

Date of issuance: July 21, 2017

**Sanctions Board Decision No. 97
(Sanctions Case No. 393)**

**IDA Credit No. 4954-BD
Bangladesh**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 393 (the “Respondent Firm”), together with certain Affiliates,² with a minimum period of ineligibility of ten (10) years and six (6) months beginning from the date of this decision; and a sanction of debarment on the individual respondent in Sanctions Case No. 393 (the former business development manager of the Respondent Firm, hereinafter referred to as the “Respondent Manager”), together with certain Affiliates, for a period of seven (7) years and six (6) months beginning from the date of this decision. These sanctions are imposed on the Respondent Firm and the Respondent Manager (together, the “Respondents”) for fraudulent and corrupt practices.

I. INTRODUCTION

1. The Sanctions Board met in panel sessions in February and March 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), Catherine O’Regan, and Anne van’t Veer.

2. A hearing was held on February 3, 2017, following a determination of the Sanctions Board Chair to call a hearing in accordance with Article VI of the Sanctions Procedures. The World Bank Group’s Integrity Vice Presidency (“INT”) participated in the hearing through its representatives attending in person. The Respondent Firm was represented by outside counsel, also attending in person. The Respondent Manager did not attend the hearing. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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 Section 1.02(a) of the Sanctions Procedures defines “Affiliates” to include “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” The sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondents. See *infra* Paragraph 80.

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

- i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")³ to the Respondents on September 2, 2015 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated May 13, 2015;
- ii. Response submitted by the Respondents to the Secretary to the Sanctions Board on December 1 and December 31, 2015 (the "Response");
- iii. Reply submitted by INT to the Secretary to the Sanctions Board on February 3, 2016 (the "Reply"); and
- iv. Post-hearing submissions filed by INT and the Respondent Firm in February 2017.

4. On September 2, 2015, the EO issued the Notice to the Respondents. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended the following sanctions for the Respondents and any Affiliate entity under either Respondent's direct or indirect control, to take effect in the absence of any Response: debarment with conditional release after a minimum period of five (5) years.⁴ The EO identified the following conditions for the release of the Respondent Firm from debarment: (i) appropriate remedial measures to address the fraudulent and corrupt practices alleged by INT against the Respondent Firm and (ii) adoption and implementation of an effective integrity compliance program with respect to the Respondent Firm and any Affiliate entity under its control, to be done in a manner satisfactory to the Bank.⁵ The EO identified the following conditions for the release of the Respondent Manager from debarment: (i) appropriate remedial measures to address the fraudulent and corrupt practices alleged by INT against him; (ii) his completion of training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics; and (iii) adoption and implementation of an effective integrity compliance program with respect to any Affiliate entity under the Respondent Manager's control, to be done in a manner satisfactory to the Bank.⁶

5. Effective on September 2, 2015, and pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended each of the Respondents, together with any Affiliate entity under either Respondent's direct or indirect control, from eligibility⁷ with respect to any

³ Effective March 31, 2013, the EO's title changed to "IBRD/IDA Suspension and Debarment Officer" ("SDO"). For consistency with the Sanctions Procedures, this decision refers to the former title.

⁴ See Sanctions Procedures at Sections 1.02(a) and 9.04.

⁵ See Sanctions Procedures at Section 9.03.

⁶ See Sanctions Procedures at Section 9.03.

⁷ The full scope of ineligibility effected by a temporary suspension is defined in the Sanctions Procedures at Sections 4.02(a) and 9.01(c), read together.

Bank-Financed Projects.⁸ The EO specified that the temporary suspensions would apply across the operations of the World Bank Group.

6. The Respondents did not file an Explanation. On December 1 and December 31, 2015, the Respondents jointly filed a Response (in two parts) to the accusations and the recommended sanctions contained in the Notice.⁹

II. GENERAL BACKGROUND

7. This case arises in the context of the Bangladesh Health Sector Development Program (the “Project”), which seeks to “enable [Bangladesh] to strengthen its health systems and improve its health services, particularly for the poor.” On September 12, 2011, IDA entered into a financing agreement with the People’s Republic of Bangladesh (the “Borrower”) for a credit of approximately US\$359 million to help finance the Project (the “Financing Agreement”). The Project became effective on October 23, 2011, and closed on June 30, 2017.

8. On December 12, 2011, the implementation unit for the Project (the “PIU”) issued bidding documents (the “Bidding Documents”) for a contract to supply capsules of vitamin A under the Project (the “Contract”). On January 6, 2012, the Respondent Firm submitted a bid for the Contract (the “Bid”). The Bid was prepared by the Respondent Manager, signed by one of the Respondent Firm’s partner-owners (the “Co-owner”), and submitted to the PIU by the Respondent Firm’s local agent (the “Agent”).

9. The Bid stated that the Respondent Firm had paid or was planning to pay a commission of US\$1,000 to the Agent “relating to this bid, and to contract execution.” The Bid additionally included, as evidence of the Respondent Firm’s recent experience, a “List of Major Supplies” and four purchase orders stating that the Respondent Firm supplied capsules of vitamin A to a company in Nigeria (the “Asserted Client”) in 2010 and 2011. Between March and June 2012, during the bid evaluation process, the PIU requested and received additional documentation (copies of invoices) to support the Respondent Firm’s asserted experience as described in the Bid. On June 28, 2012, the Respondent Firm signed the Contract, valued at US\$1,899,000.

10. INT alleges that the Respondents engaged in fraudulent practices by making a false statement in the Bid regarding the Agent’s commission, submitting falsified documents as evidence of the Respondent Firm’s experience in the Bid, and submitting falsified copies of invoices to the PIU during the bid evaluation process. INT also alleges that the Respondents engaged in a corrupt practice by offering and paying a portion of the Contract’s value to the Agent with the intent that some of that money would be used to influence public officials in the award of the Contract to the Respondent Firm.

⁸ The term “Bank-Financed Projects” encompasses any project or program financed by the Bank and governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. For the avoidance of doubt, the term “Bank-Financed Projects” includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section 1.01(c)(i), n.3.

⁹ See Sanctions Procedures at Section 5.01(a).

III. APPLICABLE STANDARDS OF REVIEW

11. *Standard of proof:* 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.

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

13. *Evidence:* 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.

