THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: November 29, 2018

Sanctions Board Decision No. 114
(Sanctions Case No. 464)

IDA Credit No. 4347-VN
IBRD GEF Grant No. TF058293-VN
Vietnam

Decision of the World Bank Group[1] Sanctions Board imposing sanctions of debarment with conditional release on the respondent entities in Sanctions Case No. 464 (the "Respondents"), together with certain Affiliates,[2] with minimum periods of ineligibility of (i) three (3) years for the lead consulting firm (the "First Respondent Firm"), (ii) three (3) years and six (6) months for the disclosed associated consultant (the "Second Respondent Firm"), and (iii) three (3) years and six (6) months for the undisclosed associated consultant (the "Third Respondent Firm"), beginning from the date of this decision. These sanctions are imposed on the Respondents for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board convened as a panel composed of Ellen Gracie Northfleet (Panel Chair), Alejandro Escobar, and Mark Kantor to review this case. A hearing was held on September 28, 2018, at the World Bank Group's headquarters in Washington, D.C. at the requests of the First Respondent Firm and the World Bank Group's Integrity Vice Presidency ("INT"), and in accordance with Section III.A, sub-paragraph 6 of the Sanctions Procedures. INT participated in the hearing through its representatives attending in person. The First Respondent Firm was represented by its current President and General Manager, both attending in person. The Second and Third Respondent Firms expressly declined to attend the hearing. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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[1] In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued on June 28, 2016 (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"). The term "World Bank Group" includes Bank Guarantee Projects and Bank Carbon Finance Projects, but does not include the International Centre for 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 II(x).

[2] Section II(a) of the Sanctions Procedures defines "Affiliate" as "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." The sanctions imposed by this decision apply only to those Affiliates that are directly or indirectly controlled by each of the Respondents. See infra Paragraph 67.

2. In accordance with Section III.A, sub-paragraph 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 Acting Suspension and Debarment Officer (the "Acting SDO") to the Respondents on August 17, 2017 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the Acting SDO by INT (undated);

ii. Explanations submitted to the Acting SDO by the Third Respondent Firm on September 13, 2017, and by the First and Second Respondent Firms on September 15, 2017 (each, individually, an "Explanation");

iii. Responses submitted to the Secretary to the Sanctions Board by the Third Respondent Firm on September 13, 2017, by the Second Respondent Firm on November 15, 2017, and by the First Respondent Firm on December 4, 2017 (each, individually, a "Response");

iv. Reply submitted by INT to the Secretary to the Sanctions Board on January 17, 2018 (the "Reply");

v. Additional submissions filed by the Third Respondent Firm with the Secretary to the Sanctions Board on September 5, 2018, and September 26, 2018 (the Third Respondent Firm's "Additional Submissions"); and

vi. INT's comments to the Additional Submissions, filed with the Secretary to the Sanctions Board on September 10, 2018, and October 5, 2018 ("INT's Comments").

3. On August 17, 2017, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the Acting SDO issued the Notice and temporarily suspended the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by any of the Respondents, from eligibility[3] with respect to any Bank-Financed Projects,[4] pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspensions would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the Acting SDO recommended in the Notice debarment with conditional release for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by any of the Respondents. The Acting SDO recommended minimum periods of ineligibility of three (3) years for each of the Respondents, after which periods each of the Respondents may be released from ineligibility only

[3] The full scope of ineligibility effected by a temporary suspension is defined in the Sanctions Procedures at Section III.A, sub-paragraphs 4.02(a) and 9.01(c), read together.

[4] The term "Bank-Financed Projects" encompasses an investment project or a program-for-results operation, for which IBRD or IDA (as the case may be), whether acting for its own account or as administrator of trust funds funded by donors, has provided financing in the form of a loan, credit, or grant; and which is governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. Sanctions Procedures at Section II(e).

if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer (the "ICO") that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

II. GENERAL BACKGROUND

4. This case arises in the context of the Hanoi Urban Transport Development Project (the "Project") in the Socialist Republic of Vietnam (the "Recipient"), which sought to increase urban mobility in targeted areas by intensifying the use of public transport in certain transit corridors and reducing travel time between different sections of the city of Hanoi. On November 22, 2007, IDA and the Recipient entered into a financing agreement (the "Financing Agreement") to provide the equivalent of approximately US$155 million for the Project. On the same day, IBRD, acting as implementing agency of the Global Environment Facility ("GEF"), entered into a GEF trust fund grant agreement (the "GEF Grant Agreement") with the Recipient, to provide US$9.8 million for the Project. The Project became effective on April 22, 2008, and closed on December 31, 2016.

5. On August 5, 2012, the Project's management unit (the "PMU") issued a request for proposals (the "RFP") for consulting services for the Implementation Monitoring of the Project (the "Contract"). On September 6, 2012, the First Respondent Firm submitted technical and financial proposals as the lead firm in an association for the Contract (the "Proposal"). On January 14, 2013, the First Respondent Firm and the PMU signed the Contract, valued at US$223,262.25. The Proposal and the Contract identified the Second Respondent Firm as the sole "associated Consultant," and indicated that the team leader for the assignment (the "Team Leader") was proposed by the First Respondent Firm.

6. INT alleges that the Respondents engaged in a fraudulent practice by failing to disclose that the Third Respondent Firm acted as an associated consultant for the Contract. INT also alleges that the First Respondent Firm engaged in a separate fraudulent practice by misrepresenting its relationship with the Team Leader in the Proposal and the Contract.

III. APPLICABLE STANDARDS OF REVIEW

7. *Standard of proof*: Pursuant to Section III.A, sub-paragraph 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 III.A, sub-paragraph 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.

8. *Burden of proof*: Under Section III.A, sub-paragraph 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.

9. *Evidence*: As set forth in Section III.A, sub-paragraph 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.

