THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: May 30, 2012

Sanctions Board Decision No. 51

(Sanctions Case No. 145)
Denmark Grant No. TF054521
West Bank and Gaza

(Sanctions Case No. 146)
Denmark Grant No. TF054521
West Bank and Gaza

Decision of the World Bank Group Sanctions Board declaring:

i. the respondent entity and the individual respondent in Sanctions Case No. 145 (respectively, the "Respondent Firm" and "Respondent General Manager"), together with any entity that is an Affiliate[1] the Respondent Firm or the Respondent General Manager directly or indirectly controls, ineligible (i) to be awarded a contract for any Bank-financed or Bank-executed project or program governed by the Bank's Procurement Guidelines, Consultant Guidelines or Anti-Corruption Guidelines (hereinafter collectively referred to as "Bank-Financed Projects"),[2] (ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider[3] of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects, for a period of one (1) year. The ineligibility shall extend across the operations of the World Bank Group.[4]

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[1] In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted January 1, 2011 (the "Sanctions Procedures"), the term "Affiliate" means "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank."

[2] As in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both the International Bank for Reconstruction and Development ("IBRD") and the International Development Association ("IDA"). See Sanctions Procedures at Section 1.01(a), n.1.

[3] In accordance with Section 9.01(c)(i), n.14 of the Sanctions Procedures, a nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one that 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.

[4] In accordance with Section 1.02(a) of the Sanctions Procedures, the term "World Bank Group" means, collectively, IBRD, IDA, the International Finance Corporation ("IFC") and the Multilateral Investment

These sanctions are imposed for fraudulent practices as defined in Paragraph 1.22(a)(ii) of the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) (the "May 2004 Consultant Guidelines"). The period of ineligibility shall begin retroactively on May 30, 2011; and

ii. the respondent entity in Sanctions Case No. 146 (the "Respondent Partner"), together with any entity that is an Affiliate the Respondent Partner directly or indirectly controls, ineligible (i) to be awarded a contract for any Bank-Financed Projects, (ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, after a minimum period of ineligibility of two (2) years, the Respondent Partner 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. The ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of this declaration of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so 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.[5] This sanction is imposed on the Respondent Partner for fraudulent practices as defined in Paragraph 1.22(a)(ii) of the May 2004 Consultant Guidelines. The period of ineligibility shall begin on the date this decision issues.

I. INTRODUCTION

1. The Sanctions Board met in plenary session on December 6, 2011, at the World Bank's headquarters in Washington, D.C., to review Sanctions Case Nos. 145 and 146 (the "Cases"). The Sanctions Board was represented by Fathi Kemicha (Chair), Hassane Cissé, Marielle Cohen-Branche, Cornelia Cova, Patricia Diaz Dennis, Hoonae Kim and Hartwig

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Guarantee Agency ("MIGA"). The term includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes ("ICSID").

[5] 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 any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the "opt out" clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank's external website (http://go.worldbank.org/B699B73Q00).

Schafer. Neither the World Bank Group's Integrity Vice Presidency ("INT") nor any of the respondents requested a hearing in either of the Cases. Accordingly, the Sanctions Board deliberated and reached its decision in each of the Cases based on the respective written records.

2. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration in Sanctions Case No. 145 included the following:

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer ("EO") to the Respondent Firm and the Respondent General Manager on March 22, 2011 (the "145 Notice"), appending the Statement of Accusations and Evidence presented to the EO by INT (the "145 SAE");

ii. Letter from Counsel for the Respondent Firm and the Respondent General Manager, submitted to the Secretary to the Sanctions Board, dated August 3, 2011 (the "145 Response"); and

iii. Reply in Support of Notice of Sanctions Proceedings submitted by INT to the Secretary to the Sanctions Board, dated September 1, 2011 (the "145 Reply").

3. Pursuant to Section 4.01(c), Section 9.01 and Section 9.04 of the Sanctions Procedures, the EO recommended in the 145 Notice that the Respondent Firm and the Respondent General Manager, together with any Affiliate the Respondent Firm or the Respondent General Manager directly or indirectly controls, each be declared ineligible (i) to be awarded a contract under any Bank-Financed Projects, (ii) to be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, after a minimum period of ineligibility of three (3) years, the Respondent Firm and/or the Respondent General Manager may be released from ineligibility only if such Respondent has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the Bank Group's Integrity Compliance Officer it has complied with the following conditions: (a) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned; (b) put in place an effective integrity compliance program acceptable to the Bank and implemented this program in a manner satisfactory to the Bank; and (c) with respect to the Respondent General Manager only, completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics.

4. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration in Sanctions Case No. 146 included the following:

i. Notice of Sanctions Proceedings issued by the EO to the Respondent Partner on March 22, 2011 (the "146 Notice"), appending the Statement of Accusations and Evidence presented to the EO by INT (the "146 SAE");

ii. Letter submitted by the Respondent Partner to the EO, dated April 17, 2011 (the "146 Explanation");

iii. Letter submitted by the Respondent Partner to the Secretary to the Sanctions Board, dated June 20, 2011 (the "146 Response"); and

iv. Reply in Support of Notice of Sanctions Proceedings, dated July 19, 2011, submitted by INT to the Secretary to the Sanctions Board (the "146 Reply").

5. Pursuant to Section 4.01(c), Section 9.01 and Section 9.04 of the Sanctions Procedures, the EO recommended in the 146 Notice that the Respondent Partner, together with any Affiliate the Respondent Partner directly or indirectly controls, be declared ineligible (i) to be awarded a contract under any Bank-Financed Projects, (ii) to be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, after a minimum period of ineligibility of three (3) years, the Respondent Partner may be released from ineligibility only if the Respondent Partner has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the Bank Group's Integrity Compliance Officer it has complied with the following conditions: (a) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned; and (b) put in place an effective integrity compliance program acceptable to the Bank and implemented this program in a manner satisfactory to the Bank.

6. Effective March 22, 2011, the Respondent Firm, the Respondent General Manager and the Respondent Partner, together with any directly or indirectly controlled Affiliates, were temporarily suspended from eligibility to (i) be awarded contracts for Bank-Financed Projects and (ii) participate in new activities in connection with Bank-Financed Projects.

7. As the Cases arise from a common set of facts and related allegations of misconduct, the Sanctions Board addresses both Cases in this decision. Section II summarizes the common background facts reflected in the records of both Cases. Section III presents the applicable standards of review common to the allegations in both Cases. Because the Cases were not joined into one sanctions proceeding, however, and the pleadings and certain evidence are not shared across the Cases, the remaining sections of the decision separately present the parties' arguments and the Sanctions Board's analysis and conclusions on the basis of the separate records for each of the Cases. Sections IV and V present the primary contentions of the parties, and the Sanctions Board's analysis and conclusions, in Sanctions Case No. 145. Sections VI and VII present the primary contentions of the parties, and the Sanctions Board's analysis and conclusions, in Sanctions Case No. 146.

II. GENERAL BACKGROUND

8. The Cases arise in the context of the West Bank and Gaza Local Government Capacity Building Project (the "Project"). On March 22, 2005, IDA, as administrator of

the Denmark Grant Agreement, and the Palestine Liberation Organization for the benefit of the Palestinian Authority (the "Recipient") entered into a Trust Fund Grant Agreement ("TFA") to finance the Project (Denmark Grant Agreement No. TF054521). The Project is intended "to improve local governance and accountability, and thereby foster the efficient and sustainable economic, social and physical development of the urban and rural areas in the parts of West Bank and Gaza under the jurisdiction of the Palestinian Authority," and includes a charge to reform financial management and accounting systems. The TFA requires consultant services to be procured in accordance with, inter alia, the provisions of Section I of the May 2004 Consultant Guidelines regarding fraud and corruption.

9. One of the objectives of the Project was to assist the Palestinian Authority's Municipal Development Fund ("MDF") in the development and implementation of an integrated financial management information system in seven pilot municipalities in West Bank and Gaza. In December 2006, MDF issued a Request for Expressions of Interest ("REI") from consulting firms for a contract that would, inter alia, prepare for and supervise system implementation, develop appropriate financial policies and procedures, and advise on software selection (the "Contract"). On January 14, 2007, MDF sent a Request for Proposals ("RFP") to six entities that had responded to the REI, including the Respondent Firm and the Respondent Partner acting as a consortium (the "Consortium"). The RFP incorporated the May 2004 Consultant Guidelines, including the definition of a "fraudulent practice."

