THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: June 16, 2017

Sanctions Board Decision No. 94
(Sanctions Case No. 409)

IBRD Loan No. 4760-RO
Romania

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of debarment on the respondent entity in Sanctions Case No. 409 (the "Respondent"), together with any entity that is an Affiliate[2] directly or indirectly controlled by the Respondent, for a period of one (1) year beginning from the date of this decision. This sanction is imposed on the Respondent for a corrupt practice.

I. INTRODUCTION

1. The Sanctions Board met in a panel session on February 2, 2017, 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), Olufunke Adekoya, and Catherine O'Regan. Neither the Respondent nor the World Bank Group's Integrity Vice Presidency ("INT") requested a hearing in this matter. 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 Respondent on October 19, 2015 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated October 1, 2015;

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

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

[3] See Sanctions Procedures at Section 6.01.

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

ii. Explanation submitted by the Respondent to the EO on November 19, 2015 (the "Explanation");

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on January 15, 2016, and the submission of January 19, 2016, attaching English translations of foreign-language materials submitted with the Response of January 15, 2016 (together, the "Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on March 3, 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 the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The EO recommended a minimum period of ineligibility of four (4) years, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practice for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

4. Effective October 19, 2015, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[5] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[6] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as "Bank-Financed Projects"[7]) pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group.

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

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

[7] 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.

II. GENERAL BACKGROUND

5. This case arises in the context of the Health Sector Reform Project (II) (the "Project") in the Republic of Romania (the "Borrower"), which sought to "provide more accessible services of increased quality and with improved health outcomes for those requiring maternity and newborn care, emergency medical care and rural primary health care." On January 28, 2005, the Bank and the Borrower entered into a loan agreement to provide the approximate equivalent of US$80 million to support the Project (the "Loan Agreement"). The European Investment Bank ("EIB") also provided a loan to the Borrower in support of the Project. The Project became effective on June 27, 2005, and closed on December 31, 2013.

6. On March 12, 2007, the Borrower's Ministry of Health (the "Ministry") issued bidding documents with tender reference number ICB02 under the Project for the procurement of maternity and neonatal care equipment ("Tender 2"). Tender 2 was composed of fifteen lots and a predecessor company to the Respondent (the "Respondent's Predecessor") submitted bids for nine of them. The Respondent, as the successor company, was awarded Lots 2, 4, 5, and 6; and entered into contracts with the Borrower for each of the lots (the "Tender 2 Contracts"). The Tender 2 Contracts were valued at, respectively, €2,698,707, €4,204,245, €207,695, and €2,084,247. According to INT, the contract for Tender 2 Lot 4 (the "Tender 2 Lot 4 Contract") was financed by the World Bank, whereas the other Tender 2 Contracts were financed by the EIB.

7. INT alleges that the Respondent engaged in a corrupt practice by offering and paying commissions to a World Bank consultant (the "Procurement Advisor") for the award of the Tender 2 Lot 4 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 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 under IBRD Loans and IDA Credits (May 2004) (the "May 2004 Procurement Guidelines"), which governed procurement for the Project and whose definition of sanctionable practices was repeated in the bidding documents for Tender 2. Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines defines the term "corrupt practice" as "the offering,

giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in contract execution." The footnote thereto provides that the term "public official" includes "World Bank staff and employees of other organizations taking or reviewing procurement decisions."

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

11. INT submits that it is more likely than not that the Respondent engaged in a corrupt practice by offering and paying a bribe to the Procurement Advisor in connection with the Tender 2 Lot 4 Contract. INT asserts that the Respondent and the Procurement Advisor entered into an agreement pursuant to which the Respondent would pay the Procurement Advisor a commission for each contract awarded under Tender 2 (the "Agreement") and that the Respondent paid the Procurement Advisor a 4% commission for the Tender 2 Lot 4 Contract. INT further asserts that, in exchange for the commission, the Procurement Advisor exercised a great deal of influence over the decision-making to award the Tender 2 Lot 4 Contract to the Respondent. According to INT, the Respondent knew that the Procurement Advisor was a public official.

12. With respect to sanctioning factors, INT submits that aggravation is warranted for (i) the sophistication of the Respondent's misconduct, (ii) the involvement of the Respondent's senior management in the misconduct, and (iii) harm to the Project caused by the Respondent's corrupt practice. According to INT, mitigation may be warranted in light of "[t]he alleged pressure exercised on [the] Respondent to enter into a contract with [the Procurement Advisor]" and for the Respondent's cooperation during INT's audit.