14. *Applicable definitions of fraudulent and corrupt practices:* The alleged fraudulent and corrupt practices in this case have the meanings set forth in the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 1, 2006 and May 1, 2010) (the “May 2010 Procurement Guidelines”), which are referenced in the Financing Agreement as applicable to the Project and whose definitions of “fraudulent practice” and “corrupt practice” appear in the Bidding Documents. Paragraph 1.14(a)(ii) of these Guidelines defines the term “fraudulent practice” as “any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.” Paragraph 1.14(a)(i) of the May 2010 Procurement Guidelines defines the term “corrupt practice” as “the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.”

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

15. INT alleges that the Respondents knowingly engaged in fraudulent practices by making misrepresentations in the Bid and during the tender evaluation process. First, INT submits that the Respondents included in the Respondent Firm’s Bid a falsified “List of Major Supplies,” four falsified purchase orders from the Asserted Client (the “Purchase Orders”), and a false commission amount to be paid to the Agent. Second, INT asserts that the Respondents submitted to the PIU, during the bid evaluation process, eight falsified invoices purportedly issued to the Asserted Client (the “Invoices”). INT alleges that the Respondents made all of these misrepresentations in order to influence the bid evaluation process.

16. INT also alleges that the Respondents engaged in a corrupt practice by offering and paying a commission to the Agent, with the expectation and/or knowledge that a portion of this commission would be used to influence the procurement process for the Contract.

17. INT asserts that the “repetitive, deliberate, and coordinated nature” of the Respondents’ fraudulent practices warrants aggravation. INT also submits that mitigation may be warranted given that the Respondent Manager and the Co-owner met with INT and made limited admissions.

B. The Respondents’ Contentions in the Response

18. The Response denies the allegations, and argues that benefit of the doubt must be given to the Respondents. The Response claims that INT’s evidence should be given little weight, given asserted omissions and improprieties in INT’s investigation, such as the absence of counsel during an investigative interview. With respect to allegations of false claims or documents in the Bid, the Response argues that the PIU’s tender evaluation committee (the “TEC”) was exclusively responsible for authenticating bid documents, which it evaluated “positive[ly].” With respect to allegations of corruption, the Response asserts that the commission paid to the Agent was not in fact used to bribe government officials. The Response additionally argues that INT misinterpreted the purported admissions made by the Respondent Manager and the Co-owner during their respective interviews with INT.

19. The Response does not specifically request mitigation, but refers generally to the Respondents’ “full cooperation,” the Respondent Firm’s confirmed performance under the Contract, and the passage of two years from the commencement of INT’s audit in September 2013 to the issuance of the Notice in September 2015.

20. The Sanctions Board notes certain procedural history as relevant to its consideration of the Respondents’ arguments. The Response and additional correspondence submitted in this case between December 2015 and September 2016 were filed by counsel acting on behalf of both Respondents. However, shortly before the first scheduled hearing date in September 2016, the Respondent Manager withdrew that counsel’s authority to represent him, retained different counsel, and asked that submissions filed by former counsel on the Respondent Manager’s behalf be “discarded” and considered “withdrawn or cancelled.”

C. INT’s Principal Contentions in the Reply

21. INT reasserts the allegations presented in its SAE and submits that the Respondents failed to “demonstrate that their conduct did not amount to the sanctionable practices of which they are accused.” In addition, INT argues that, although the TEC supported awarding the Contract to the Respondent Firm and the Bank ultimately gave its no-objection, neither the TEC nor the Bank ever conducted an independent assessment of any documents submitted by the Respondents. INT also submits that the TEC’s determination to award the Contract to the Respondent Firm was questioned by a sub-committee tasked with evaluation of the bidders’ technical qualifications (the “TESC”). According to INT, the TEC’s “repeated disregard” of the significant concerns raised by the TESC supports INT’s allegation of corrupt conduct against the Respondents.

22. INT additionally asserts that neither the absence of counsel at investigative interviews nor the Respondent Firm’s asserted performance under the Contract merits mitigation, and that the Respondents’ assessment of INT’s investigative timeline in the Response is “incorrect and immaterial.”

D. Presentations at the Hearing

23. As noted at Paragraph 2 above, INT and the Respondent Firm attended the hearing, whereas the Respondent Manager was not present or represented at the hearing. As a preliminary matter, the Sanctions Board Chair invited the Respondent Firm and INT to address the Respondent Firm's request for a stay or cancellation of the proceedings, filed on January 19, 2017, which the Sanctions Board Chair had denied before the hearing, pending additional discussion. The Respondent Firm stated that these sanctions proceedings ought to be stayed due to parallel national proceedings against the Respondent Firm arising from the same facts, and assertedly resulting from INT's request for such an investigation by national authorities. The Respondent Firm indicated that Section 10.03 ("Sharing of Materials with Third Parties") and Section 10.04 ("Sharing of Investigative Materials") of the Sanctions Procedures were applicable to the issue. INT responded that sanctions proceedings may and should continue independent of any parallel national investigation or proceeding, and that Sections 10.03 and 10.04 support INT's ability to make investigative referrals to national authorities. The Sanctions Board Chair reaffirmed his denial of the request, with reasoning to be included in this final decision.¹⁰

24. In its presentation on the merits, INT reiterated the allegations and arguments identified in its written submissions. INT stated that the Respondents' misconduct was deliberate, egregious, and corroborated by both documentary evidence and admissions by the Respondent Manager during the investigation. Finally, INT proposed that, to the extent that the Respondents may argue that the Respondent Manager has withdrawn or denied his admissions made to INT, the Respondents should not receive mitigation that may have been granted on the basis of those admissions.

25. The Respondent Firm reiterated its objections to a finding of liability as previously stated in the Response. In response to questions from Sanctions Board members, the Respondent Firm declined to articulate its position on the authenticity and validity of the List of Major Supplies, the Purchase Orders, or the Invoices. The Respondent Firm also did not provide a clarification, when invited, of (i) how INT may have misinterpreted admissions of the Respondent Manager and of the Co-owner, as reflected in verbatim transcripts of recorded interviews with INT investigators; and (ii) what specific services were provided by the Agent in exchange for the commission. However, the Respondent Firm argued that the Respondent Manager did withdraw his admissions to INT, as reflected in recent correspondence from the Respondent Manager's new counsel, shortly before the hearing. The Sanctions Board Chair informed INT and the Respondent Firm that the Sanctions Board Secretariat had not received any copies of such correspondence.