10. The RFP required all bids to include the names of the professional staff who would work under the Contract, the role each person would play, and each person's curriculum vitae ("CV") "signed by the staff themselves or by the authorized representative of the Professional Staff." The Respondent Partner tasked a third party, who was not an employee of either the Respondent Firm or the Respondent Partner, to "recruit professional consultants from Gaza." Shortly thereafter, the recruiter provided the Respondent Partner with the CV of a freelance consultant from Gaza (the "Consultant"). The fraud allegations in the Cases arise from questions regarding this Consultant's participation in the Contract.

11. According to the recruiter, as he later stated in an email to INT, the Consultant initially approved using his CV with the Respondent Partner in the Project at issue, as well as other projects involving the Respondent Partner. The recruiter also stated, however, "Common practice requires informing the consultant of the usage of his/her CV before submitting any proposal." Due to conditions in Gaza, the recruiter was "unable to contact [the Consultant] for getting his signature on the proposal document as needed" for the Proposal. Based on the Consultant's initial oral authorization, the recruiter stated, he "replied on [the Consultant's] behalf and authorized using his CV with proposals pertaining to [the Respondent Partner]." According to the recruiter, the Respondent Partner then provided the Consultant's CV to the Respondent General Manager. The Consortium then represented the Consultant as a confirmed participant in documents submitted at two stages in the bidding process, detailed below.

12. The February 2007 Proposal with CV: On February 28, 2007, the Consortium submitted a proposal for the Contract to MDF (the "Proposal"), naming the Consultant as one of the professional staff proposed to work on the Contract and including his CV. The

CV was signed in the name of the Consultant. The Proposal itself was signed by both the Respondent General Manager on behalf of the Respondent Firm, and the Respondent Partner's Director of Consulting on behalf of the Respondent Partner, and stated: "We hereby declare that all the information and statements made in this Proposal are true and we accept that any misinterpretation contained in it may lead to our disqualification." INT alleges the signature on the Consultant's CV was forged, and the submission of the Proposal with the forged CV constitutes a fraudulent practice on the part of the Respondent Partner. INT does not allege the co-signature and joint submission of the Proposal constitutes a fraudulent practice or sanctioning factor with respect to the Respondent Firm or Respondent General Manager.

13. The June 2007 Commitment Letter: The MDF invited the Consortium, as one of two qualifying bidders, to negotiate for the Contract. The terms of the RFP required the Consortium, "as a pre-requisite for attendance at the negotiations, confirm availability of all Professional staff." The Respondent General Manager represented the Consortium in the June 2007 negotiations. During negotiations, MDF requested the Consortium replace one of the originally proposed specialists (not the Consultant) with a "more qualified candidate to meet the qualifications requested" – specifically, the Consultant. The Consortium agreed to move the Consultant to the more demanding specialist role. The Respondent General Manager confirmed this change in his letter to MDF dated June 13, 2007, and a separate commitment letter apparently signed on behalf of the Consultant with the date of June 14, 2007 (the "Commitment Letter"). INT alleges the signature on behalf of the Consultant was unauthorized, and that the submission of the Commitment Letter constitutes a fraudulent practice on the part of the Respondent Firm and Respondent General Manager. INT does not allege this constitutes a fraudulent practice on the part of the Respondent Partner directly, though INT alleges it should be an aggravating factor in determining the Respondent Partner's sanction.

14. Around this time, the Respondent General Manager contacted the Consultant to discuss his participation in the Contract. This was the first direct communication between the Consultant and the Respondent General Manager. The Consultant stated he intended to emigrate from the region, and he did not want to be included in the Proposal. The Respondent General Manager contends the conversation took place after he had already submitted the Commitment Letter and claims he was astonished to learn the Consultant did not want to take part in the Contract.

15. Following his conversation with the Respondent General Manager, the Consultant wrote to MDF on June 17, 2007. In this letter, the Consultant stated he had received a call from the Respondent General Manager "last week" wherein the Respondent General Manager asked to use his CV in connection with the Proposal. The Consultant wrote: "I requested [the Respondent General Manager] clearly not to use my name or my CV at all in any project." He requested MDF "treat this seriously to prevent any complications in the future."