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

13. The Respondent raised evidentiary issues in its Response, arguing that INT failed to disclose exculpatory evidence, and requesting the withdrawal of certain evidence from the record in this case. As discussed in Paragraphs 20-22 below, the Sanctions Board resolved these issues on February 3, 2017, and March 8, 2017.

14. In response to INT's corruption allegation, the Respondent argues that INT has not established that the Procurement Advisor was a World Bank staff member involved in the Project or that the Respondent was aware of, and sought to benefit from, any position that the Procurement Advisor may have had at the Bank. The Respondent asserts that the Procurement Advisor never spoke to the Respondent about his alleged relationship with the Bank. According to the Respondent, the Procurement Advisor solely disclosed that "he was an independent consultant because it was the truth." In addition, the Respondent disputes INT's assertion that the Procurement Advisor exerted considerable influence over the award of the Tender 2 Lot 4 Contract to the Respondent. The Respondent also argues that it is not the company that signed the Agreement with the Procurement Advisor, asserting that INT's allegations relate to a contract signed between the Procurement Advisor and its predecessor.

15. With respect to any potential sanction, the Respondent disputes application of the aggravating factors asserted by INT. The Respondent submits that mitigation is warranted for its

cooperation with INT's audit and for its compliance measures. In addition, the Respondent asserts that it "executed in a very professional way its contracts to the total satisfaction of the client."

C. INT's Principal Contentions in the Reply

16. In response to the Respondent's evidentiary requests, INT stated that it produced all exculpatory or mitigating evidence in its possession. INT did not specifically respond to the Respondent's request that the Sanctions Board withdraw certain evidence from the record.

17. In support of its corruption allegation, INT asserts that status as a public official is functional and that, therefore, the relevant question is whether the Procurement Advisor was taking or reviewing procurement decisions with respect to the Tender 2 Lot 4 Contract. According to INT, "[a]ll evidence shows that he was." In addition, INT argues that the Respondent knew of the Procurement Advisor's status as a public official, that the Procurement Advisor did exert influence in awarding the Tender 2 Lot 4 Contract to the Respondent, and that the Respondent's corporate reorganization does not affect the Respondent's culpability.

18. With respect to sanctioning factors, INT argues that the Respondent's contract performance is not a ground for mitigation.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

19. The Sanctions Board will first address the evidentiary matters raised by the Respondent. The Sanctions Board will then consider whether it is more likely than not that the Respondent engaged in the alleged corrupt practice. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on the Respondent.

A. Evidentiary Matters

20. The Respondent argued that INT failed to disclose exculpatory evidence, specifically identifying an interview with the former chief executive officer of the Respondent and its predecessor (the "Former CEO"), and interviews of the Procurement Advisor "taken by INT and/or by the City of London Police." The Respondent further requested that "INT and/or the Sanctions Board . . . withdraw all evidence in connection with lots 2, 5 and 6 because they are not in the jurisdiction of INT" and such evidence is not relevant. In response, INT argued that it has produced all exculpatory or mitigating evidence in its possession. INT further argued that its transcript of interview with the Procurement Advisor is the only transcript in its possession, that the transcript is not relevant to this case, and that the transcript is a confidential staff member record. In addition, INT attached to the Reply its transcript of interview with the Former CEO "[f]or comprehensiveness," asserting that the transcript is of marginal relevance. INT did not specifically respond to the Respondent's request that the Sanctions Board withdraw evidence from the record.

21. On February 3, 2017, the Sanctions Board issued a determination on the evidentiary matters raised by the Respondent. The Sanctions Board determined that no further action was necessary with respect to the Respondent's request for INT's transcript of interview with the Former CEO, considering that INT had attached the transcript to its Reply. Regarding INT's transcript of interview with the Procurement Advisor, the Sanctions Board requested INT to submit the

transcript to the Sanctions Board for its in camera review. In addition, the Sanctions Board denied the Respondent's request for the asserted interview with the Procurement Advisor conducted by the City of London Police, considering in particular INT's representation that it does not possess such a transcript. The Sanctions Board also considered that the sanctions framework provides no right to discovery and does not give the Sanctions Board the mandate to compel INT to seek out evidence from national authorities.[8] Finally, the Sanctions Board denied the Respondent's request that the Sanctions Board withdraw the specified evidence from the record. In reaching this determination, the Sanctions Board noted that it has the discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered pursuant to Section 7.01 of the Sanctions Procedures, and that the Sanctions Board may be expected to weigh the probative value of irrelevant evidence and reject any improper inferences.