10. *Applicable definition of fraudulent practice*: The Financing Agreement and GEF Grant Agreement provided that the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) (the "May 2004 Consultant Guidelines") would apply. However, the RFP and the Contract contained a definition of "fraudulent practice" identical to the definition in the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006, and May 1, 2010) (the "May 2010 Consultant Guidelines"). Consistent with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the standards applicable in the event of such a conflict shall be those agreed between the borrowing or recipient country and the respondent as governing the contract at issue, rather than the standards agreed between the borrowing or recipient country and the Bank.[5] Therefore, the alleged fraudulent practices in this case have the meaning set forth in the May 2010 Consultant Guidelines. Paragraph 1.22(a)(ii) of the May 2010 Consultant Guidelines define the term "fraudulent practice" as "any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation." A footnote to this definition explains that "'party' refers to a public official; the terms 'benefit' and 'obligation' relate to the selection process or contract execution; and the 'act or omission' is intended to influence the selection process or contract execution."[6]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

11. *Fraud allegation 1*: INT alleges that the Respondents engaged in fraud by failing to disclose the Third Respondent Firm's role in relation to the Contract. According to INT, the Proposal and the Contract identified the Second Respondent Firm as the only firm serving as an "associated Consultant" to the First Respondent Firm, when in fact the Third Respondent Firm – an affiliate of the Second Respondent Firm – also acted in the same capacity. INT asserts that the Respondents deliberately withheld the involvement of the Third Respondent Firm from the PMU in order to conceal potential conflicts of interest. INT submits that all the Respondents are liable for this omission because the First Respondent Firm knowingly violated its disclosure obligations as the signatory of the Proposal and the Contract, and the Second and Third Respondent Firms knowingly and "actively participated" in the misconduct.

12. *Fraud allegation 2*: INT contends that the First Respondent Firm misrepresented, in the Proposal and the Contract, that it was the "firm proposing" the Team Leader for the assignment. According to INT, the Team Leader was, in reality, recruited and proposed by the Third Respondent Firm. INT submits that the First Respondent Firm knowingly misled the PMU in order to justify its position as the lead firm in the Contract and thereby influence the selection process.

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[5] See Sanctions Board Decision No. 59 (2013) at para. 11.

[6] May 2010 Consultant Guidelines at para. 1.22(a)(ii), n.18.

13. *Sanctioning factors:* INT submits as aggravating factors: (i) with respect to all the Respondents, management's role in the alleged misconduct; (ii) with respect to the First Respondent Firm, interference with the investigation; and (iii) with respect to the Second and Third Respondent Firms, central role in the alleged misconduct. INT asserts that no mitigating factors apply.

B. The First Respondent Firm's Principal Contentions in Its Explanation and Response

14. *Fraud allegation 1*: The First Respondent Firm concedes that "the shared staff between [the Second and Third Respondent Firms] as two sister firms" assisted the First Respondent Firm "with proposal preparation, contract negotiations and project implementation." Nevertheless, the First Respondent Firm contends that the Third Respondent Firm did not amount to a "member of our [a]ssociation" or an "associated firm," and that the Respondents were not required to disclose the Third Respondent Firm's involvement in the assignment. In support of this argument, the First Respondent Firm submits, inter alia, that: (i) there was no written agreement between the First Respondent Firm and the Third Respondent Firm; (ii) the Third Respondent Firm's role was limited to the provision of "professional assistance to [the Second Respondent Firm] only;" and (iii) the Third Respondent Firm's staff did not participate "in delivering the consulting service tasks of the [Terms of Reference]" of the Contract.

15. *Fraud allegation 2*: The First Respondent Firm asserts that it was truthful in representing itself as the firm proposing the Team Leader, even though in practice it did not recruit or retain management authority over him. The First Respondent Firm concedes that it delegated certain functions under the Contract, including all "managerial authority" and "technical responsibilities" over the Team Leader, to the Second Respondent Firm. Nevertheless, the First Respondent Firm contends that it remained responsible for the "administrative management" of the Team Leader and retained "corporate accountability" for his work. In addition, the First Respondent Firm argues that the RFP did not require the Team Leader to report directly to the lead firm, and that the Team Leader's CV clearly and accurately presented his affiliation as an "independent consultant."

16. *Sanctioning factors*: The First Respondent Firm denies having interfered with the investigation. Without explicitly requesting mitigation, the First Respondent Firm also submits that: (i) its staff cooperated with INT; and (ii) the Contract was successfully completed.

C. The Second Respondent Firm's Principal Contentions in Its Explanation and Response

17. *Fraud allegation 1*: The Second Respondent Firm generally disputes INT's assertions and submits that it was the "official subcontractor of [the First Respondent Firm] in the Contract." The Second Respondent Firm also denies any affiliation with the Third Respondent Firm and challenges INT's evidence on this point.

18. *Sanctioning factors*: Without explicitly requesting mitigation, the Second Respondent Firm submits that: (i) it will voluntarily refrain from bidding on Bank-financed projects for a period of "at least four years," due to a change in business strategies; (ii) the Contract was successfully

completed; and (iii) the sanction recommended by the Acting SDO would adversely impact the Second Respondent Firm and other entities.

D. The Third Respondent Firm's Principal Contentions in Its Explanation and Response

19. *Fraud allegation 1*: The Third Respondent Firm generally disputes INT's assertions, denies any affiliation with the Second Respondent Firm, and challenges INT's evidence in this regard. This notwithstanding, the Third Respondent Firm does not contest that, at the time of the alleged misconduct, the Second and Third Respondent Firms shared personnel and resources, including a project manager and an accountant who worked on the Contract. In addition, the Third Respondent Firm states that "[a]ll partners agreed to include [the Third Respondent Firm] as a local sub-consultant in the package."

20. *Sanctioning factors*: Without explicitly requesting mitigation, the Third Respondent Firm states that it "will not bid any World Bank project for 3 years if World Bank withdraws" the Notice.

E. INT's Principal Contentions in the Reply

21. *Fraud allegation 1*: INT contends that nothing in the record supports the First Respondent Firm's narrow interpretation of "associated consultant" and that "[n]either the RFP nor the Contract limited these disclosure requirements to subcontract signatories, or to entities performing certain types of work." INT also asserts that the Third Respondent Firm's work was vital to the preparation of the Proposal and implementation of the Contract, going well beyond mere "professional assistance."

22. *Fraud allegation 2*: INT concedes as "technically true that [the First Respondent Firm] possessed authority over [the Team Leader]." Nevertheless, INT submits that "all practical responsibility" was allocated to the Second Respondent Firm, and therefore "in no meaningful sense was [the First Respondent Firm] ever [the Team Leader's] proposing firm."

23. *Sanctioning factors*: INT opposes mitigation based on some of the facts asserted by the Respondents – namely, cooperation, successful completion of the Contract, and voluntary restraint.