16. The Consultant told INT he had not agreed to be part of the Proposal, and contends he never discussed the Contract with anyone except the Respondent General Manager. He

did state he had previously expressed to the recruiter a willingness to be considered for another bid, but "with a condition to get my approval and signature in advance."

III. APPLICABLE STANDARDS OF REVIEW

17. Section 8.02(b)(i) of the Sanctions Procedures requires the Sanctions Board to determine whether the evidence presented by INT, as refuted by a respondent, supports the conclusion it is "more likely than not" such 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 the respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, the Sanctions Board has discretion to determine the relevance, materiality, weight and sufficiency of all evidence offered; formal rules of evidence do not apply.

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

19. The alleged sanctionable practices in the Cases have the meaning set forth in the May 2004 Consultant Guidelines, which governed the Project's procurement of consultant services under the TFA. Paragraph 1.22(a)(ii) of these Guidelines defines the term "fraudulent practice" as "a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract." This definition does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward.[6] The Sanctions Board has previously held the "knowing or reckless" standard may be implied under the pre-October 2006 definitions, however, because the legislative history of these definitions reflects the October 2006 incorporation of this standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.[7]

SANCTIONS CASE NO. 145

IV. PRINCIPAL CONTENTIONS OF THE PARTIES IN SANCTIONS CASE NO. 145

A. INT's Principal Contentions in the 145 SAE

20. INT asserts the record of documentary evidence shows the Respondent Firm and the Respondent General Manager submitted the Commitment Letter with a forged

[6] See, e.g., the definition of fraudulent practices set out in Paragraph 1.22(a)(ii) of the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, rev. October 2006) (the "October 2006 Consultant Guidelines"): "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" (emphasis added).

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

signature for the Consultant, without the Consultant's authorization to sign or submit such letter on his behalf. INT asserts such misrepresentation was made knowingly, or at least recklessly, and with the intention to influence the selection process for the Contract by bolstering the roster of consultants supposedly committed to work on the Project.

21. INT asserts no aggravating factors for sanctioning. INT identifies as a mitigating factor the cooperation of the Respondent Firm and the Respondent General Manager with INT's investigation, as evidenced by their responses to INT's show-cause letters.

B. Principal Contentions of the Respondent Firm and the Respondent General Manager in the 145 Response

22. The Respondent Firm and the Respondent General Manager state they "agree to plea in this case and accept full responsibility for their actions." They request the Sanctions Board impose a "one year sanction with public debarment," as the Respondent Firm and the Respondent General Manager previously discussed with INT during settlement negotiations.

23. The Respondent Firm and the Respondent General Manager attach to the 145 Response a letter they sent to INT during settlement negotiations in May 2011. In the letter, the Respondent Firm and the Respondent General Manager request a lesser sanction of a "warning" with conditions for the implementation of a compliance program and cooperation with the Bank, and assert:

i. The Respondent General Manager signed and submitted the Commitment Letter on the Consultant's behalf because he thought he had permission from the Respondent Partner to do so; he believed the Respondent Partner had the Consultant's approval to be part of the Contract; and he desired to follow the Respondent Partner's instructions.

ii. The Respondent General Manager submitted the Commitment Letter on June 14, 2007, and contacted the Consultant either on the same evening or the next day to tell him "to get himself ready." The Respondent General Manager recalls the Consultant stating "the situation in Gaza was in a state of emergency." He was surprised to learn the Consultant planned to emigrate and was not interested in participating in the Project.

iii. The lack of communication between the Respondent Firm and the Respondent Partner "[led] to this unfortunate situation." The Respondent Firm and the Respondent General Manager accept responsibility for their actions or omissions, but do not believe they "rise to the level of fraud."

C. INT's 145 Reply

24. INT contends the Respondent Firm and the Respondent General Manager failed to meet the shifted burden of proof to show it is more likely than not their conduct did not amount to fraudulent practices. In their Response, INT contends, the Respondent Firm and

the Respondent General Manager "admitted that they submitted a commitment letter containing a forged signature."