22. On March 8, 2017, after having carefully reviewed in camera the timely submitted transcript of interview with the Procurement Advisor conducted by INT, the Sanctions Board denied the Respondent's request for access to the transcript. In reaching this determination, the Sanctions Board noted its finding that the transcript of interview does not contain directly relevant material to this case, whether inculpatory or exculpatory. The Sanctions Board further noted that it would place no reliance on the transcript in reaching its decision on the merits and any sanction in this case.

B. Evidence of Corrupt Practice

23. In accordance with the definition of corrupt 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) offered or gave, directly or indirectly, any thing of value (ii) to influence the action of a public official in the procurement process or in contract execution.[9]

1. Offering or giving, directly or indirectly, any thing of value

24. INT alleges that the Respondent offered and paid the Procurement Advisor a 4% commission for the Tender 2 Lot 4 Contract pursuant to the Agreement. The Respondent acknowledges that it made payments to the Procurement Advisor – stating that "its agreement and payment" to the Procurement Advisor was made in exchange for the Procurement Advisor's lobbying efforts "to ensure the award of the [Tender 2 Lot 4 Contract]" – but disputes that these acts constitute a corrupt practice as defined in the May 2004 Procurement Guidelines. The record reflects that employees of the Respondent's Predecessor agreed to make payments to the Procurement Advisor in relation to Tender 2. Specifically, in July 2007, the Respondent's Predecessor entered into the Agreement with the Procurement Advisor pursuant to which the Respondent's Predecessor agreed to pay the Procurement Advisor a 3-4% commission for each contract awarded in exchange for his services. Consistent with the Agreement, contemporaneous documentary evidence – including invoices, bank records, and email correspondence – reflects

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[8] See Sanctions Procedures at Section 7.03.

[9] The definition of "corrupt practice" in the bidding documents for Tender 2 omitted the footnote defining the term "public official."

that the Respondent's employees made payments to the Procurement Advisor in connection with the Tender 2 Lot 4 Contract.

25. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the Respondent made payments to the Procurement Advisor. Because "offering" and "giving" are set out as alternative elements of corrupt practice under the applicable definition, the Sanctions Board declines to address INT's separate allegation of an offer.[10]

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

26. INT argues that the Respondent's payments to the Procurement Advisor were made "in exchange for [the Procurement Advisor] ensuring the award of [the Tender 2 Lot 4 Contract] to the Respondent." The Respondent argues, inter alia, that INT has not established that the Procurement Advisor was a World Bank staff member involved in the Project or that the Respondent was aware of, and sought to benefit from, any position that the Procurement Advisor may have had with the Bank.

27. The applicable definition of corrupt practice in this case does not require evidence that the public official whom a respondent has sought to influence was specifically appointed to work on any particular project or contract.[11] As the Sanctions Board has previously observed,[12] even without being officially assigned responsibility in a procurement process, a public official may be shown on the record to have an actual or perceived role in taking or reviewing procurement decisions, and thus be the target of sanctionable influence. The record in this case demonstrates, and the parties do not dispute, that the Procurement Advisor did in fact have a role in the procurement process for the contract at issue. In addition, the record contains documentary evidence showing that the Procurement Advisor was appointed by the Bank as a consultant at the time of the alleged misconduct. On the basis of this record, the Sanctions Board finds that the Procurement Advisor was a Bank staff member, and therefore a public official, acting in the procurement process for the contract at issue.

28. The record contains direct evidence that payments under the first element were made in exchange for the Procurement Advisor's services in connection with the Tender 2 Lot 4 Contract. For example, and as noted above, the Respondent's Predecessor entered into the Agreement with the Procurement Advisor pursuant to which the Respondent's Predecessor agreed to pay the Procurement Advisor a commission for each contract awarded under Tender 2 in exchange for the Procurement Advisor's services in relation to that tender. In addition, the record includes an email from the Respondent's operations manager (the "Operations Manager") to the Respondent's sales manager (the "Sales Manager") in which the Operations Manager appears to summarize payments owed to the Procurement Advisor – including a 4% commission for the Tender 2 Lot 4 Contract. As supported by the evidence discussed in the following paragraph, the record indicates that the

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[10] Cf. Sanctions Board Decision No. 60 (2013) at para. 70 (deciding to consider the allegation of offering only with respect to those contracts for which the record contained no evidence of payments).

