THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: June 21, 2017

Sanctions Board Decision No. 95
(Sanctions Case No. 399)

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. 399 (the "Respondent"), together with any entity that is an Affiliate[2] directly or indirectly controlled by the Respondent, for a period of two (2) years 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 September 3, 2015 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated July 21, 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 5, 2015 (the "Explanation");

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on February 4, 2016 (the "Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on March 7, 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 initially 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. Upon review of the Respondent's Explanation, the EO revised the recommended minimum period of ineligibility to three (3) years.

4. Effective September 3, 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 Project became effective on June 27, 2005, and closed on December 31, 2013.

6. On September 10, 2009, the Borrower's Ministry of Health (the "Ministry") issued bidding documents with tender reference number ICB09 under the Project for the procurement of maternity and neonatal care equipment ("Tender 9"). Tender 9 was composed of seven lots. The Respondent won Lot 2 and entered into a contract with the Borrower for that lot (the "Contract"), which was valued at €1,999,988.

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 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 9. 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 Tender 9. INT asserts that, consistent with an agreement (the "Agreement") signed by the Respondent's co-owner and managing director (the "Co-Owner") and the Procurement Advisor, the Respondent offered and paid the Procurement Advisor a 5% commission for the award of the Contract. INT contends that the Respondent paid the Procurement Advisor through an intermediary (the "Intermediary") and that the Procurement Advisor exercised considerable influence over the decision-making process to award the 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 conduct, (ii) the involvement of the Respondent's senior management in the corrupt practice, and (iii) the Respondent's repeated denials of knowledge of the Procurement Advisor's identity and role in the procurement process for the Contract, despite documentary evidence proving the Respondent's knowledge thereof. INT asserts that no mitigating factors apply in this case.

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

13. The Respondent challenged INT's redaction of certain exhibits to the SAE and argued that a separate set of SAE exhibits are "patchy and of limited quality." The Respondent requested "access to the documents' full content" and challenged the evidentiary value of the exhibits. As discussed in Paragraph 20 below, the Sanctions Board resolved these issues on December 9, 2016.

14. In response to INT's corruption allegation, the Respondent argues that INT has not discharged its burden of proof to establish that the Respondent engaged in a sanctionable practice. The Respondent acknowledges that its employees offered and made a 5% commission payment to the Procurement Advisor, but asserts that the Respondent only knew the Procurement Advisor as "an independent procurement expert" and did not know that he was a public official. The Respondent further asserts that it was misled and deceived by the Procurement Advisor, who "clandestinely cooperat[ed]" with the Respondent's former executive director for business development (the "Former Executive Director"). In addition, the Respondent contends that INT failed to establish that the Procurement Advisor was able to influence the decision-making process for Tender 9 or that the Respondent's senior management had knowledge of any such influence.

15. With respect to any potential sanction, the Respondent disputes the application of the aggravating factors asserted by INT. The Respondent submits that mitigation is warranted for (i) its minor role and the Procurement Advisor's "leading role" in the misconduct, (ii) its voluntary corrective actions, (iii) its cooperation with INT's investigation, (iv) the passage of time, and (v) the period of temporary suspension served. In addition, the Respondent argues that all of its products were "delivered in accordance with the contractual terms," that "the customer did not

suffer any harm," and that there was no allegation of "any financial disadvantage to the customer (or the World Bank)."

C. INT's Principal Contentions in the Reply

16. In support of its corruption allegation, INT argues that the Respondent is liable for the corrupt acts of the Former Executive Director under the doctrine of respondeat superior. According to INT, in order to render the Respondent liable for a corrupt practice, it is sufficient that the Former Executive Director, an employee of the Respondent acting within the scope of his work, had personal knowledge of the Procurement Advisor's status as a World Bank consultant. INT further argues that, even if the Procurement Advisor did not influence or lacked the ability to influence the award of the Contract, the Respondent's payment to the Procurement Advisor would still constitute a corrupt practice because the payment was intended to influence the procurement process for the Contract.

17. With respect to sanctioning factors, INT submits that the EO's recommended sanction is appropriate and that the Respondent is not entitled to further mitigation.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

18. The Sanctions Board will first address the evidentiary matters raised by the Respondent. The Sanctions Board will then consider whether the record supports a finding that 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

19. The Respondent challenged INT's redaction of certain exhibits to the SAE, asserting that the exhibits as redacted are "inadmissible and inconclusive." The Respondent also argued that a separate set of SAE exhibits, which contain transcripts of some of the interviews conducted by INT, are "patchy and of limited quality" because sections of the interviews were not transcribed but rather described as "inaudible." The Respondent requested access to the "full content" of the interviews and redacted documents, and also challenged the evidentiary value of these exhibits.