F. The Third Respondent Firm's Additional Submissions

24. In the Additional Submissions filed after INT's Reply, the Third Respondent Firm states that its management "decided to sell" and "already completed procedures to hand over the company" to an unidentified new owner. The Third Respondent Firm also states that it "will no longer exist" and submits an updated business registration certificate. Pursuant to Section III.A, sub-paragraph 5.01(c), of the Sanctions Procedures, the Sanctions Board Chair admitted the Additional Submissions into the record.

G. INT's Comments on the Third Respondent Firm's Additional Submissions

25. The Sanctions Board Chair invited INT to comment on the Third Respondent Firm's Additional Submissions. In its Comments, INT contends that the asserted corporate changes do

not impact the Third Respondent Firm's culpability. According to INT, while the evidence indicates that the Third Respondent Firm has adopted a new name, address, and legal representative, it does not support a finding that the Third Respondent Firm's legal identity has changed.

H. Presentations at the Hearing

26. *Fraud allegation 1*: At the hearing, INT contended that the Respondents formed a de facto three-member association that misrepresented the Respondents' respective functions and failed to disclose the involvement of the Third Respondent Firm to the PMU. According to INT, the Third Respondent Firm played a significant role in the preparation of the Proposal and implementation of the Contract, while the First Respondent Firm was the lead firm only in name and did not carry out any managerial or substantive responsibilities. INT also argued that the Respondents deliberately concealed the participation of the Third Respondent Firm because the Third Respondent Firm had been shortlisted for two other, potentially conflicting, contract packages under the Project, which could have led to the disqualification of the Proposal. During its presentation, the First Respondent Firm acknowledged that the joint staff of the Second and Third Respondent Firms provided services related to the Proposal and the Contract. Nevertheless, the First Respondent Firm maintained that it is not illegitimate for affiliated companies to share resources when performing an assignment. In addition, the First Respondent Firm asserted that, although it had initially envisioned submitting the Proposal with the Third Respondent Firm, it ultimately opted to form an association instead with an affiliate – the Second Respondent Firm – which it described as "common practice." According to the First Respondent Firm, the Respondents did not violate any rules because the RFP did not require consultants to identify sub-consultants that were not part of the association.

27. *Fraud allegation 2*: INT argued that the First Respondent Firm misrepresented that it proposed the Team Leader for the Contract. According to INT, the RFP required consultants to have practical control over its experts in order to manage and mobilize them for the assignment. INT asserted that, by representing itself as the firm "proposing" the Team Leader, the First Respondent Firm falsely declared having substantive authority over him. INT contended that the First Respondent Firm made this misrepresentation in order to justify its position as the lead firm in the Contract. For its part, the First Respondent Firm argued that it had the ability to mobilize the Team Leader, and that its then business development director (the "Business Development Director") reviewed the Team Leader's reports prior to submitting them to the PMU. The First Respondent Firm also stated that, after the Team Leader resigned, the General Manager personally replaced him, which shows that the First Respondent Firm was ultimately responsible for the Team Leader's duties under the Contract.

28. *Sanctioning factors*: INT alleged that the First Respondent Firm provided an altered email with the intent to mislead INT's investigation. Specifically, INT referenced two exhibits to the SAE, consisting of: (i) a redacted email provided by the First Respondent Firm in response to the show-cause letter; and (ii) an unredacted version of the same email, independently obtained by INT. The First Respondent Firm observed that the title of the email corresponds to a project other than the Contract, and claimed that the document was redacted because it was unrelated to the allegations in this case.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

29. The Sanctions Board will first consider whether it is more likely than not that the alleged sanctionable practices occurred, and if so, whether any of the Respondents may be held liable for the misconduct. The Sanctions Board will then determine what sanctions, if any, should be imposed on each of the Respondents.

A. Evidence of Fraudulent Practices

30. In accordance with the definition of "fraudulent practice" under the May 2010 Consultant Guidelines, INT bears the initial burden to prove that it is more likely than not that the Respondents (i) engaged in an 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.

1. Fraud allegation 1: Alleged failure to disclose the Third Respondent Firm

a. Act or omission, including a misrepresentation

31. The Sanctions Board has consistently determined that a failure to meet disclosure obligations may constitute an omission or misrepresentation under the first element of fraudulent practice.[7] Here, the RFP clearly and repeatedly instructed consultants to identify any sub-consultants or associates for the Contract. This requirement comprised, for example: (i) a statement as to "whether [the consultant] will submit a proposal alone or in association"; (ii) the "full name and address of each associated Consultant"; (iii) a summary of the background, organization, and experience of "each associate for this assignment"; and (iv) where the selected consultant participates as "more than one entity," an amendment to the Standard Form of Contract, identifying each member of the association. In response to these stipulations, the Proposal and the Contract represented that the First Respondent Firm was participating "in association with" the Second Respondent Firm only, and identified the Second Respondent Firm as the sole "Sub-Consultant." According to INT, this constituted a misrepresentation, as the Respondents failed to also identify the Third Respondent Firm as an associated consultant. The Respondents contest the allegation. The First Respondent Firm contends that the Respondents were not required to disclose the Third Respondent Firm's involvement, asserting, inter alia, that the Third Respondent Firm did not deliver any consulting tasks as described in the Terms of Reference for the Contract, and that the Third Respondent Firm was not a party to the sub-consultancy agreement between the First and Second Respondent Firms.

32. For the reasons presented below, the Sanctions Board finds that INT has sufficiently established that the Third Respondent Firm acted as an associated consultant to the First Respondent Firm within the meaning of the RFP, and that the Third Respondent Firm should have been disclosed as such in the Proposal and the Contract.

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[7] See, e.g., Sanctions Board Decision No. 56 (2013) at paras. 44-49; Sanctions Board Decision No. 60 (2013) at paras. 94-96; Sanctions Board Decision No. 83 (2015) at paras. 48-50, 57; Sanctions Board Decision No. 88 (2016) at paras. 24-29; and Sanctions Board Decision No. 92 (2017) at paras. 67-70.