E. Post-Hearing Submissions

26. In response to statements made at the hearing, the Sanctions Board Chair requested INT to submit a copy of recent correspondence that INT staff had apparently received from the Respondent Manager. In compliance with this request, INT disclosed one letter and one email from counsel for the Respondent Manager, in which counsel asked that submissions filed by

¹⁰ See *infra* Paragraph 30.

former counsel on the Respondent Manager's behalf be "discarded" and considered "withdrawn or cancelled," and that the Respondent Manager's counsel receive an opportunity to file an independent and detailed reply on behalf of his client before the proceedings continue. Although the Respondent Manager was aware of the Sanctions Board's contact information, having corresponded with the Sanctions Board directly on multiple occasions, and although the letter listed the Sanctions Board Secretary as an addressee, both the letter and the email were sent to INT electronically days before the scheduled hearing and did not copy the Sanctions Board. The Sanctions Board Secretariat received no further correspondence from or explanation by the Respondent Manager after the hearing. The Sanctions Board will ordinarily disregard correspondence not sent to it, but sent to other parties. Nevertheless, the Sanctions Board Chair admitted both the letter and the email into the record and gave the parties an opportunity to comment on the documents.

27. INT expressed no objection to the admission of the documents into the record, but argued that the Respondent Manager's disavowal of arguments made on his behalf may constitute a retraction of the Response and render the matter uncontested with respect to the Respondent Manager. The Respondent Firm also expressed no objection to the admission of the documents into the record, supported the Respondent Manager's request to make a new submission, and requested permission to file a separate explanatory submission following up on questions posed at the hearing. The Respondent Manager did not file any submissions following the Sanctions Board Chair's invitation. The Respondents' requests were denied, as detailed in Paragraphs 32 and 37-38 below.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

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

A. Procedural and Evidentiary Determinations

1. Determination on the Respondent Firm's request to "stay or cancel" proceedings

29. The Respondent Firm requested that the present sanctions proceedings be stayed or cancelled in light of a purported parallel national proceeding against the Respondent Firm, arising from the same facts, and assertedly resulting from INT's request for such an investigation by national authorities. INT opposed the request as insufficiently supported by evidence. The Sanctions Board Chair made an interim determination to deny the request prior to the hearing and allowed the parties to make additional arguments on this issue during the hearing. After carefully considering the sum of the parties' written submissions and oral statements, the Sanctions Board Chair reaffirmed his denial of the request at the hearing, with reasoning to be included in this final decision.

30. In reaching his determination, the Sanctions Board Chair took into account three factors. First, the Respondent Firm's request does not support with evidence the timing, basis, or scope of the asserted parallel national proceeding. Second, Sections 10.03 and 10.04 of the Sanctions Procedures explicitly address INT's ability to make referrals to national investigative or prosecuting authorities and do not suggest that such referrals should effect any pause on the Bank's separate sanctions proceedings, if any. Third and finally, the Bank's sanctions proceedings are generally distinct from, and are not to be coordinated with, any national proceedings. Specifically, the Bank's sanctions proceedings are solely administrative in nature and intended to ensure that the Bank's fiduciary duty is fulfilled and that the proceeds of its financings are used for their intended purposes. The sanctions framework, which was approved by member country shareholders and which governs the conduct of these proceedings, does not provide for a stay of proceedings due to any concurrent criminal, civil, or administrative proceeding before a national court or other tribunal.¹¹ In these circumstances, national proceedings against a domestic firm should not by default have any bearing on the Bank's sanctions process with respect to that same enterprise.

2. Determination on the Respondent Firm's request to strike evidence from the record

31. In the Response and during the hearing, the Respondent Firm argued that testimonial evidence from the Respondent Manager and from an asserted competitor of the Respondent Firm "cannot be accepted" by the Sanctions Board because it constitutes hearsay and/or because the interviewee may have been biased against the Respondent Firm. INT does not address the claim that some of its testimonial evidence was obtained from the Respondent Firm's competitor, and argues that the Respondent Manager's testimony is credible and supported by documentary evidence. The Sanctions Board notes that Section 7.01 of the Sanctions Procedures ("Forms of Evidence") states that "[a]ny kind of evidence may form the basis of arguments presented in a sanctions proceedings and conclusions reached by the . . . Sanctions Board" and explicitly provides for admissibility of hearsay evidence, with due consideration of its weight.¹² Furthermore, as the Sanctions Board has previously observed, "the fact that testimony comes from a competitor may discount its value, depending on the circumstances, but will not necessarily preclude its use."¹³ In these circumstances, the Sanctions Board denies the Respondent Firm's apparent request to strike from the record any testimonial evidence obtained from the Respondent Manager or the Respondent Firm's asserted competitor.

¹¹ See also Sanctions Board Decision No. 93 (2017) at para. 36 (articulating the basis for the Sanctions Board's denial of the respondent's request for a stay, where the respondent asserted that it was a suspect in a national criminal proceeding).

¹² See Sanctions Board Decision No. 92 (2017) at para. 57.

¹³ Sanctions Board Decision No. 50 (2012) at para. 39. See also Sanctions Board Decision No. 92 (2017) at para. 52 (in assessing the weight of witness statements, the Sanctions Board took into account all relevant factors bearing on the witness's credibility and noted that while these factors may be considered or may discount such witness's testimony, they would not necessarily preclude its use.)

3. Determination on the Respondent Manager's request to withdraw earlier submissions

32. As revealed through INT's post-hearing submissions,¹⁴ the Respondent Manager requested that the Sanctions Board "discard" and "consider withdrawn" submissions filed by former counsel on the Respondent Manager's behalf, and denied having given any statements to INT. INT submitted that the Respondent Manager's request to withdraw the Response filed on his behalf may constitute the Respondent Manager's withdrawal from the proceedings. On March 23, 2017, the Sanctions Board Chair declined to consider the Respondent Manager's submission, as articulated by his new counsel in his letter and email to INT days before the hearing,¹⁵ as a withdrawal of the Response. The Sanctions Board observes that the record supports INT's reported interview of the Respondent Manager, during which the Respondent Manager shared copies of the Respondent Firm's internal correspondence, included as evidence in this proceeding.¹⁶ Furthermore, there is nothing in the record to suggest that the Respondent Manager's statements to INT made during the investigation were false or manufactured and the Respondent Manager has not otherwise provided any cogent explanation for possibly having given false evidence. In these circumstances, the Sanctions Board has taken the Respondent Manager's statements to INT into account in determining the facts of this case.