[11] See id. at para. 78.

[12] See id.

Procurement Advisor's services relate to his efforts to influence the selection process for the Tender 2 Lot 4 Contract in the Respondent's favor.

29. The record reflects that the Procurement Advisor and employees of the Respondent worked together in support of the Respondent's bid. Contemporaneous evidence shows that the Procurement Advisor prepared a report on the technical justification for rejecting the bid of another company (the "Competitor"), whose bid was approximately €770,000 less than the bid of the Respondent's Predecessor. Significantly, during his interview with INT, the Sales Manager stated that the Procurement Advisor had asked for technical data that could be used to disqualify the Competitor. In response to the Procurement Advisor's request, the Sales Manager stated that "we found that [the Competitor] had a few minor deviation[s]" and "we passed the message to [the Procurement Advisor] and we told him that [that] could be the reason for disqualifying" the Competitor. In addition, the record reflects that the Procurement Advisor continued to work for the Respondent's benefit after the Competitor sent a series of letters to the Ministry and the World Bank complaining about its non-selection, including one letter to the Bank that attached an academic article in support of the Competitor's arguments. For instance, the Procurement Advisor emailed Bank officials stating that the article attached to the Competitor's letter "does not add nor eliminate[] any of the conclusions and findings arrived at earlier, but in fact confirm earlier findings and conclusions" as to the non-compliance of the Competitor's bid.

30. Consistent with the alleged corrupt arrangement to influence the procurement process, the Respondent won the Tender 2 Lot 4 Contract. As the Sanctions Board has previously observed,[13] 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.

31. The Sanctions Board is not persuaded by the Respondent's defense that it regarded the Procurement Advisor as an independent consultant and not a public official. It is clear from the nature of the Procurement Advisor's services and his impact on the procurement process – which the Respondent's employees were aware of as indicated by the evidence discussed in Paragraph 29 above and the Sales Manager's testimony regarding contemporaneous communications with the Procurement Advisor – that the Procurement Advisor was functioning as a public official in reviewing Tender 2 procurement decisions. Moreover, other evidence in the record – including that the Procurement Advisor was in fact a public official, that the Procurement Advisor used an alias for purposes of the Agreement, and that the Agreement provided that the parties would keep their relationship and the terms of the Agreement strictly confidential – further supports a finding that the employees were aware that the Procurement Advisor was functioning as a public official.

32. On the basis of this record, the Sanctions Board determines that it is more likely than not that employees of the Respondent made payments to the Procurement Advisor in his capacity as a public official with a purpose to influence his actions in the procurement process for the Tender 2 Lot 4 Contract.

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[13] 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; Sanctions Board Decision No. 87 (2016) at para. 104.

C. Liability of the Respondent

1. Successor liability

33. The Respondent raises a defense to successor liability, arguing that the allegations against it relate to a contract signed between the Procurement Advisor and its predecessor company, and that it cannot be held responsible for the acts of its predecessor or its employees. The Sanctions Procedures do not define the term "successor," nor does the definition of "Respondent" under the Sanctions Procedures refer to "successor(s)." The Sanctions Procedures address the application of sanctions to successors only in Section 9.04(c), which provides that "[a]ny sanction imposed shall apply to the sanctioned party's successors and assigns, as determined by the Bank." The Bank's general principles and presumptions in regard to sanctions and corporate groups include the principle that sanctions should be applied flexibly to avoid evasion and the presumption that sanctions should be applied to successors and assigns.[14] Considering this framework, and consistent with past precedent,[15] the Sanctions Board finds that the Respondent may be sanctioned for the misconduct of the Respondent's Predecessor if the record supports a finding that the Respondent is a successor to the Respondent's Predecessor.