25. INT "does not oppose" the request of the Respondent Firm and the Respondent General Manager for a sanction of one-year debarment with conditional release. INT acknowledges it had been engaged earlier in settlement discussions with the Respondent Firm and the Respondent General Manager, and states a number of factors "would most likely" have resulted in such agreed sanction, had a settlement been reached. Namely, (i) the Respondent Firm and the Respondent General Manager "unconditionally admitted to engaging in a fraudulent practice and accepted responsibility for their actions"; (ii) they did not show a repeated pattern of misconduct; (iii) they are cooperating fully with INT; (iv) the Respondent General Manager was already working with counsel on an effective compliance program for the Respondent Firm; and (v) the Respondent Firm "is a small sole proprietorship."

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS IN SANCTIONS CASE NO. 145

26. Where the parties to a case have agreed upon liability and appropriate sanctions, the parties should most expeditiously resolve such matter through settlement in accordance with Article XI of the Sanctions Procedures. Under Article XI, the parties may conduct settlement negotiations and reach a settlement agreement at any time before or during the course of sanctions proceedings, prior to the Sanctions Board's issuance of a decision.[8] In the present case, where INT, the Respondent Firm and the Respondent General Manager state they agree on appropriate sanctions, it appears the parties could have utilized Article XI to resolve the matter more efficiently prior to or during sanctions proceedings.

27. Where for any reason a case is presented on appeal rather than resolved through settlement, the Sanctions Board conducts a full de novo review. The Sanctions Board is not constrained by the parties' views or informal agreements in the course of prior settlement discussions. The Sanctions Board must determine, based on the record presented in accordance with Section 8.02 of the Sanctions Procedures, whether it is more likely than not a respondent engaged in one or more sanctionable practices and, if so, which appropriate sanction or sanctions shall be imposed.[9]

28. Accordingly, the Sanctions Board now considers first whether the Respondent General Manager engaged in a fraudulent practice by signing and submitting the Commitment Letter. Next, the Sanctions Board considers whether the Respondent Firm may be held liable for the acts of the Respondent General Manager. Finally, the Sanctions Board determines what sanctions, if any, should be imposed on the Respondent Firm and the Respondent General Manager.

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[8] See Sanctions Procedures at Sections 11.01 and 11.02.

[9] See id. at Section 8.01.

A. Evidence of Fraudulent Practice by the Respondent General Manager

29. While the Respondent Firm and the Respondent General Manager have offered "to plea in this case and accept full responsibility" for their actions, they deny engaging in misconduct rising to the level of a fraudulent practice. The initial burden thus remains on INT to show the Respondent General Manager (i) made a misrepresentation or omission of facts (ii) that was knowing or reckless (iii) in order to influence the selection process or execution of the Contract, thereby engaging in a fraudulent practice as defined under the May 2004 Consultant Guidelines.

1. "Misrepresentation of facts"

30. In past cases finding fraudulent bid documents, the Sanctions Board relied primarily on written statements from the parties named in or supposedly issuing the allegedly fraudulent documents, as well as the respondents' own admissions.[10] Here, the record reflects the Consultant's written statement to INT that he never agreed to be part of the Contract, and did not sign or give permission for anyone else to sign the Commitment Letter on his behalf. The Respondent Firm and the Respondent General Manager admit the Respondent General Manager signed the Commitment Letter on behalf of the Consultant, and submitted it to MDF, without having received any direct authorization from the Consultant to sign on his behalf. The Respondent Firm and the Respondent General Manager assert such action was not a misrepresentation because the Respondent Partner had, to their understanding, obtained "permission from all the experts to use their names, as well as to sign on their behalf when they were unreachable." The Respondent Firm and the Respondent General Manager do not present any evidence of such permission from the Consultant, however. Accordingly, the Sanctions Board finds it more likely than not the Respondent General Manager engaged in a misrepresentation of fact by signing the Commitment Letter on behalf of the Consultant without the Consultant's authorization.