33. The record supports the conclusion that the Third Respondent Firm substantially assisted the First Respondent Firm and participated in all stages of the selection process and execution of the Contract. For example, contemporaneous emails show that employees of the Third Respondent Firm worked on the preparation of the Proposal, recruited experts for the assignment (including the Team Leader), monitored the Contract's execution schedule, and supervised the completion of deliverables under the Terms of Reference (such as Semi-Annual Reports). Other correspondence indicates that the Third Respondent Firm's high-level management was directly involved in the implementation of the Contract. For instance, during the execution phase, the President of the First Respondent Firm wrote to the Deputy Director of the PMU about several issues related to staffing and assignments, with the Chairman of the Third Respondent Firm in copy. Moreover, the Third Respondent Firm itself conceded that "[a]ll partners agreed to include [the Third Respondent Firm] as a local sub-consultant in the package," and the First Respondent Firm also acknowledged that the Second and Third Respondent Firms worked together as "sister firms" throughout the entire life of the Contract. Thus, the totality of the evidence, and the Respondents' own assertions, weigh against the theory that the Third Respondent Firm did not perform substantive work and that its role was therefore not encompassed by the disclosure requirements.

34. In addition, the absence of a formal sub-consultancy agreement is not as a legitimate basis to omit the Third Respondent Firm's name from the Proposal and the Contract. The Sanctions Board observes that nothing in the RFP limits the disclosure requirements in question to relationships that are governed by written contracts. Indeed, such a narrow reading would be inconsistent with the context and the underlying purpose of this obligation.[8] Under the applicable Consultant Guidelines, the Recipient must ensure that all individuals and entities employed have the capability and resources to fulfill the Contract, and are in a position to carry out the assignment consistent with the best interest of the client.[9] Accordingly, the RFP directs the PMU to examine each consultant, sub-consultant, and association member not only with respect to their qualifications, but also in light of eligibility requirements and any potential conflicts of interest. It logically ensues that consultants must identify each firm executing any material part of the assignment – whether as a formal associate or not – and disclose all the information necessary for the PMU to assess any related business and ethical risks. Ultimately, the Recipient and the Bank have the right to know exactly who is performing the Contract, and this right cannot hinge on the form or structure of a consultant's internal arrangements.

35. Considering the above, and the findings discussed at Paragraphs 46-47 below, the Sanctions Board finds that it is more likely than not that the representatives of each of the Respondents engaged in a sanctionable omission of fact.

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[8] Cf. Sanctions Board Decision No. 88 (2016) at para. 27 (finding that "a narrow reading of the term 'agent' would be inconsistent with both the structure and the underlying purpose of the disclosure requirement for 'commissions or gratuities' as set out in the Bidding Documents and the Bidding Letter").

[9] See May 2004 Consultant Guidelines at paras. 1.9, 1.11; May 2010 Consultant Guidelines at paras. 1.9, 1.11.

b. That knowingly or recklessly misleads or attempts to mislead a party

36. INT argues that, by omitting the Third Respondent Firm's name from the Proposal and the Contract, the Respondents' employees knowingly acted to mislead the PMU. According to the First Respondent Firm, the Respondents understood that they were not required to disclose the Third Respondent Firm's involvement in the assignment. The Second and Third Respondent Firms do not specifically address this issue in their submissions.

37. The record supports a finding that representatives of the Respondents not only understood their obligation to disclose, but knowingly and jointly acted to conceal the participation of the Third Respondent Firm in the assignment. Robust documentary evidence shows that, when the RFP was first issued, the First Respondent Firm's plan was to partner with the Third Respondent Firm as its only sub-consultant. For example, on August 6, 2012, employees of the First and Third Respondent Firms exchanged emails dividing their responsibilities in the preparation of the Proposal and future implementation of the Contract. A week later, on August 13, 2012, the First Respondent Firm's Business Development Director wrote to the PMU acknowledging receipt of the RFP and stating that the First Respondent Firm would submit a proposal in association with the Third Respondent Firm. However, prior to the submission of the Proposal, the Third Respondent Firm was shortlisted for two other contract packages under the Project – a fact that the Third Respondent Firm itself conceded during INT's investigation. According to the RFP, the winner of the Contract would be responsible for reviewing and overseeing the implementation of these two contract packages. On August 30, 2012 – one week before the Proposal was due – an employee of the Third Respondent Firm emailed the Business Development Director, stating: "we will have to change our association member, [the Third Respondent Firm] must be replaced by [the Second Respondent Firm]. This is because [the Third Respondent Firm] has involved [sic] in other two service packages . . . so for [the Contract], we should not has [sic] its name in the proposal, small opportunity to win. . . . [The Second Respondent Firm] is also a subsidiary of [the Third Respondent Firm's] Group so do not worry about this." This email then proceeds to describe how the Respondents would replace the Third Respondent Firm with the Second Respondent Firm in the Proposal and related attachments. On the same day, the Business Development Director wrote to the PMU stating that the First Respondent Firm would submit a proposal in association with the Second Respondent Firm. Subsequently, the First Respondent Firm submitted the Proposal identifying the Second Respondent Firm as the sole associated consultant. After the award of the Contract, the Respondents were officially represented by employees of the First and Second Respondent Firms in the negotiations with the PMU, and the Contract only included the Second Respondent Firm as a sub-consultant. Nevertheless, as discussed in Paragraph 33 above, the Third Respondent Firm continued to act as the First Respondent Firm's associated consultant, including by supervising the completion of deliverables during the implementation of the Contract. As a whole, this evidence solidly establishes that the Respondents omitted the Third Respondent Firm's name from the Proposal and the Contract in order to conceal potential conflicts of interest from the PMU.

38. The Respondents have not satisfactorily rebutted the evidence that their employees knowingly acted to mislead the PMU. In particular, the Respondents provided no credible explanation for the aforementioned email of August 30, 2012, in which the Third Respondent

Firm's representative states that "we should not [have the Third Respondent Firm's] name in the proposal, small opportunity to win." During INT's investigation, the Third Respondent Firm stated that it genuinely wanted to cease working with the First Respondent Firm in order to concentrate its efforts on the other packages, but it could not do so "because the official letter from [the First Respondent Firm] was sent to PMU to nominate both our company and [the Second Respondent Firm] . . . to work as their subcontract[or]s so we continued." As discussed above, the record disproves this statement. Although initially the First Respondent Firm did inform the PMU of its intent to associate with the Third Respondent Firm, the final Proposal and the Contract identified the Second Respondent Firm as the only sub-consultant. For its part, the First Respondent Firm contends that, at the time of submission, the Third Respondent Firm had no conflicts of interest to disclose (as it had not yet been awarded any other contracts under the Project), and that "the change in association membership" in the Proposal is not indicative of any wrongdoing. This argument falls short of explaining why the First Respondent Firm continued to work with the Third Respondent Firm after removing its name from the Proposal. In addition, while it may be true that the Third Respondent Firm had only been shortlisted for other packages at that time, the email in question shows that the Respondents were aware of at least the possibility of a conflict, and understood that this would lead to a "small opportunity to win."