4. Determination on the Respondent Manager's objection regarding his counsel's opportunity to prepare for the hearing

33. The Respondent Manager and his new counsel did not attend the hearing held in February 2017. In a letter sent to INT several weeks prior to that hearing, the Respondent Manager states that he "[w]as not given ample opportunity to enable his new advocate to study the papers and to properly appear before [the] [S]anction[s] [B]oard."¹⁷

34. The Sanctions Board originally scheduled a hearing to take place in this case on September 23, 2016, after giving more than two months of advance notice to the parties. One day before the scheduled hearing date, counsel who originally represented both Respondents informed the Sanctions Board that the Respondent Manager had withdrawn that counsel's authority to represent him. The Sanctions Board Chair convened the hearing as scheduled and invited INT and the Respondent Firm to comment on possible postponement of the hearing, in light of the change in the Respondent Manager's legal representation. INT expressed no objection and counsel for the Respondent Firm endorsed a postponement. The Sanctions Board Chair then determined to postpone the hearing, with plans to re-convene as soon as practicable.

35. On October 28, 2016, the parties received notice of the proposed week of the re-scheduled hearing (January 30, 2017 – February 3, 2017). On November 30, 2016, the parties received confirmation of the hearing date (February 3, 2017). Both of these communications included specific instructions for the parties to identify proposed attendees and indicate availability during

¹⁴ See *supra* Paragraphs 26-27.

¹⁵ See *supra* Paragraph 26.

¹⁶ See *infra* Paragraphs 55, 57, and 73.

¹⁷ See *supra* Paragraph 26.

the week and day of the hearing. On December 2, 2016, the Respondent Manager confirmed engagement of new counsel. Between October 2016 and January 2017, both Respondents failed to identify proposed attendees at the hearing or to provide any credible and substantiated request for postponement. In November-December 2016, the Sanctions Board Chair twice denied requests from counsel for the Respondent Firm to re-schedule the hearing to April 2017, noting the absence of evidence of any specific time conflicts with the re-scheduled hearing. On January 6, 2017, INT formally objected to any additional postponement of the proceedings.

36. The original postponement, the early and repeated reminders of the re-scheduled hearing date, and the period of at least two months for new counsel to contact the Sanctions Board Secretariat for any clarifications, all served to enable the Respondent Manager to ensure adequate representation for himself in these proceedings. In these circumstances, the Sanctions Board finds that the Respondent Manager's counsel had adequate opportunity to prepare for the hearing and that the Respondent Manager was in no way deprived of the opportunity to mount a meaningful response to the allegations against him.

5. Determination on the Respondents' requests to make additional post-hearing submissions

37. In its pre-hearing letter, shared with the Sanctions Board after the hearing,¹⁸ counsel for the Respondent Manager requested to make additional independent submissions on his client's behalf. INT expressed strong opposition to the request and argued that the case is ready for the Sanctions Board's decision. The Respondent Firm also asked for opportunity to make additional submissions to address questions it had declined to answer during the hearing. On March 23, 2017, the Sanctions Board Chair denied both requests in his discretion.

38. In reaching his determination, the Sanctions Board Chair took into account the full scope of correspondence in this case. First, the record reflects that the Respondent Manager's counsel had ample opportunity to prepare and communicate with the Sanctions Board in the months preceding the hearing, and omitted to file any reasonable, substantiated, and timely requests for additional accommodation.¹⁹ Second, the record reveals that the Respondent Firm's counsel had even more time to review the record and prepare for the hearing, having represented the Respondent Firm in this matter since at least December 2015. Finally, the Sanctions Board notes that post-hearing submissions are ordinarily permitted only when their content is clearly delineated and the submissions seek to cover new issues not previously traversed by the respondents during the proceedings, including the hearing. In the present case, neither of the Respondents' requests was based on new issues or newly available evidence, but rather sought to revise and supplement earlier submissions and statements. In light of the history of this sanctions case, which includes repeated postponements, numerous opportunities for the Respondents to submit their arguments prior to the close of proceedings, and the Respondents' repeated failures to make their submissions in a timely manner, the Respondents' requests to make additional post-hearing arguments were necessarily denied.

¹⁸ See supra Paragraph 26.

¹⁹ See supra Paragraphs 35-36.

B. Evidence of Fraudulent Practices

39. In accordance with the definition of “fraudulent practice” under the May 2010 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that each of the Respondents (i) engaged in any act or omission, including a misrepresentation (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.²⁰

1. Misrepresentation

40. INT alleges that the Bid included misrepresentations by virtue of four falsified Purchase Orders, a falsified List of Major Supplies, and a false statement as to the amount of the Respondent Firm’s commission to the Agent. INT additionally alleges that, following submission of the Bid, the Respondents submitted eight false Invoices to corroborate the fictitious transactions between the Respondent Firm and the Asserted Client claimed in the Bid. The Respondent Firm does not claim that it possesses the experience described in its Bid or that it correctly stated, in the Bid, the commission to be paid to the Agent. Nevertheless, the Respondent Firm argues that the Sanctions Board should construe the Bid documents as “authentic and/or legal” because, according to the Respondent Firm, the TEC was exclusively responsible for verifying the authenticity of submitted documents. The Respondent Firm also challenges INT’s testimonial evidence, including admissions from the Respondent Manager and the Co-owner, and asserts that inculpatory testimonial evidence in the record was inappropriately collected from interviewees not represented by counsel, collected by telephone, not recorded, and/or collected from potentially biased sources.

41. The Sanctions Board does not find any of the Respondent Firm’s above defenses persuasive. First, the responsibility to ensure that the Respondent Firm’s qualifications and experience were accurately represented or documented in the Bid lay with the Respondent Firm and not the TEC or any other part of the PIU. Second, the record does not suggest – and the Respondent Firm provided no evidence to support the idea – that the Respondent Manager may have been biased against the Respondent Firm at the time of his interview with INT, or that any of the interviewees requested an attorney or expressed any difficulty in understanding INT’s questions. Specific evidence and precedent relevant to each of the alleged misrepresentations is discussed below.