2. "Knowing or reckless"

31. INT asserts the Respondent General Manager submitted the Commitment Letter with a forged signature knowingly or at least recklessly. The record does not show it is more likely than not he acted knowingly to forge an unauthorized signature. The Respondent Firm and the Respondent General Manager do not deny they signed and submitted the Commitment Letter on the Consultant's behalf, but they consistently maintain they did so with the understanding the Respondent General Manager had permission to sign on the Consultant's behalf pursuant to the Respondent Partner's instructions. While INT suggests the Respondent General Manager submitted the Commitment Letter only after the phone call in which the Consultant clearly stated he was not interested or available to take part in the Contract, the evidence on this point is

[10] See, e.g., Sanctions Board Decision No. 2 (2008) at para. 4 (stating the Sanctions Board "relied primarily" on the written statement of the bank that had supposedly issued the bid securities stating the securities had been forged, as well as the respondent's oral and written admissions); Sanctions Board Decision No. 6 (2009) at para. 6 (stating the Sanctions Board "relied primarily" on the written statement of the individual named in the CV stating the CV had been falsified, contained a forged signature and had been submitted without her consent, as well as the admission of the respondent's director).

inconclusive. The record shows contradictory evidence whether the Respondent General Manager spoke with the Consultant before the Commitment Letter was sent (as the Consultant claims) or after the Commitment Letter was sent (as the Respondent General Manager insists).

32. The next question presented is whether the Respondent General Manager acted recklessly in signing and submitting the Commitment Letter on behalf of the Consultant without direct prior authorization or written agreement from the Consultant.

33. In assessing recklessness, the Sanctions Board may consider whether circumstantial evidence indicates a respondent was aware of, but disregarded, a substantial risk – such as harm to the integrity of the Bank's procurement process due to false or misleading bid documents. Alternatively, where circumstantial evidence may be insufficient to infer subjective awareness of risk, the Sanctions Board may measure a respondent's conduct against the common "due care" standard of the degree of care the proverbial "reasonable person" would exercise under the circumstances. In other words, the question is whether the respondent knew or should have known of the substantial risk presented. In the context of Bank-Financed Projects, the standard of care should be informed by the Bank's procurement policies, as articulated in the applicable Procurement or Consultant Guidelines and the standard bidding documents for the contract at issue. Industry standards or customary or firm-specific business policies, procedures or practices may also be relevant in certain cases.

34. The record here supports a finding the Respondent General Manager acted recklessly in signing and submitting the Commitment Letter in the Consultant's name without confirming the Consultant's continued interest and availability, or getting his direct or written signature authority. The Sanctions Board considers in particular the bidding documents' explicit requirements to confirm and reconfirm the availability of named consultants. The RFP for the Contract explicitly stated a bidder may be disqualified "if it is established that Professional staff were offered in the proposal without confirming their availability." The RFP further specified that once the Bid Evaluation Committee selects a bidder and invites it to negotiations based on its proposed roster of consultants, such bidder must, "as a pre-requisite for attendance at the negotiations, confirm availability of all Professional staff."

35. Together, these explicit requirements in the RFP define a duty of care for the Respondent General Manager to have reconfirmed the Consultant's participation at the point of the June 2007 negotiations and Commitment Letter. Instead, he asserts he relied upon the supposed oral agreement originally reached between the recruiter and the Consultant, which pre-dated the Proposal submitted with the Consultant's CV in February 2007. In failing to reconfirm the Consultant's agreement before submitting the Commitment Letter, the Respondent General Manager took a known substantial risk of misrepresenting the involvement of an individual whose alleged agreement had never been reduced to writing and was in any event already some months old.

36. The Respondent General Manager asserts local conditions and customs as explanations for his failure to confirm the Consultant's participation and authorization to

sign and submit the Commitment Letter. These arguments are insufficient to counter a finding of recklessness. With respect to local conditions, the Respondent General Manager asserts he tried to reach the Consultant before submitting the Commitment Letter, but was unable to do so because of communication problems due to the political unrest in Gaza at the time. Thereafter, he says, he continued to try to contact the Consultant "only to inform him to get himself ready." The Respondent General Manager's argument lacks evidentiary support demonstrating how conditions in Gaza actually prevented communications with the Consultant. Moreover, should conditions in Gaza have precluded timely communications with the Consultant, the Respondent General Manager should – as he later acknowledged to INT – "have clearly indicated the situation of this particular consultant and our inability to reach him to obtain his signature."