20. On December 9, 2016, the Sanctions Board issued a determination denying the Respondent's evidentiary challenges. Having reviewed the redacted material, the Sanctions Board determined that the material relates to the identity and particulars of third parties to the sanctions proceedings. Nothing on the record before the Sanctions Board suggests that these third parties are material to the case and accordingly, the Sanctions Board found that INT had properly exercised its discretion to redact material that was "not relevant or not germane" to the case as set out in Section 5.04(d) of the Sanctions Procedures. Moreover, the Sanctions Board concluded that the redactions did not prevent the Respondent from mounting a meaningful response to the allegations against it. In relation to the challenge to the transcripts of interviews on the ground that they are "patchy and of limited quality," the Sanctions Board found that, although it could not determine the content of the "inaudible" sections of the transcripts, there was nothing to suggest that those sections were material. In addition, the Sanctions Board noted that it would consider the quality of

the transcripts of interview in the context of the record as a whole when assessing their evidentiary weight.

B. Evidence of Corrupt Practice

21. 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.[8]

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

22. INT alleges that the Respondent offered and paid the Procurement Advisor, through the Intermediary, a 5% commission for the Contract. The Respondent acknowledges that it made a payment to the Procurement Advisor, stating that "[t]he evidence shows that an offer and a payment have been made from [the Respondent] to a temporarily hired consultant of the World Bank." Consistent with the Respondent's acknowledgment, the record reflects that employees of the Respondent agreed to make payments to the Procurement Advisor in relation to Tender 9. Specifically, in December 2010, the Co-Owner entered into the Agreement with the Procurement Advisor on behalf of the Respondent, pursuant to which the Respondent agreed to pay the Procurement Advisor "5% of the total net value" of any contract awarded to the Respondent under Tender 9. Contemporaneous documentary evidence – including invoices, bank records, and email correspondence – reveals that employees of the Respondent made a payment of €100,000 in connection with Tender 9 to the Intermediary, who then made a corresponding payment to the Procurement Advisor.

23. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the Respondent made a payment 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.[9]

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

24. INT argues that the Respondent knew that the Procurement Advisor was a Bank staff member or at least occupied "a position of knowledge and influence" in relation to Tender 9, and that the Respondent paid the Procurement Advisor in order to influence the procurement process for Tender 9. The Respondent argues that INT has not proven the Respondent's intent to engage in a corrupt practice, asserting that the Respondent only knew the Procurement Advisor as "an independent procurement expert," that its senior management did not know that the payment in

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

[9] 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).

question was to a "public official," and that INT failed to establish that the Procurement Advisor was able to influence the decision-making process for Tender 9.

25. 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.[10] As the Sanctions Board has previously observed, 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.[11] 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. 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 – a point that the Respondent acknowledges. On the basis of this record, the Sanctions Board determines that the Procurement Advisor was a Bank staff member, and therefore a public official, acting in the procurement process for the Contract.

26. The record contains direct evidence that the payment under the first element was made in exchange for the Procurement Advisor's services in connection with Tender 9. For example, and as discussed above, the Respondent entered into the Agreement with the Procurement Advisor pursuant to which the Respondent agreed to pay the Procurement Advisor a commission for any contract awarded under Tender 9 in exchange for the Procurement Advisor's services in relation to that tender. In addition, other contemporaneous evidence – including an invoice and emails – demonstrates that the payment in question was made pursuant to the Agreement. As supported by the evidence discussed in the following paragraph, the record indicates that the Procurement Advisor's services relate to his efforts to influence the selection process for the Contract in the Respondent's favor.

27. The record reflects that the Procurement Advisor and employees of the Respondent worked together in support of the Respondent's bid. In September 2008 – approximately one year before the official release of the technical specifications for Tender 9 – the Procurement Advisor emailed the Respondent's area administrator for Southeast Europe (the "Area Administrator") and the Former Executive Director a draft of the technical specifications requesting their comments on the document by the end of the day. The following day, the Procurement Advisor emailed the technical specifications to the Bank with suggested changes to the document. The record indicates that the Procurement Advisor continued to work for the Respondent's benefit throughout the procurement process. For instance, after the bid evaluation report was issued recommending the award of the Contract to the Respondent – despite the fact that another bidder (the "Competitor") submitted the lowest bid price – the Procurement Advisor stated in response to the Bank's request for comments: "seems OK & award can proceed as per the [bid evaluation report]." In an internal email exchange between Bank staff that was later forwarded to the Procurement Advisor for his further comment, a Bank procurement analyst stated that "we cannot issue a no-objection, as [the Procurement Advisor] has not provided any explanation on the deviations in the lowest bid." In

[10] Sanctions Board Decision No. 60 (2013) at para. 78.