34. The record includes the transfer of asset agreement (the "TAA") between the Respondent and the Respondent's Predecessor. The provisions of the TAA indicate (i) that the Respondent's Predecessor transferred certain assets and liabilities to the Respondent; (ii) that the Respondent's Predecessor created the Respondent to receive its hospital engineering activity, including its contracts under the Project; (iii) that the Respondent is responsible for any contract or engagement obligating the Respondent's Predecessor, including employment contracts (indicating that employees of the Respondent's Predecessor continued as employees of the Respondent) and not excluding the Agreement with the Procurement Advisor or the Tender 2 Contracts; and (iv) that shares in the Respondent were sold to the Former CEO. Consistent with these provisions of the TAA, the Respondent stated in the course of these sanctions proceedings that "the transferring of the assets and liabilities . . . was never denied" as the Respondent "always stated that it has performed the contract" at issue in this case. Based on the relevant provisions of the TAA and the Respondent's own statements, the Sanctions Board concludes that the Respondent succeeded the Respondent's Predecessor and bears its obligations – and is responsible for its actions – in relation to the Project. In light of the above, the Respondent's argument seeking to avoid liability on the basis of the actions of the Respondent's Predecessor cannot succeed.

2. Liability of the Respondent for the acts of employees

35. 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

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[14] See The World Bank Group's Sanctions Regime: Information Note (November 2011) (the "Information Note") at p. 21, available at: http://go.worldbank.org/CVUUIS7HZ0.

[15] See Sanctions Board Decision No. 53 (2012) at paras. 8, 70 (holding the named respondent liable for sanctionable practices carried out by its legal predecessor); Sanctions Board Decision No. 66 (2014) at paras. 28-30 (holding the named respondent liable for a sanctionable practice carried out by its legal predecessor); Sanctions Board Decision No. 83 (2015) at paras. 74-75 (holding the named respondents liable for the sanctionable misconduct of their respective predecessors).

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.[16] 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.[17]

36. In the present case, the record supports a finding that employees of the Respondent's Predecessor and employees of the Respondent engaged in the corrupt practice in accordance with the scope of their duties and with the purpose of serving the interests of their employers. For instance, the record reflects that employees of the Respondent's Predecessor entered into the Agreement with the Procurement Advisor and that employees of the Respondent made at least three payments to the Procurement Advisor pursuant to the Agreement. There is no indication in the record, and the Respondent does not argue, that these activities were undertaken outside the course and scope of the employees' duties or for any purpose other than serving the employers' interest in winning and benefiting financially from the contract at issue. Moreover, the Respondent does not present, and the record does not provide any basis for, a rogue employee defense. In these circumstances, and having found the Respondent to be the successor to the Respondent's Predecessor, the Sanctions Board finds the Respondent liable for the misconduct of its employees and that of its predecessor.

D. Sanctioning Analysis

1. General framework for determination of sanctions

37. 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.

38. 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.[18] 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.[19]

39. 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

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

[17] See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 53-54.

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

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

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.

40. 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

41. 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 sophisticated means of misconduct and management's role in the misconduct as examples of severity.

42. *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 record indicates that the corrupt misconduct involved a variety of tactics, including provision of information to a public official used to disqualify a competitor, use of an alias by the public official for purposes of the Agreement with the Respondent, and payments to the public official's Swiss bank account. In addition, the record reflects that the scheme was implemented over the course of approximately one year with the active involvement of several of the Respondent's employees. The Sanctions Board finds that aggravation is warranted for the Respondent in these circumstances.

43. *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.[20] Here, the record reveals that senior officials of the Respondent, including the Operations Manager and the Sales Manager, were involved in the misconduct. In addition, the Respondent states in its Response that the Former CEO "was the only person who signed the agreement with [the Procurement Advisor] and he and [his wife] were . . . sole[ly] authorized to sign payments made to [the Procurement Advisor] in the

[20] 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).

framework of his contract." The Sanctions Board finds that aggravation is warranted in these circumstances.

b. Magnitude of harm caused by the misconduct

44. Section 9.02(b) of the Sanctions Procedures requires the Sanctions Board to consider the magnitude of the harm caused by the misconduct in determining a sanction. As examples of such harm, Section IV.B of the Sanctioning Guidelines identifies harm to public safety/welfare and harm to the project. INT submits that, as a result of the Respondent's corrupt practice, "the project awarded the [Tender 2 Lot 4 Contract] for a price €800,000 higher than it otherwise would have paid." However, as the bidders offered different products with different specifications in the various bids, it is not clear on the record – and it would be speculative for the Sanctions Board to opine – whether the Respondent's corrupt misconduct caused overpayment as asserted by INT. Accordingly, the Sanctions Board declines to apply aggravation on this ground.

c. Voluntary corrective action

45. 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.[21]

46. *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[22] and/or at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines.[23] Conversely, the Sanctions Board has declined to afford mitigation in cases where there was no evidence in the record that the respondent had in fact implemented compliance measures,[24] or where the respondent did not present sufficient evidence to show that the asserted measures were designed