37. With respect to local customs, the Respondent Firm and the Respondent General Manager assert it is common practice in their culture for oral agreements between two parties to form a binding legal contract, and that they trusted the Respondent Partner had created a binding oral agreement with the Consultant through its recruiter. The Respondent Firm and the Respondent General Manager assert they made a "moral" decision when they signed on the Consultant's behalf, because they did not want to break this oral commitment. Yet they present no evidence to support their assertion of local customs; and both the recruiter and the Consultant state oral agreements are not common local practice.

38. Moreover, the record supports a finding the Respondent General Manager was subjectively aware of the risks in representing the Consultant's continued participation and signature without an updated and preferably written authorization – risks heightened by MDF's specific request the Consultant take over a different, more demanding specialist role under the Contract. Having participated in the negotiations on behalf of the Consortium, the Respondent General Manager knew firsthand the Consultant's involvement was material to the strength of the Consortium's Proposal. The record shows the Respondent General Manager asked all the West Bank consultants named in the Proposal to come to the Respondent Firm's office to sign their commitment letters in person; he states he tried to ask the Consultant in Gaza to do the same, but was unable to reach him immediately; and as a result he deliberately delayed sending the Consultant's Commitment Letter until the final due date of June 14, 2007, one day after he had sent all other documents to MDF on June 13, 2007.

39. Considering the above circumstances and evidence presented, the Sanctions Board finds the Respondent General Manager acted recklessly in signing and submitting the Commitment Letter in the Consultant's name without confirming the Consultant's continued interest and availability, or getting his direct and preferably written authorization to sign such document on his behalf.

3. <u>"In order to influence a selection process"</u>

40. The Sanctions Board finds the submission of the Commitment Letter was intended to influence the selection process for the Contract by strengthening the Consortium's roster of consultants and thereby improving the Consortium's chances of being awarded the

Contract. As noted above, the RFP required confirmation of availability for "all Professional staff," which would include the Consultant; and MDF made clear in negotiations it saw the Consultant's particular involvement as important.

41. For the above reasons, the Sanctions Board finds it more likely than not the Respondent General Manager engaged in a fraudulent practice in signing and submitting the Commitment Letter without the Consultant's authorization.

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

42. The record shows the Respondent General Manager is the general manager and sole proprietor of the Respondent Firm; and the Respondent General Manager acted as the Respondent Firm's authorized representative and in the course and scope of his duties in submitting the Proposal, participating in negotiations with MDF and submitting the Consultant's Commitment Letter. The Respondent Firm does not contest its liability for the Respondent General Manager's actions in carrying out these duties on its behalf. On this record, the Sanctions Board finds the Respondent Firm directly and/or vicariously liable for the fraudulent misconduct of the Respondent General Manager.[11]

C. Determination of Appropriate Sanctions

1. General framework for determination of sanctions

43. Where the Sanctions Board determines it is more likely than not 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 possible sanctions set out in Section 9.01 are: (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.

44. 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.[12] The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented.[13]

45. 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 they are not intended to be prescriptive in nature,

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[11] See Sanctions Board Decision No. 41 (2010) at para. 85 (finding direct and/or vicarious liability for the respondent firm, which bore responsibility for the conduct of the individual respondent who was the firm's president, owner and sole shareholder).

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

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

they provide a point of reference to help illustrate the types of considerations potentially relevant to a sanctions determination. They further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after three years.

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

2. Factors applicable in Sanctions Case No. 145

47. The Respondent Firm and the Respondent General Manager request the imposition of a one-year debarment with conditional release, and INT states it has no objection to such sanction. The Sanctions Board takes into consideration the fact and timing of the parties' apparent consensus, which the record indicates was reached in May 2011, shortly after the issuance of the 145 Notice. The Sanctions Board is not bound by the parties' consensus in the absence of a formal settlement agreement, however, and may impose any sanction it considers appropriate pursuant to Section 8.01(b) of the Sanctions Procedures.

48. Section 9.02 of the Sanctions Procedures identifies a number of factors potentially relevant in this case, which the Sanctions Board addresses in turn below.

a. Severity of the misconduct

49. Section 9.02(a) of the Sanctions Procedures requires consideration of "the severity of the misconduct" in determining a sanction. Section IV.A.1 of the Sanctioning Guidelines cites a "Repeated Pattern of Conduct" as an example of severity.