39. In light of the above, the Sanctions Board finds that it is more likely than not that, by omitting the Third Respondent Firm's name from the Proposal and the Contract, the representatives of the Respondents knowingly acted to mislead the PMU.

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

40. INT submits that the Respondents' employees failed to identify the Third Respondent Firm in the Proposal and the Contract in order to improperly influence the selection process. The Respondents contend, inter alia, that it was not illegitimate for the First Respondent Firm to replace the Third Respondent Firm with an affiliate – the Second Respondent Firm – in the Proposal and the Contract.

41. The totality of the evidence supports a finding that the third element of this first fraud allegation has been established. As discussed in Paragraph 31, the Respondents' employees' omission directly relates to explicit provisions in the RFP – including the Standard Form of Contract – which instructed consultants to identify each associate for the assignment. The Sanctions Board has consistently held that, where the record demonstrates that a misrepresentation (including an omission) was made in response to a tender requirement, the intent to obtain a benefit or avoid an obligation may be inferred.[10] Furthermore, as addressed in Paragraphs 37-38, INT has demonstrated that the Respondents' employees omitted the Third Respondent Firm's name from the Proposal in order to conceal potential conflicts of interest from the PMU, and thereby to enhance their "opportunity to win." The same evidence reflects a clear intent to influence the selection process and secure the Contract. As previously noted, the Respondents have not satisfactorily rebutted this evidence or otherwise presented a plausible justification for removing

[10] See, e.g., Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 83 (2015) at para. 52; Sanctions Board Decision No. 88 (2016) at para. 37; Sanctions Board Decision No. 92 (2017) at para 72; Sanctions Board Decision No. 99 (2017) at paras. 23-25; Sanctions Board Decision No. 106 (2017) at paras. 25-27.

the Third Respondent Firm from the Proposal while the Third Respondent Firm continued to work as an associated consultant.

42. For the above reasons, the Sanctions Board finds that it is more likely than not that the Respondents' representatives knowingly failed to identify the Third Respondent Firm as an associated consultant with the specific intent to obtain the Contract.

2. Fraud allegation 2: Alleged misrepresentation of the affiliation of the Team Leader

a. Act or omission, including a misrepresentation

43. INT alleges that the First Respondent Firm engaged in fraud by representing that the Team Leader was "proposed by, affiliated with, and provided by" the First Respondent Firm. Specifically, in connection with the Proposal and the Contract, the First Respondent Firm submitted: (i) completed Forms TECH-5 and TECH-7, including charts associating the Team Leader with the First Respondent Firm in a column titled "Firm;" and (ii) the Team Leader's CV, completed according to Form TECH-6, identifying the First Respondent Firm as the "firm proposing the staff." INT submits that this constituted a misrepresentation, because in reality the Team Leader was recruited, subcontracted, and effectively supervised by the Second and Third Respondent Firms. In support of this view, INT asserts that the RFP's evaluation criteria indicate the PMU's preference for an "established relationship" between the consultant and the proposed team leader, from which INT concludes that the consultant's role in the Contract is to "supervise and manage" the work of this expert. The First Respondent Firm concedes that it did not recruit the Team Leader and that it delegated its "managerial and technical responsibilities" under the Contract, including its management authority over the Team Leader, to the Second Respondent Firm. Nevertheless, the First Respondent Firm asserts that it was truthful in representing its affiliation with the Team Leader because the First Respondent Firm was the entity formally proposing the Team Leader and, pursuant to the sub-consultancy agreement with the Second Respondent Firm, the First Respondent Firm remained responsible for the Team Leader's work.

44. The Sanctions Board finds that INT has not met its initial burden of proof to establish that the First Respondent Firm misrepresented its relationship with the Team Leader. Notably, the parties agree in substance on the basic factual premises of this allegation – the First Respondent Firm did not recruit the Team Leader or closely and directly supervise his technical performance, but retained formal authority and legal responsibility over him under the Contract. What is under review, ultimately, is the meaning of the terms "firm" and "firm proposing" under the RFP and the Contract. In a past case where the parties disputed the interpretation of a term used in certain template forms, the Sanctions Board relied on the plain meaning of the text to resolve the issue.[11] In that decision, the Sanctions Board found that INT's reading was consistent with a literal

[11] See Sanctions Board Decision No. 82 (2015) at paras. 26-27 (finding that the respondent made a misrepresentation by placing "check marks in boxes titled '[f]ulfilled' following certain listed disbursement amounts and objectives" in certain data sheets; finding that a plain reading of the data sheets indicates that the boxes in question referred to amounts paid to local beneficiaries and a final assessment of objectives, as pleaded by INT, as opposed to amounts paid to a special payer and a preliminary assessment of objectives, as pleaded by the respondent).

understanding of the word, while nothing in the forms, related documents, or the totality of the evidence supported the interpretation asserted by the respondent.[12] In the present case, the record weighs in favor of the First Respondent Firm's explanation. In the technical meaning of the word, the First Respondent Firm did "propose" to engage the Team Leader for the assignment. The First Respondent Firm was also the Team Leader's "firm" in the plain sense that it was formally responsible for his services under the Contract. It may be true that the First Respondent Firm did not first identify the Team Leader for recruitment to this position, and that in practice the First Respondent Firm exercised no substantive supervisory authority over him. However, there is nothing in the RFP, the Contract, or the record generally to suggest that the terms "firm" and "firm proposing" comprised the tasks of recruiting or supervising staff in the context of the selection process. Even if the evaluation criteria favored the existence of a prior relationship with the Team Leader, as argued by INT, there is no indication that the proposing firm was required to retain the same level of authority over this expert during the implementation of the Contract. In essence, the words at issue do not ordinarily carry the meanings pleaded by INT and, if the PMU had intended to communicate those meanings to consultants, it is reasonable to expect that the PMU would have explicitly so indicated.

