as to methodology. However, INT also asserts that "the inquiry's mitigating value is somewhat limited by the incomplete nature of its findings." The record reveals that, beginning in September 2010, the Respondent conducted an internal investigation into the misconduct alleged by INT, resulting in an 11-page internal investigation report. The report states that the Respondent's parent

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[20] Sanctions Board Decision No. 53 (2012) at para. 58.

[21] See Sanctions Board Decision No. 56 (2013) at para. 73; Sanctions Board Decision No. 79 (2015) at para. 48.

[22] 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.

company conducted the investigation with "the assistance of Internal Audit" and the "concurrence" of outside counsel, but the record provides no other information as to the qualifications or independence of these individuals or teams. The report indicates that the internal investigation included the retention, collection, and review of documents, as well as the conducting of interviews. The record reflects that the Respondent shared the report with INT in the course of INT's investigation. The Sanctions Board finds that some mitigation is justified for the Respondent in these circumstances.

c) Period of temporary suspension

46. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the Respondent has been temporarily suspended since March 27, 2015.

d) 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. *Period of debarment already served*: As noted in Paragraphs 6-7 above, the Respondent was publicly debarred from June 30, 2015, to August 12, 2015, as a result of the Respondent's failure to respond to the Notice as initially delivered. Consistent with past precedent,[23] the Sanctions Board considers the period of debarment already served to be a mitigating factor.

49. *Passage of time*: The Respondent seeks mitigation under this factor. 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.[24] 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.[25] At the time that the EO re-sent the Notice in August 2015, over ten years had elapsed since the misconduct occurred in April 2005; and over

[23] See Sanctions Board Decision No. 68 (2014) at para. 46.

[24] 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).

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

five years had elapsed since INT sought information from the Respondent in relation to the Contract in June 2010. The Sanctions Board therefore applies mitigation on this ground.

D. Determination of Liability and Appropriate Sanction for the Respondent

50. Considering the full record and all the factors discussed above, the Sanctions Board issues a formal letter of private reprimand to the Respondent on the date of this decision, without prejudice to the Respondent's eligibility to participate in Bank-Financed Projects. This sanction is imposed on the Respondent for a fraudulent practice as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines.

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Teresa Cheng
Anne van't Veer