[11] See id.

reply, the Procurement Advisor stated that "[t]he lowest bidder . . . was not compliant" and had "major deviation[s]" whereas the Respondent "is compliant with the tender specifications." In addition, the Procurement Advisor provided comments on a complaint filed by the Competitor and responded to the Bank's concerns regarding potential deviations in the Respondent's bid as raised in the Competitor's complaint. The Procurement Advisor advised the Bank that the Competitor is a "bad loser" and that the Respondent's bid is fully compliant. The evidence discussed in this paragraph demonstrates the Procurement Advisor's actual influence over the procurement process.

28. Consistent with the alleged corrupt arrangement to influence the procurement process, the Respondent won the Contract. As the Sanctions Board has previously observed, evidence that the desired influence actually materialized may bolster a showing of a respondent's intent, although it is not necessary for a finding of corrupt practice.[12]

29. The Sanctions Board is not persuaded by the Respondent's defense that, at the time of the alleged misconduct, the Respondent 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 that the Procurement Advisor was functioning as a public official in reviewing Tender 9 procurement decisions. It is also clear that at least some of the Respondent's employees had knowledge of the Procurement Advisor's services and impact in relation to the procurement process. For example, and as noted above, the Area Administrator and the Former Executive Director received technical specifications directly from the Procurement Advisor well in advance of official release. In addition, during his interview with INT, the Former Executive Director stated that the Procurement Advisor "told me that he was in charge of reviewing specifications for the World Bank." The Former Executive Director also confirmed that he relayed to colleagues that the Procurement Advisor was a World Bank consultant. Moreover, other evidence in the record – including evidence that the Procurement Advisor was in fact a public official, that the Procurement Advisor exerted actual influence over the procurement process, that the Procurement Advisor used an alias for purposes of the Agreement, that the Agreement provided that the parties would keep their relationship and the terms of the Agreement strictly confidential, and that employees of the Respondent used an intermediary to pay to the Procurement Advisor – further supports a finding that the employees were aware that the Procurement Advisor was functioning as a public official.

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

C. Liability of the Respondent 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

[12] See, e.g., Sanctions Board Decision No. 78 (2015) at para. 56.

motivated, at least in part, by the intent of serving their employer.[13] 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.[14]

32. In the present case, the record supports a finding that 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 the Respondent. For instance, the record reflects that employees of the Respondent communicated with the Procurement Advisor regarding the Tender 9 technical specifications and made the payment to him pursuant to the Agreement. There is no indication in the record that these activities were undertaken outside the course and scope of the employees' duties or for any purpose other than serving the Respondent's interest in winning and benefiting financially from the Contract.

33. The Sanctions Board does not accept the Respondent's rogue employee defense with respect to the Former Executive Director. The Respondent argues that it is not liable because the Procurement Advisor and/or the Former Executive Director deliberately concealed the Procurement Advisor's role at the Bank from the Respondent's senior management. As the Sanctions Board has previously held, the relevant question in determining employer liability is whether the employee's misconduct was – as in the present case – "a mode, albeit an improper mode" of carrying out an assigned duty.[15] With regard to the scope and adequacy of its controls, the record does not support a finding that, at the time of the corrupt practice, the Respondent had adequate corporate policies and controls in place, which the Former Executive Director circumvented or willfully ignored. The Procurement Advisor was paid 5% of the total net value of the Contract. There is no satisfactory explanation from the Respondent as to why this payment was made by its finance manager (the "Finance Manager") without query. The quantum of the payment to the Procurement Advisor should have raised a red flag, even assuming that the Former Executive Director had not disclosed the basis for the payment. It is clear that, at best for the Respondent, its systems enabled a corrupt scheme of this sort to take place. Indeed, the Respondent acknowledges that "its internal controls failed and that the deficiencies of the Romanian tender should have been detected earlier" and states that its "management is willing to accept criticism for having failed to adequately control its employees, in particular [the Former Executive Director]." Accordingly given the lack of controls, the rogue employee defense cannot stand.