42. *Falsified Purchase Orders, List of Major Supplies, and Invoices:* In past decisions finding that the respondents had submitted forged documents, the Sanctions Board relied primarily on written statements from the parties named in or supposedly issuing these documents, as well as

²⁰ Footnote 20 of the May 2010 Procurement Guidelines provides that “‘party’ refers to a public official; the terms ‘benefit’ and ‘obligation’ relate to the procurement process or contract execution; and the ‘act or omission’ is intended to influence the procurement process or contract execution.”

the respondents' own admissions.²¹ The record in the present case includes the Asserted Client's denial that it registered any vitamin A supplements with national authorities in Nigeria or imported any vitamin A supplements into Nigeria. The record also includes specific admissions that the Respondent Manager and the Co-owner made to INT, stating that the Respondent Firm did not make the supplies of vitamin A to the Asserted Client as claimed in the Bid and the subsequent Invoices. The Respondent Manager stated to INT that he had drafted the Purchase Orders and the Invoices, which he agreed were not authentic. The Respondent Manager further admitted that he had also drafted the List of Major Supplies, which he described as having "not the right numbers" and "modified numbers" for the period of 2010-2011. In addition, INT's investigation produced a number of written statements from third parties involved in Nigeria's vitamin A supply and distribution chain. In these statements, the various third parties consistently denied that the Asserted Client imported or had authorization to import any vitamin A supplements into Nigeria, as described in the Purchase Orders and the Invoices.

43. *False statement of commission amount:* In a past decision considering misrepresentation of an agent's commission, the Sanctions Board relied on evidence that, at the time of bid submission, the respondents had agreed to a different commission than that disclosed in the bid.²² In the present case, the record includes a copy of the pre-Bid agreement between the Respondent Firm and the Agent to provide a commission of 10% of the Contract value, or approximately US\$19,000. The record also includes "debit notes" from the Agent to the Respondent Firm, including one requesting a commission of 10%; and admissions from the Respondent Manager and the Co-owner that the Respondent Firm had negotiated and expected to pay a commission of 10% of the Contract's value to the Agent. The Bid, in contrast, disclosed a commission of only US\$1,000.

44. In these circumstances, the Sanctions Board finds that the Respondent Manager engaged in misrepresentations by submitting false documents and making false statements to the PIU, both in the Bid and during tender evaluation.

2. That knowingly or recklessly misled, or attempted to mislead, a party

45. INT asserts that the Respondents knowingly submitted false documents and made false claims to the PIU. The Response submits that INT's contentions are "inconsistent with . . . material facts and/or circumstances."

46. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.²³ The Sanctions

²¹ See, e.g., Sanctions Board Decision No. 2 (2008) at para. 4 (stating that the Sanctions Board "relied primarily" on a written statement from the purported issuer of the documents at issue that the documents had been forged, as well as the respondent's oral and written admissions, in finding that the respondent had engaged in fraudulent practices by forging documents); see also Sanctions Board Decision No. 79 (2015) at para. 21 (considering written denials of authenticity by the purported issuer as well as a statement by the respondent's counsel, during the Sanctions Board hearing, that the document in question was false).

²² Sanctions Board Decision No. 72 (2014) at paras. 37-39.

²³ Sanctions Procedures at Section 7.01.

Board has previously found sufficient evidence of knowledge in cases of alleged fraud where the respondents and/or their employees either directly admitted to creating or knowingly using documents that contained misrepresentation,²⁴ or, alternatively, could be “presumed by inference to have acted knowingly based on their statements and/or indicia of falsity apparent to them.”²⁵

47. The record in the present case includes INT’s transcript of an interview with the Respondent Manager in which he described having drafted and included in the Bid all four of the Purchase Orders and the List of Major Supplies, knowing them to be false. The Respondent Manager also described to INT having drafted and submitted to the PIU each of the Invoices, which he knew to be false, and stated that he was aware that the PIU later received copies of the same documents from the Asserted Client. The Respondent Manager and the Co-owner also separately explained to INT that the Respondent Manager had revised the agreed commission rate of 10% of the Contract value (approximately US\$19,000) down to US\$1,000 in the Bid.

48. In these circumstances, the Sanctions Board finds that the Respondent Manager knowingly made the alleged misrepresentations – both with respect to the Respondent Firm’s experience and the extent of the commission planned for the Agent.

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

49. INT argues that the misrepresentations were designed to mislead the Borrower and to influence both the Borrower and the bid evaluation process to ensure that the Respondent Firm qualified for and ultimately won the Contract. The Respondents do not specifically contest this component of INT’s allegation. The Sanctions Board has previously found that, where the record showed that a respondent’s misrepresentation was made in response to a bid requirement, that misrepresentation was more likely than not intended to show the respondent’s qualifications and thereby help the respondent win the tender and benefit from such award.²⁶

50. As the record reveals, and the parties do not dispute, the Bidding Documents required, inter alia, evidence of a defined minimum of experience and disclosure of information regarding any past or anticipated commissions to agents “relating to this bid.” The Sanctions Board notes that, during his interview with INT, the Respondent Manager shared that his misrepresentations regarding the Respondent Firm’s experience and the Agent’s commission were prompted by perceived criteria or rules for bidding. Specifically, the Respondent Manager indicated to INT

²⁴ See, e.g., Sanctions Board Decision No. 46 (2012) at para. 24 (the respondent’s employee who forged the signature on the bid document admitted that he knew he was not authorized to sign on behalf of the purported signatory, and thus deliberately concealed his wrongdoing); Sanctions Board Decision No. 49 (2012) at paras. 22, 24-25 (finding that fraud was carried out knowingly where the respondent and its affiliate sought to justify their conduct by explaining that they did not have time to secure “genuine” documents, and an employee of the named affiliate admitted to generating the forgeries under pressure from the respondent’s employee to “get creative”).

²⁵ Sanctions Board Decision No. 86 (2016) at para. 34. See also Sanctions Board Decision No. 44 (2011) at para. 42 (finding that misrepresentations with respect to certain testing were made knowingly where the respondent “would have been aware that it had not paid any testing fees”); Sanctions Board Decision No. 55 (2013) at para. 46 (finding that misrepresentations with respect to certain documents were made knowingly where the forged documents’ falsity would have been readily apparent to the respondent firm’s representative).