45. In light of the above, and considering the totality of the record, the Sanctions Board finds that it is not more likely than not that the First Respondent Firm misrepresented the Team Leader's affiliation. Because the Sanctions Board has found insufficient evidence under this first element of fraudulent practice, it need not address the second and third elements, i.e., the First Respondent Firm's alleged knowledge and intent to obtain a financial or other benefit related to the Contract.

B. Liability of the Respondents

1. Liability of the Respondents for the Acts of Their Employees

46. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.[13] In the present case, the record supports a finding that the employees of the Respondents engaged in a sanctionable practice in accordance with the scope of their respective duties and with the purpose of serving the interests of the Respondents. For instance, the record indicates that representatives of the First Respondent Firm, including the Business Development Director, prepared and submitted the Proposal and signed the Contract containing the misrepresentation in question. In addition, the evidence examined above shows that the shared staff of the Second and Third Respondent Firms assisted in the preparation of the Proposal, instructed the Business Development Director to omit the Third Respondent Firm's name from the Proposal, and participated in the negotiation of the Contract. There is no indication in the record that the employees acted for any purpose other than serving the Respondents. Moreover, the Respondents do not present, and the record does not provide any

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[12] See Sanctions Board Decision No. 82 (2015) at paras. 26-27.

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

basis for, a rogue-employee defense. Thus, the Sanctions Board finds the Respondents liable for the fraudulent omission carried out by their employees.

2. Liability of the Second and Third Respondent Firms

47. While the Proposal and the Contract were signed by the First Respondent Firm only, the record shows that all the Respondents acted to mislead the PMU. Specifically regarding the obligation to disclose, it is clear that the First Respondent Firm acted on behalf and for the benefit of all members of the association – whether declared or not – in its representations to the PMU. In past cases, the Sanctions Board has held respondents liable for the acts of a consortium partner, based on the general principle that a "respondent cannot carry out through an agent . . . any conduct that would be sanctionable if carried out directly by the respondent."[14] In these decisions, the Sanctions Board noted that the respondents had authorized the consortium partner to act on their behalf, but failed to monitor or supervise the consortium partner in that capacity.[15] Here, the conduct of the Second and Third Respondent Firms displays an even greater degree of culpability. As addressed in Paragraphs 31-42, through shared management and staff, the Second and Third Respondent Firms not only were directly involved, but also planned and led the fraudulent practice, specifically directing the First Respondent Firm to remove the Third Respondent Firm from the Proposal, and assigning the Second Respondent Firm as its formal replacement in the Contract. The fact that the Second and Third Respondent Firms were represented by the First Respondent Firm in the selection process cannot shield them from responsibility for conceiving and participating in the association's omission. Therefore, the Sanctions Board confirms that all the Respondents are liable for the failure to disclose the Third Respondent Firm as an associated consultant.

3. The Third Respondent Firm's Asserted Corporate Changes

48. In the Additional Submissions following its Response, the Third Respondent Firm states that it was acquired by an unidentified new owner and "will no longer exist," and submits an updated business registration certificate as corroborating evidence. In response, INT argues that the asserted corporate changes do not impact the Third Respondent Firm's culpability.

49. In the past, where a respondent firm provided detailed evidence of changes in management or corporate identity since the time of the misconduct, the Sanctions Board has taken such developments into consideration – for example, in deciding whether to apply mitigation,[16] or

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[14] Sanctions Board Decision No. 51 (2012) at para. 77; Sanctions Board Decision No. 83 (2015) at para. 73.

[15] See Sanctions Board Decision No. 51 (2012) at paras. 77-78 (holding a respondent liable for the acts of an employee of its consortium partner, who submitted a fraudulent letter on behalf of the consortium); Sanctions Board Decision No. 83 (2015) at paras. 71-75 (holding a respondent liable for the acts of an employee of its predecessor firm's consortium partner, who submitted a proposal on behalf of the consortium and, inter alia, failed to disclose a conflict of interest).

[16] See, e.g., Sanctions Board Decision No. 53 (2012) at para. 66; Sanctions Board Decision No. 66 (2014) at para. 49; Sanctions Board Decision No. 83 (2015) at para. 104; Sanctions Board Decision No. 98 (2017) at para. 69.

whether to find liability of successors.[17] By contrast, in a previous case where the new owner of a respondent firm alleged a corporate restructuring without presenting any corroboration, and later indicated future plans for its liquidation, the Sanctions Board declined to apply mitigation as requested.[18] Here, apart from an updated business registration certificate, the Third Respondent Firm provides no details or evidence of its purported acquisition, while stating that it "will no longer exist" in the future. In these circumstances, and consistent with precedent, the Sanctions Board finds that the record does not sufficiently support this factual assertion. This notwithstanding, the Sanctions Board notes that, under Section III.A, sub-paragraph 9.04(c) of the Sanctions Procedures, the sanctions applied to the Third Respondent Firm pursuant to this decision shall apply to the Third Respondent Firm's "successors and assigns, as determined by the Bank."

C. Sanctioning Analysis

1. General framework for determination of sanctions

50. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section III.A, sub-paragraph 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 III.A, sub-paragraph 9.01. The range of sanctions set out in Section III.A, sub-paragraph 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 III.A, sub-paragraph 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the Acting SDO's recommendations.

51. 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.[19] 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.[20]

52. The Sanctions Board is required to consider the types of factors set forth in Section III.A, sub-paragraph 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.

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[17] See, e.g., Sanctions Board Decision No. 66 (2014) at paras. 28-30; Sanctions Board Decision No. 83 (2015) at paras. 74-75; Sanctions Board Decision No. 94 (2017) at paras. 33-34.

[18] See Sanctions Board Decision No. 74 (2014) at paras. 17-22, 48.

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

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

53. Where the Sanctions Board imposes a sanction on a respondent, it may also, pursuant to Section III.A, sub-paragraph 9.04(b) of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of the respondent.

2. Factors considered in the present case

a. Severity of the misconduct

54. Section III.A, sub-paragraph 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies management's role and central role in the misconduct as examples of severity.