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

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

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

[24] See, e.g., Sanctions Board Decision No. 75 (2014) at para. 31 (declining to apply mitigation where the respondent provided no evidence that asserted compliance measures were implemented).

or implemented so as to reduce the risk of the type of misconduct at issue.[25] The Respondent seeks mitigation on this ground. The record includes a copy of the Respondent's Code of Ethics and Conduct and a list of employees who have, according to the Respondent, provided their agreement to apply the Code. The record also includes a sample consultant contract, which provides that the consultant will comply with the Respondent's Code of Ethics and Conduct. The Sanctions Board notes that the Respondent's compliance documents appear to address the type of misconduct at issue in this case and some of the principles set out in the World Bank Group's Integrity Compliance Guidelines.[26] Accordingly, the Sanctions Board finds that the asserted compliance measures, as supported by written policies, warrant mitigation.

d. Cooperation

47. 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.

48. *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 in an investigation," 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,[27] or corresponded with INT and made relevant personnel available for interviews.[28] The Respondent asserts that it "cooperated with INT for its audit without opposing," and INT submits that the Respondent's cooperation may be considered a mitigating factor. The record includes transcripts of INT's interviews with three of the Respondent's current or former employees – namely, the Former CEO, the Operations Manager, and the Sales Manager. During their respective interviews, the interviewees answered INT's questions regarding the Respondent's relationship with the Procurement Advisor in connection with Tender 2. The record also contains email correspondence between the Procurement Advisor and employees of the Respondent, as well as documents internal to the Respondent – though it is not clear which documents the Respondent provided to INT and which documents INT may have obtained from the City of London Police. These interviews and

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[25] See, e.g., Sanctions Board Decision No. 69 (2014) at para. 39 (declining to apply mitigation where the respondent provided no details or corroborating evidence to support a finding that the asserted measures were designed or implemented so as to address the type of misconduct presented in that case); Sanctions Board Decision No. 75 (2014) at para. 31 (declining to apply mitigation where the respondent provided limited details about its compliance measures and presented no evidence that the measures were in fact implemented so as to reduce the risk of the type of misconduct at issue in that case).

[26] See generally Summary of World Bank Group Integrity Compliance Guidelines, available at: http://siteresources.worldbank.org/INTDOII/Resources/IntegrityComplianceGuidelines_2_1_11web.pdf.

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

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

documents include inculpatory evidence as relied upon by INT in the SAE. The Sanctions Board finds that mitigation is warranted for the Respondent in these circumstances.

e. Period of temporary suspension

49. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the Respondent has been temporarily suspended since October 19, 2015.

f. Other considerations

50. 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."

51. *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.[29] 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.[30] At the time of the EO's issuance of the Notice in October 2015, over eight years had elapsed since the Respondent's Predecessor and the Procurement Advisor entered into the Agreement in July 2007 in connection with Tender 2. The Sanctions Board finds that mitigation is warranted in these circumstances.

52. *Record of general performance*: The Respondent asserts that it "executed in a very professional way its contracts to the total satisfaction of the client." INT argues that the Respondent's contract performance is not a ground for mitigation. 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 Respondent fails to establish the relevance of its argument under this framework. Consistent with past precedent declining to grant mitigating credit for respondents' claimed record of general performance,[31] the Sanctions Board finds no mitigation justified on these grounds under the sanctions framework.

53. *Pressure on the Respondent's Predecessor to enter into the Agreement*: INT submits that mitigation may be warranted in light of the Procurement Advisor's alleged pressure on the Respondent's Predecessor to enter into a contract with the Procurement Advisor. Consistent with

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[29] 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).

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

[31] See, e.g., Sanctions Board Decision No. 87 (2016) at para. 155.

INT's submission, the record includes credible testimony that indicates coercion on the part of the Procurement Advisor. For instance, the Sales Manager stated during his interview with INT that the Procurement Advisor "was telling us, if I don't finalize a deal with you, maybe you will get one lot . . . and even I can prove that you are not compliant and you will not even get that lot . . . and you will not get anything else." The Sanctions Board finds that some mitigation is justified in these circumstances.

E. Determination of Liability and Appropriate Sanction

54. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, for a period of one (1) year beginning from the date of this decision. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for a corrupt practice as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines.

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
Catherine O'Regan