²⁶ See, e.g., Sanctions Board Decision No. 82 (2015) at paras. 35-36.

that he misrepresented the Respondent Firm's experience in the Bid due to "really difficult" experience-related criteria for eligibility. The Respondent Manager also stated that the Agent had advised him to disclose a commission of only US\$1,000 due to the "rules for bidding."

51. In these circumstances, the Sanctions Board finds that the Respondent Manager's misrepresentations sought to ensure that the Bid was accepted as compliant with bidding requirements and were thus made in order to help the Respondent Firm win the tender and benefit from the Contract award.

C. Evidence of a Corrupt Practice

52. In accordance with the definition of "corrupt practice" under the May 2010 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) offered, gave, received, or solicited, directly or indirectly, anything of value (ii) to influence improperly the actions of another party.²⁷

53. INT alleges that the Respondent Firm and the Respondent Manager agreed to pay and the Respondent Firm did pay a commission of 10% to the Agent with the intent that this commission would fund "bribes to public officials." The Respondent Firm submits that INT has not proven that the commission has in fact been used toward bribery of government officials in Bangladesh and that INT's allegation of corruption relies on "wrong inferences" from the Respondent Manager's statements made at the interview.

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

54. The first element of corrupt practice, as alleged in this case, requires a showing that a respondent offered or gave a thing of value. The recipient of the offer or the item(s) of value under this first element of the definition need not be – though s/he may be – the public official who is the intended target of influence under the second element of corrupt practice,²⁸ as discussed below at Paragraphs 56-58.

55. The record reflects, and the parties do not dispute, that the Respondents agreed to pay a commission of 10% of the Contract's value to the Agent and ultimately paid the Agent at least 7.5% of the Contract's value. The record includes a copy of the written agreement between the Respondent Firm and the Agent, which obligated the Respondent Firm to pay the Agent a commission of 10% of the Contract's value. Copies of contemporaneous correspondence between the Respondent Manager and the Agent reflect negotiation and agreement on the same commission amount. In addition, the Respondent Manager and the Co-owner both stated to INT that the Respondent Firm and the Agent had agreed on a commission of 10%. Finally, copies of payment vouchers in the record, as well as the Respondent Manager's statements to INT, reflect that the Respondent Firm paid the Agent at least 7.5% of the Contract's value thus far. In these circumstances, the Sanctions Board concludes that it is more likely than not that the Respondents

²⁷ Footnote 19 of the May 2010 Procurement Guidelines provides that "'another party' refers to a public official acting in relation to the procurement process or contract execution" and that "[i]n this context, 'public official' includes World Bank staff and employees of other organizations taking or reviewing procurement decisions."

²⁸ See Sanction Board Decision No. 72 (2014) at para. 43.

offered and gave a thing of value to the Agent.

2. To influence improperly the actions of another party

56. As an initial matter, the Sanctions Board notes that a finding of corrupt practice does not require proof of either actual payment to, or actual influence over, public officials.²⁹ While evidence that the desired influence actually materialized may bolster a showing of a respondent's intent to influence, it is not necessary for a finding of corrupt practice.³⁰

57. In the present case, the record includes copies of correspondence from the Respondent Manager to the Agent, requesting assurance that the Respondent Firm would win the Contract and expressing interest in winning the tender "at any possible cost." Consistent with that correspondence, the Respondent Manager stated to INT that he personally believed, at the time of the commission offer, that the Agent had "contacts" among PIU personnel and that a portion of the Agent's commission would be paid to government officials to help the Respondent Firm win the Contract. The Sanctions Board notes that these statements are reflected in a transcript of a recorded interview and the Respondents have not identified any way in which the inculpatory statements could have been misinterpreted. Finally, the Sanctions Board observes that the agreement between the Respondent Firm and the Agent does not articulate – and the Respondent Firm did not articulate at the hearing³¹ – the Agent's specific Bid-related deliverables, for which the Agent was offered 10% of the Contract value, i.e., approximately US\$19,000.

58. In these circumstances, the Sanctions Board finds that it is more likely than not that the Respondent Manager offered a commission to the Agent with the intent to improperly influence the actions of public officials acting in relation to procurement of the Contract.

D. The Respondent Firm's Liability for the Acts of the Respondent Manager

59. 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 an employee "acted within the course and scope of his employment and with a purpose, at least in part, to serve the [r]espondent."³² 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.³³

60. In the present case, the record supports a finding that the Respondent Manager had specific responsibility to work on the Bid; acted within the course and scope of his employment;

²⁹ See Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 72 (2014) at para. 45.

³⁰ 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.

³¹ See supra Paragraph 25.

³² Sanctions Board Decision No. 48 (2012) at para. 29. See also Sanctions Board Decision No. 68 (2014) at para. 30.

³³ See, e.g., Sanctions Board Decision No. 46 (2012) at para. 29; Sanctions Board Decision No. 47 (2012) at para. 33; Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at paras. 53-54.

and was motivated by the intent of serving the Respondent Firm in offering a commission to the Agent, preparing the Bid for submission, and preparing invoices to substantiate claims made in the Bid. The Respondents do not present, and the record does not provide any basis for, a rogue employee defense. On the basis of this record, the Sanctions Board concludes that the Respondent Firm may be held liable for the fraudulent and corrupt practices carried out by the Respondent Manager in the course and scope of his duties.

E. Sanctioning Analysis

1. General framework for determination of sanctions

61. 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.

62. 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.³⁴ 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.³⁵

63. 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 debarment of three years.

64. Where the Sanctions Board imposes a sanction on a respondent, it may also, pursuant to Section 9.04 of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of the respondent.

³⁴ See Sanctions Board Decision No. 40 (2010) at para. 28.

³⁵ Sanctions Board Decision No. 44 (2011) at para. 56.