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

[14] 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. 60 (2013) at para. 112.

[15] See Sanctions Board Decision No. 46 (2012) at para. 29 (explaining why an employer may be held responsible for its employee's wrongful acts, even if such acts were not specifically authorized, so long as the misconduct was "a mode, albeit an improper mode, of carrying out his responsibilities to fill in the missing . . . documentation for the bid and submit a complete bidding package by the deadline"). See also Sanctions Board Decision No. 48 (2012) at para. 29; Sanctions Board Decision No. 55 (2013) at para. 52.

34. In light of the above, the Sanctions Board finds the Respondent liable for the acts of its employees in making a payment to the Procurement Advisor in exchange for his efforts in securing the Contract for the Respondent.

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

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

2. Factors applicable in the present case

a. Severity of the misconduct

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

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

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

Sanctioning Guidelines identifies sophisticated means of misconduct and management's role in the misconduct as examples of severity.

40. *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 used a variety of tactics including receipt of confidential bid information from a public official, use of an alias by the public official for purposes of the Agreement with the Respondent, and use of an intermediary to make a payment to a public official's Swiss bank account. The Sanctions Board finds that aggravation is warranted for the Respondent in these circumstances.

41. *Management's role in the misconduct*: Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board has previously applied aggravation on this basis where high-level members of a respondent entity's management personally participated in a corrupt arrangement.[18] Here, INT asserts that the Respondent's "senior management was involved in its corrupt practices." The record supports a finding that senior officials of the Respondent – including the Co-Owner, who signed the Agreement with the Procurement Advisor, and the Former Executive Director, who reported directly to the Co-Owner, was head of the division on business development, and was the Respondent's main interlocutor with the Procurement Advisor – were involved in the misconduct. Accordingly, the Sanctions Board applies aggravation under this factor.

b. Magnitude of harm caused by the misconduct

42. *Lack of harm*: 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. The Respondent raises as considerations for determining any potential sanction its assertions that "the customer did not suffer any harm," that there were no product complaints, and that there was no allegation of "any financial disadvantage to the customer (or the World Bank)." The Sanctions Board has previously considered the absence of harm, even where supported by evidence, as merely a neutral fact that does not justify mitigation.[19] The Sanctions Board thus declines to apply any mitigation for the lack of harm asserted by the Respondent.

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[18] 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).

[19] See, e.g., Sanctions Board Decision No. 73 (2014) at para. 45; Sanctions Board Decision No. 79 (2015) at para. 40.

c. Minor role in the misconduct

43. Section 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party played a minor role in the misconduct." Section V.A of the Sanctioning Guidelines states that mitigation may be warranted where "no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct." The Respondent submits that mitigation is warranted for its minor role and the Procurement Advisor's "leading role" in the misconduct. According to the Respondent, the Procurement Advisor together with the Former Executive Director deceived the Co-Owner and the Respondent's senior management. The Sanctions Board has previously observed that "a respondent bears the burden to show affirmatively that no one with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct."[20] As the Respondent has not carried this burden – considering in particular that the Respondent does not point to specific evidence in support of its assertion and that the record indicates that the Co-Owner and the Former Executive Director were involved in the misconduct – the Sanctions Board declines to apply mitigation on this basis.

d. Voluntary corrective action

44. 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]

45. *Internal action against responsible employee*: Section V.B.2 of the Sanctioning Guidelines states that mitigation may be appropriate where "[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative." The Sanctions Board has previously declined to apply mitigation based on internal action against responsible staff where the respondent failed to substantiate its stated measures.[22] In the present case, the Respondent asserts that mitigation is justified for its termination of the Former Executive Director. The Sanctions Board does not find mitigation warranted under this factor, considering in particular that the Respondent does not provide evidence of the termination and the record does not otherwise provide a basis for determining whether any such termination was in response to the misconduct concerned.

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 Respondent seeks mitigation on this ground, asserting that it has, inter alia, hired compliance officers, issued a

[20] Sanctions Board Decision No. 71 (2014) at para. 91.