55. *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 the misconduct.[21] Here, the record shows that the Respondents' high-level personnel participated in the fraudulent practice. For example, the First Respondent Firm's Business Development Director participated in the preparation of the Proposal, communicated with the PMU on behalf of the Respondents, and signed the Contract containing the misrepresentation at issue. In addition, the General Manager of the First Respondent Firm and the Chairman of the Board of the Third Respondent Firm – who also acted as a de facto Chairman of the Second Respondent Firm – were personally responsible for approving the terms of the Contract following negotiations with the PMU. Accordingly, the Sanctions Board finds aggravation warranted for all the Respondents.

56. *Central role in the misconduct*: Section IV.A.3 of the Sanctioning Guidelines states that this factor may apply to a respondent who acted as the "organizer, leader, planner, or prime mover in a group of 2 or more." The Sanctions Board has applied aggravation where the respondent led or initiated misconduct executed by a group of two or more.[22] The Sanctions Board has declined to apply aggravation where the record did not suggest that any other party apart from the respondent participated in the misconduct,[23] or where the record did not demonstrate that the

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[21] See, e.g., Sanctions Board Decision No. 102 (2017) at para. 69.

[22] See, e.g., Sanctions Board Decision No. 72 (2014) at para. 57 (applying aggravation for an individual respondent's central role in the misconduct where the record revealed that he served as the respondents' main interlocutor with the agent, took the lead in negotiating the commissions to be paid, signed the agency agreements on behalf of one of the respondent entities, and signed the fraudulent bids); Sanctions Board Decision No. 78 (2015) at para. 76 (applying aggravation with respect to the individual respondent, who initiated the corrupt scheme by soliciting employment for her daughter).

[23] See, e.g., Sanctions Board Decision No. 67 (2014) at paras. 36-37 (declining aggravation where the record did not indicate, and INT did not assert, that the respondent's joint venture partner was involved in the misconduct); Sanctions Board Decision No. 86 (2016) at para. 48 (declining aggravation where INT did not address, and the record did not show, the involvement and potential culpability or responsibility of other actors for the misconduct).

respondent was the leader or prime mover in the misconduct.[24] In this case, there is clear evidence that, through shared staff and management, the Second and Third Respondents planned and led the fraudulent practice, specifically directing the First Respondent Firm to remove the Third Respondent Firm from the Proposal and assigning the Second Respondent Firm as its formal replacement. Therefore, the Sanctions Board finds that aggravation is warranted for the Second and Third Respondent Firms under this factor.

b. Interference in the Bank's investigation

57. *Interference with investigative process*: Section III.A, sub-paragraph 9.02(c) of the Sanctions Procedures requires consideration of "interference by the sanctioned party in the Bank's investigation" when determining a sanction. Section IV.C.1 of the Sanctioning Guidelines describes this factor as including "[d]eliberately destroying, falsifying, altering, or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation." In previous cases, the Sanctions Board has applied aggravation where respondents concealed or destroyed evidence – including emails – considered material to the investigation.[25] The Sanctions Board has declined aggravation where the record did not show that the evidence in question was altered or destroyed specifically to interfere with the investigation.[26]

58. INT submits that the First Respondent Firm provided an altered email with the intent to mislead INT's investigation. In support of this allegation, INT references: (i) a redacted email produced by the First Respondent Firm in response to the show-cause letter; and (ii) an unredacted version of the same email, independently obtained by INT. This evidence shows that the First Respondent Firm censored part of a message between the Team Leader and the First Respondent Firm's General Manager – specifically, a paragraph indicating that the Team Leader was recruited by the Third Respondent Firm. At the hearing, the First Respondent Firm observed that the title of the email corresponds to a different project, and claimed that the document was redacted because it was unrelated to the allegations in this case. The Sanctions Board is not persuaded by the First Respondent Firm's argument. If the correspondence in question were truly irrelevant, as suggested at the hearing, the First Respondent Firm would not have presented this document in response to the show-cause letter. In addition, regardless of the subject line, the Team Leader and the General Manager appear to be discussing the Contract in the body of the email. Finally, the fact that the only redacted portion of the message was potentially inculpatory, weighs against the First Respondent Firm's assertion. For these reasons, the Sanctions Board finds that it is more likely

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[24] See, e.g., Sanctions Board Decision No. 85 (2016) at para. 40 (declining aggravation where INT failed to carry its burden to prove that the respondent solicited its joint venture partner to pay for the trip offered to a public official, and that the record showed that the employees of both the respondent and the joint venture partner actively coordinated with each other to plan the trip).

[25] See, e.g., Sanctions Board Decision No. 56 (2013) at paras. 57-59; Sanctions Board Decision No. 63 (2013) at paras. 101-102; Sanctions Board Decision No. 106 (2017) at para. 37 (applying limited aggravation because the evidence was subsequently recovered and provided to INT).

[26] See, e.g., Sanctions Board Decision No. 61 (2013) at paras. 37-38; Sanctions Board Decision No. 88 (2016) at para. 48; Sanctions Board Decision No.100 (2017) at para. 48; Sanctions Board Decision No. 103 (2017) at para. 37.

than not that the First Respondent Firm deliberately altered evidence material to the investigation, and aggravation is thereby warranted.

c. Cooperation

59. Section III.A, sub-paragraph 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 or ongoing cooperation and voluntary restraint as examples of cooperation.

60. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance and/or ongoing cooperation, "[b]ased on INT's representation that the respondent has provided substantial assistance in an investigation," as well as "the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." In the past, the Sanctions Board has declined to apply mitigation where respondents corresponded with INT, provided relevant documents, and made relevant personnel available for interviews, but also withheld material evidence without credible justification,[27] made implausible assertions,[28] or otherwise failed to assist INT's investigation substantially.[29] Here, the First Respondent Firm submits that its staff "cooperated fully with the investigation." INT argues that no mitigation is warranted on this basis, particularly in light of the First Respondent Firm's interference with the investigation. The evidence shows that the First Respondent Firm replied to the show-cause letter and the General Manager agreed to a recorded interview by INT. Nevertheless, based on the record as a whole – including the above finding of interference – the Sanctions Board finds that the First Respondent Firm did not substantially assist INT's investigation, and declines to apply mitigation under this factor.