2. Plurality of sanctionable practices

65. As the Sanctions Board finds that the Respondents engaged in fraudulent and corrupt practices, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding “Cumulative Misconduct” (emphasis in original):

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

66. Where respondents engaged in sanctionable practices in factually unrelated cases involving, inter alia, different projects, contracts, and allegations of misconduct, the Sanctions Board considered the gravity of each case separately and determined that the sanctions in the two cases should run on a cumulative basis.³⁶ In contrast, the Sanctions Board has previously held that plurality of sanctionable practices warrants aggravation, rather than multiplication, where the respondent engaged in interrelated, albeit different, sanctionable practices.³⁷ The record in this case reflects that – while the Respondents’ misconduct related to the same Project and Contract – the fraudulent practices relating to the Respondent Firm’s experience were distinct from, and not merely a means of furthering, the corrupt practice in this case, and vice versa. Accordingly, the Sanctions Board concludes that the plurality of the Respondents’ above-mentioned sanctionable practices warrants multiplication, rather than aggravation, of the base sanction for the Respondents.³⁸ However, the record also reflects that it is more likely than not that the Respondents’ fraudulent misrepresentation of the Agent’s commission sought to conceal, and was therefore a means of furthering, the corrupt practice in this case. Accordingly, the Sanctions Board concludes that the interrelationship between the Respondents’ fraudulent practice relating to the Agent’s commission and the Respondents’ corrupt practice warrants aggravation, rather than multiplication, as specified in Paragraph 69 below.

³⁶ See, e.g., Sanctions Board Decision No. 41 (2010) at para. 89 (finding that the respondents engaged in sanctionable practices in two factually unrelated cases); Sanctions Board Decision No. 87 (2016) at para. 151 (finding that the respondents engaged in different sanctionable practices, with each count of misconduct being distinct from, and not merely a means of furthering, the other counts of misconduct).

³⁷ See, e.g., Sanctions Board Decision No. 60 (2013) at para. 143 (applying aggravation where the various sanctionable practices for which the respondents were found liable were closely interrelated); Sanctions Board Decision No. 72 (2014) at para. 67 (applying aggravation where the individual respondent engaged in interrelated corrupt and fraudulent practices).

³⁸ See Sanctions Board Decision No. 63 (2014) at paras. 118-119 (applying separate cumulative sanctions where a respondent’s fraudulent conduct was distinct from, and not merely a means of concealing or furthering, the respondent’s corrupt practices in the same case); Sanctions Board Decision No. 87 (2016) at paras. 149-151 (applying separate cumulative sanctions where some of the respondents’ collusive conduct was distinct from, and not merely a means of concealing or furthering, those respondents’ corrupt conduct in the same case).

3. Factors considered in the present case

a. Severity of the misconduct

67. Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct, sophisticated means of misconduct, and management role in the misconduct as examples of severity.

68. *Repeated pattern of conduct:* In assessing potential aggravation for repeated pattern of conduct, the Sanctions Board has previously considered the number of distinct types of fraud at issue and the number and variety of false documents submitted.³⁹ INT asserts that the “repetitive, deliberate, and coordinated nature” of the Respondents’ submission of multiple false invoices merits aggravation. The fraudulent practices in this case involve the submission of multiple false documents and false claims relating to the Respondent Firm’s experience, as well as a separate false claim relating to the Respondent Firm’s remuneration of the Agent.⁴⁰ The Sanctions Board also notes that the Respondents first introduced misrepresentations in the Respondent Firm’s Bid and then used additional false documents to corroborate the initial misrepresentations. The Sanctions Board finds significant aggravation warranted under these circumstances with respect to both Respondents.

69. With respect to the corrupt practice, and consistent with Section III of the Sanctioning Guidelines discussed in Paragraph 66 above, the Sanctions Board finds that it is more likely than not that the Respondents’ fraudulent misrepresentation of the Agent’s commission was related to, and was a means of furthering, the corrupt practice in this case. The Sanctions Board applies additional aggravation with respect to both Respondents on this basis.

70. *Sophisticated means:* Section IV.A.2 of the Sanctioning Guidelines states that aggravation may be warranted for sophisticated means based on, *inter alia*, “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; [and] whether the scheme was developed or lasted over a long period of time.” In assessing potential aggravation under this factor, the Sanctions Board has previously considered the level of “forethought and planning” evident in the misconduct.⁴¹ In the present case, the record reflects that the Respondent Manager, acting on behalf of the Respondent Firm, prepared a diverse set of forged and false documents purporting to reflect multiple transactions that never took place. These documents included

³⁹ See, *e.g.*, Sanctions Board Decision No. 2 (2008) at paras. 1, 7 (applying aggravation where the respondents “engaged in multiple forgeries,” in a case involving three false bid securities and two false advance payment guarantees, all under different contracts); Sanctions Board Decision No. 56 (2013) at para. 55 (applying aggravation where the respondents engaged in “several distinct types of fraud, on different subject matters, extending over the course of nearly two years”).

⁴⁰ See *supra* Paragraphs 40-44.

⁴¹ See Sanctions Board Decision No. 69 (2014) at para. 33 (applying aggravation for misconduct that the Sanctions Board considered to involve “a considerable amount of forethought and planning” in that the respondent forged three different types of official business documents, which were clearly drafted in an effort to avoid detection, including through the use of an inauthentic embassy stamp and forged signatures and seals).

purported Purchase Orders issued by the Asserted Client to the Respondent Firm, subsequent Invoices purportedly issued by the Respondent Firm to the Asserted Client, and the List of Major Supplies – an internal summary document generated by the Respondent Firm – that was admittedly modified and falsified to match the inauthentic Purchase Orders and Invoices. The Sanctions Board therefore applies aggravation to the sanctions of both Respondents under this factor.

71. *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.” In considering potential aggravation under this factor, the Sanctions Board has assessed the seniority of staff positions on a case-by-case basis.⁴² The Sanctions Board finds aggravation warranted under this factor with respect to the Respondent Firm, because the Respondent Manager, in his high-level role within the Respondent Firm and reporting directly to the Respondent Firm’s Co-owner, admittedly participated in both the fraudulent and the corrupt conduct at issue.

b. Cooperation

72. 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 admission or acceptance of guilt or responsibility as examples of cooperation.