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

[22] See Sanctions Board Decision No. 44 (2011) at paras. 71-72.

comprehensive global Code of Conduct, increased compliance training of its senior staff members worldwide, and implemented due diligence proceedings for consultancy agreements. The Respondent presented extensive documentary evidence of its asserted compliance measures. 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.[23] Accordingly, the Sanctions Board finds that the asserted compliance measures, as supported by written policies, warrant mitigation.

e. 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 and a respondent's internal investigation as examples 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," 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,[24] or corresponded with INT and made relevant personnel available for interviews.[25] The Respondent asserts that it granted INT full access to its documents and computer and accounting systems, and enabled INT to interview the Respondent's employees. INT submits that the EO already considered the Respondent's cooperation in determining the recommended sanction and that no further mitigation is warranted. The record includes transcripts of INT's interviews with employees of the Respondent, including the Former Executive Director, the Area Administrator, and the Finance Manager. During their respective interviews, the interviewees answered INT's questions regarding the Respondent's relationship with the Procurement Advisor in connection with Tender 9. The record also contains documents internal to the Respondent, including relevant contemporaneous email correspondence and financial documents relating to the payment to the Procurement Advisor – though it is not clear which documents the Respondent provided to INT and which documents INT obtained from national authorities. The interviews and 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.

49. *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

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

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

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

INT." The Sanctions Board has previously declined to apply mitigation under this factor where the respondent did not provide any evidence or details of its asserted internal investigation.[26] In the present case, the Respondent states that, in July 2014, it advised its compliance officer to conduct an investigation of any potential irregularity within the Respondent's group of companies, to report any investigation results to the Respondent's senior management, and to implement corrective measures. However, the Respondent did not provide documentation to corroborate its asserted internal investigation. Accordingly, the Sanctions Board declines to apply mitigation on this basis.

f. Period of temporary suspension

50. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the Respondent has been temporarily suspended since the EO's issuance of the Notice on September 3, 2015.

g. Other considerations

51. 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."

52. *Non-cooperation in proceedings before the Sanctions Board*: The Sanctions Board has previously applied aggravation for actions that demonstrate a respondent's lack of candor in sanctions proceedings.[27] INT requests aggravation for "[t]he Respondent's repeated denials of [the Procurement Advisor's] identity or an improper relationship," despite documentary evidence proving the Respondent's knowledge thereof. Considering that the Respondent admits in its Response that "[t]he evidence shows that an offer and a payment have been made" from the Respondent to the Procurement Advisor and states its willingness "to accept criticism for having failed to adequately control" the Former Executive Director, the Sanctions Board declines to apply aggravation for the Respondent's conduct in these sanctions proceedings.

53. *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

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[26] See Sanctions Board Decision No. 74 (2014) at para. 43.

[27] See, e.g., Sanctions Board Decision No. 63 (2014) at para. 121 (applying aggravation due to some of the respondents' persistent and implausible denials of any responsibility for or knowledge of the misconduct, despite substantial evidence to the contrary, during the sanctions proceedings and including at the Sanctions Board's hearing); Sanctions Board Decision No. 77 (2015) at para. 59 (applying aggravation where the respondent's defense relied on an implausible assertion).

practices, to the initiation of sanctions proceedings.[28] 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.[29] At the time of the EO's issuance of the Notice in September 2015, almost five years had elapsed since the Respondent and the Procurement Advisor entered into the Agreement in December 2010 in connection with Tender 9. The Sanctions Board finds that some mitigation is warranted in these circumstances.

54. *Record of general performance*: The Respondent asserts that "[t]he high quality of [the Respondent's] products is well known throughout the world and everything was delivered in accordance with the contractual terms." 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,[30] the Sanctions Board finds no mitigation justified on this basis under the sanctions framework.

55. *Absence of past misconduct*: The Respondent's assertion that "this case must be considered as an isolated incident, and [the Respondent] is only guilty of a lack of oversight" 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.[31] While a record of past sanctionable misconduct may merit treatment as an aggravating factor, the Sanctions Board considers its absence a neutral fact.[32]

E. Determination of Liability and Appropriate Sanction

56. 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 two (2) years beginning from the date of this

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[28] 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).

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

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

[31] See, e.g., Sanctions Board Decision No. 85 (2016) at para. 50; Sanctions Board Decision No. 90 (2016) at para. 49.

[32] See, e.g., Sanctions Board Decision No. 85 (2016) at para. 50; Sanctions Board Decision No. 90 (2016) at para. 49.

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.

57. The Bank will also provide notice of this declaration of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may determine whether to enforce the declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[33]

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
Catherine O'Regan

[33] At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The Cross-Debarment Agreement provides that, subject to the prerequisite conditions set forth in the Cross-Debarment Agreement, unless a participating MDB (i) believes that any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the "opt out" clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank's external website (http://go.worldbank.org/B699B73Q00).