61. *Voluntary restraint*: Section V.C.4 of the Sanctioning Guidelines provides for mitigation where a respondent has voluntarily refrained from bidding on Bank-financed tenders pending the outcome of an investigation. The Sanctions Board has previously declined to apply mitigating

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[27] See, e.g., Sanctions Board Decision No. 103 (2017) at para. 38 (declining to apply mitigation where the respondent agreed to an interview and provided certain documents to INT, but also withheld key documents, made unsubstantiated assertions, and failed to make a "full and frank disclosure" to INT); Sanctions Board Decision No. 109 (2018) at paras. 49-50 (declining to apply mitigation where the respondent made employees available for interviews, corresponded with INT, and produced relevant documents, but withheld certain inculpatory evidence and failed to comply with specific document requests, while providing implausible justifications for doing so); Sanctions Board Decision No. 110 (2018) at paras. 41-42 (declining to apply mitigation where the respondents agreed to interviews, corresponded with INT, and produced relevant documents, but withheld material evidence and provided implausible justifications for doing so, thereby engaging in obstruction).

[28] See, e.g., Sanctions Board Decision No. 77 (2015) at paras. 53-54, 59 (declining to apply mitigation where the respondent responded to INT's requests for information, provided certain documents, and spoke with INT via videoconference, but displayed a "lack of candor" by making implausible assertions).

[29] See, e.g., Sanctions Board Decision No. 61 (2013) at para. 44 (declining to apply mitigation where the respondents provided detailed responses to INT, but their statements revealed substantial internal inconsistencies).

credit for the respondent's voluntary restraint once it was temporarily suspended,[30] and has given partial mitigation for the respondents' voluntary restraint up to the point at which their temporary suspension commenced.[31] In the present case, the Second Respondent Firm states in its Explanation and Response that it will voluntarily refrain from bidding on Bank-financed projects for a period of "at least four years," due to an unspecified change in business strategies. Similarly, the Third Respondent Firm states in its Explanation and Response that it "will not bid any World Bank project for 3 years if World Bank withdraws" the Notice. Considering that the Second and Third Respondent Firms' stated commitments were made after these firms had been temporarily suspended, and that their purported restraint did not constitute cooperation with INT's investigation, the Sanctions Board finds that no mitigation is warranted on this basis.

d. Periods of temporary suspension

62. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the periods of the Respondents' temporary suspensions since the Acting SDO's issuance of the Notice on August 17, 2017.

e. Other considerations

63. Under Section III.A, sub-paragraph 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."

64. *Passage of time*: The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.[32] 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.[33] Here, the record indicates that the Acting SDO issued the Notice in August 2017, approximately five years after the First Respondent Firm submitted the Proposal in August 2012, four years and seven months after the First Respondent Firm signed the Contract in January 2013, and at least three years and eight months after the Bank apparently became aware of the alleged misconduct in or around December 2013. The Sanctions Board therefore grants some mitigation to all the Respondents on this ground.

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[30] Sanctions Board Decision No. 44 (2011) at para. 66.

[31] Sanctions Board Decision No. 56 (2013) at para. 79.

[32] 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).

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

65. *Satisfactory completion of the Contract*: Section III.A, sub-paragraph 9.02(i) of the Sanctions Procedures enables the Sanctions Board to consider sanctioning factors that are reasonably relevant to a respondent's own culpability or responsibility for the sanctionable practice. The Sanctions Board has consistently declined mitigation on the basis of a respondent's satisfactory completion of the contract.[34] The First and Second Respondent Firms, without expressly requesting mitigation, claim that their Contract performance was successful. Consistent with precedent, the Sanctions Board declines to apply mitigation on this basis.

66. *Adverse consequences of debarment*: The Second Respondent Firm, without expressly requesting mitigation, states that the sanction recommended by the Acting SDO would cause "damage to not only [the Second Respondent Firm] but also to a number of clients, PMUs, partners and even projects' beneficiaries." The Sanctions Board has consistently declined to consider the impact of a sanction as a basis for mitigation,[35] including where the respondent asserted an impact beyond its individual business.[36] Likewise, no mitigation is applicable on this basis in this case.

D. Determination of Appropriate Sanctions

67. Considering the full record and all the factors discussed above, the Sanctions Board determines that:

i. the First Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the First Respondent Firm, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[37] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[38] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of three (3) years beginning from the date of this decision, the First Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions

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[34] See, e.g., Sanctions Board Decision No. 53 (2012) at para. 67; Sanctions Board Decision No. 97 (2017) at para. 78.

[35] See, e.g., Sanctions Board Decision No. 98 (2017) at para. 72.

[36] See, e.g., Sanctions Board Decision No. 61 (2013) at para. 50; Sanctions Board Decision No. 106 (2017) at para. 49.

[37] A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated 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 III.A, sub-paragraph 9.01(c)(i), n.14.

[38] A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its pre-qualification 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 III.A, sub-paragraph 9.01(c)(ii), n.15.

Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group, including by providing tailored ethics and compliance training to its General Manager and business development staff. This sanction is imposed on the First Respondent Firm for a fraudulent practice as defined in Paragraph 1.22(a)(ii) of the May 2010 Consultant Guidelines;

ii. the Second Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Second Respondent Firm, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[39] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[40] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of three (3) years and six (6) months beginning from the date of this decision, the Second Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group, including by providing tailored ethics and compliance training to its top management and any staff in commercial or business development roles. This sanction is imposed on the Second Respondent Firm for a fraudulent practice as defined in Paragraph 1.22(a)(ii) of the May 2010 Consultant Guidelines; and

iii. the Third Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Third Respondent Firm, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[41] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[42] of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of three (3) years and six (6) months beginning from the date of this decision, the Third Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group, including by providing tailored compliance training to its Chairman of the Board and any staff in commercial or business development roles. This sanction is imposed on

[39] See supra n.37.

[40] See supra n.38.

[41] See supra n.37.

[42] See supra n.38.

the Third Respondent Firm for a fraudulent practice as defined in Paragraph 1.22(a)(ii) of the May 2010 Consultant Guidelines. The Sanctions Board notes that the Third Respondent Firm has asserted certain corporate changes, which remain insufficiently corroborated. The Sanctions Board emphasizes that, under Section III.A, sub-paragraph 9.04(c) of the Sanctions Procedures, the sanction applied to the Third Respondent Firm pursuant to this decision shall apply to the Third Respondent Firm's "successors and assigns, as determined by the Bank."

68. 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.[43]

Ellen Gracie Northfleet (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

Ellen Gracie Northfleet
Alejandro Escobar
Mark Kantor

[43] 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).