73. *Assistance with investigation:* Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance and/or ongoing cooperation, based on “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 Respondents assert that they fully cooperated with INT’s investigation. INT supports mitigation for the Respondents’ cooperation. In past cases, the Sanctions Board has accorded mitigation where a respondent’s managers met with INT and provided relevant information,⁴³ or corresponded with INT and made other relevant personnel available for interviews.⁴⁴ In the present case, the record reflects that the Respondent Manager and other employees of the Respondent Firm participated in interviews and shared information with INT, including internal documents, upon some of which INT relied in making its allegations. In these circumstances, the Sanctions Board finds mitigation warranted with respect to both Respondents. However, the Sanctions Board applies proportionately greater mitigation with respect to the Respondent Manager’s sanction, noting that, during his interviews with INT, the Respondent Manager made specific descriptions of his personal participation in

⁴² Sanctions Board Decision No. 60 (2013) at para. 125 (applying aggravation where two respondent entities’ director and co-owner, respectively, were involved in corrupt and fraudulent conduct and were also named respondents in the case); Sanctions Board Decision No. 78 (2015) at para. 77 (applying aggravation where high-level members of the respondent entity’s management personally participated in the corrupt arrangement).

⁴³ Sanctions Board Decision No. 53 (2012) at para. 58.

⁴⁴ Sanctions Board Decision No. 56 (2013) at para. 73.

the misconduct that were consistent with the record.

74. *Admission or acceptance of guilt or responsibility:* Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent's admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance should be given more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. The Sanctions Board has previously considered the timing, consistency, and scope of a respondent's admissions in granting mitigation under this factor.⁴⁵ The Respondent Manager and the Co-owner made specific admissions as reflected in their respective transcripts of interview with INT. INT submits that mitigating credit should be tempered by the Respondent Manager's subsequent attempt to withdraw his admissions. The Sanctions Board notes that the Respondent Firm has consistently, both in the Response and at the hearing, sought to challenge the Respondent Manager's and the Co-owner's admissions, and that the Respondent Manager subsequently denied having given any statement to INT. In these circumstances, the Sanctions Board declines to apply any mitigation to the sanction of either Respondent for the initial admissions made by the Respondent Manager and the Co-owner.

c. Period of temporary suspension

75. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of temporary suspension already served by the Respondents since September 2, 2015. In considering the impact of this factor, the Sanctions Board also takes into account the extent to which the Respondents contributed to the length of these sanctions proceedings by way of their repeated requests to receive additional time for written submissions and their failure to abide by a number of set deadlines for written submissions.⁴⁶

d. Other Considerations

76. 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."

77. *Passage of time:* The Respondent Firm complains of an "inordinate" delay of two years from the conduct of INT's audit in September 2013 to the EO's issuance of the Notice in September 2015. 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

⁴⁵ Sanctions Board Decision No. 55 (2013) at para. 82 (declining to apply mitigation where the respondent issued a limited acceptance of responsibility late in the sanctions proceedings). See Sanctions Board Decision No. 36 (2010) at para. 41 (holding that "eleventh-hour" admissions at a hearing do not warrant consideration as a mitigating factor because they are made at the final juncture of the sanctions process and therefore do not result in savings of Bank resources or facilitate the investigation).

⁴⁶ See Sanctions Board Decision No. 82 (2015) at para. 54 (considering the fact that the respondent had been suspended for a period of almost two years, but noting that "the length of the sanctions proceedings, and therefore the period of temporary suspension, was prolonged by approximately three months due to extension requests by the [r]espondent and INT").

proceedings.⁴⁷ 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.⁴⁸ At the time of the EO's issuance of the Notice in September 2015, approximately three and a half years had elapsed since the Respondent submitted the Bid and the false Invoices in January 2012 and March 2012, respectively; and almost three years had elapsed since the Bank first became aware of the potential misconduct in October 2012. The Sanctions Board does not find this timeline to reflect a significant delay so as to warrant mitigation.

78. *Satisfactory completion of the Contract:* The Respondent Firm asserts that it successfully executed the Contract. Consistent with past precedent,⁴⁹ the Sanctions Board declines to apply any mitigation on this basis.

79. *Conduct of INT's investigation:* The Respondents complain that INT failed to seek testimonial evidence from the Agent, failed to "verify[] the facts" with the Asserted Client, made incorrect inferences from interview transcripts, conducted interviews without the presence of counsel, and conducted an interview over the telephone. The Sanctions Board has previously declined to consider the conduct of INT's investigation as a basis for mitigation,⁵⁰ and similarly finds that no mitigation is warranted in the present case. Furthermore, the Sanctions Board does not find the Respondents' complaints to be supported by the record. For instance, the interviewees did not at any point request the presence of counsel, INT did in fact correspond with a representative of the Asserted Client, and the Respondents could not identify how INT may have misinterpreted the interviewees' testimony.

⁴⁷ 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 the Notice of Sanctions Proceedings was issued 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).

⁴⁸ See, e.g., Sanctions Board Decision No. 83 (2015) at para. 67.

⁴⁹ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 67.

⁵⁰ Sanctions Board Decision No. 71 (2014) at para. 104 (declining to apply mitigation on this basis, taking into account that Section 9.02 of the Sanctions Procedures does not provide for the consideration of INT's conduct in the determination of an appropriate sanction).

F. Determinations of Liability and Appropriate Sanctions for the Respondents

80. Considering the full record and all the factors discussed above, the Sanctions Board:
- i. determines that the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, is ineligible⁵¹ to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated⁵² sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of ten (10) years and six (6) months beginning from the date of this decision, the Respondent Firm may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent Firm for fraudulent and corrupt practices as defined in Paragraph 1.14(a) of the May 2010 Procurement Guidelines; and
 - ii. determines that the Respondent Manager, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Manager, is ineligible⁵³ to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated⁵⁴ 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 seven (7) years and six (6) months. This sanction is imposed on the Respondent Manager for fraudulent and corrupt practices as defined in Paragraph 1.14(a) of the May 2010 Procurement Guidelines.

⁵¹ A respondent's 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.

⁵² 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.

⁵³ See *supra*, n.51.

⁵⁴ See *supra*, n.52.

81. The Respondents' ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of these declarations of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may determine whether to enforce the declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.⁵⁵



J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Catherine O'Regan
Anne van't Veer

⁵⁵ At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The Cross-Debarment Agreement provides that, subject to the prerequisite conditions set forth in the Cross-Debarment Agreement, unless a participating MDB (i) believes that any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the "opt out" clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank's website (<http://go.worldbank.org/B699B73Q00>).