50. In the 145 Reply, INT asserts "[t]here was no repeated pattern of misconduct on the part of" the Respondent Firm and the Respondent General Manager. The record indicates, however, the Respondent Firm and the Respondent General Manager signed not only the Commitment Letter directly at issue in Sanctions Case No. 145, but also the CV and Proposal at issue in Sanctions Case No. 146. The Sanctions Board finds below that the submission of the Proposal, which attached a forged CV, constituted a fraudulent practice. The Sanctions Board accordingly finds the co-signature and submission of the fraudulent CV and Proposal by the Respondent Firm and the Respondent General Manager an aggravating factor.

b. Voluntary corrective action

51. Section 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party . . . took voluntary corrective action." Section V.B of the Sanctioning Guidelines suggests such voluntary corrective actions may include cessation of misconduct, internal action against a responsible individual, establishment or improvement and implementation of an effective compliance program, and restitution or financial remedy. The Sanctioning Guidelines suggest a reduction is warranted only where the corrective action apparently "reflects genuine remorse and intention to reform," rather than

"a calculated step to reduce the severity of the sentence." It is the respondent who bears the burden of presenting evidence to show voluntary corrective actions.[14]

52. The Respondent Firm, the Respondent General Manager and INT assert mitigation is warranted for voluntary corrective action because the Respondent General Manager has been working with counsel on an effective compliance program for the Respondent Firm. The Sanctions Board accords some mitigating credit on this ground, limited by the lack of more concrete evidence to show compliance measures already taken.

c. Cooperation

53. 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 suggests cooperation may take the form of assistance with INT's investigation, an internal investigation, acceptance of responsibility, or voluntary restraint.

54. The Sanctions Board finds cooperation warranting a degree of mitigation. INT states the Respondent Firm and the Respondent General Manager are "cooperating fully with INT" and have "unconditionally admitted to engaging in a fraudulent practice and accepted responsibility for their actions." The record shows the Respondent Firm and the Respondent General Manager responded to INT's show-cause letters, which warrants mitigating credit.[15] They also stated they "agree to plea in this case and accept full responsibility for their actions." The record before the Sanctions Board, however, does not reflect an actual admission of fraudulent practices. Counsel for the Respondent General Manager instead characterized the conduct at issue as "mistakes" that do not rise to the level of fraud. Accordingly, the Sanctions Board does not grant additional mitigation for admission of culpability.[16]

d. Period of temporary suspension already served

55. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by the sanctioned party. The Respondent Firm and the Respondent General Manager have been temporarily suspended since the EO issued the 145 Notice on March 22, 2011.

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[14] See Sanctions Board Decision No. 45 (2011) at paras. 72-74 (considering the respondent did not carry its burden to show voluntary corrective actions where the first claimed action was unrelated to the misconduct and the second action was a bare assertion the respondent agreed to draft and implement a compliance program in the future).

[15] See, e.g., Sanctions Board Decision No. 37 (2010) at para. 45 (in determining an appropriate sanction for fraudulent practices, taking into account the respondent's cooperation in replying to INT's show-cause letter as a mitigating factor).

[16] See Sanctions Board Decision No. 39 (2010) at para. 60 (granting limited mitigation for cooperation where the respondent had engaged with INT, but never unambiguously admitted to culpability for the specific sanctionable practices alleged); Sanctions Board Decision No. 40 (2010) at para. 28 (same); Sanctions Board Decision No. 45 (2011) at para. 66 (same).

e. Other considerations

56. Under Section 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider "any other factor" it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice."

57. *Nature of respondent entity:* INT asserts as a mitigating factor that the Respondent Firm "is a small sole proprietorship." While the nature of a respondent entity may be relevant to understanding its role, standards and conduct in a case, the Sanctions Board does not view smaller entities as automatically entitled to mitigating credit and lesser sanctions based on size or status alone; nor would it automatically accord aggravating treatment and greater sanctions to larger entities. The record does not provide any reason to consider the Respondent Firm's size or status as a sanctioning factor here.

58. *Proportionality:* The Sanctions Board has previously recognized the merits of imposing greater sanctions on respondents that played a greater role in the sanctionable practice at issue, and lesser sanctions on other respondents that more readily accepted responsibility or cooperated with INT.[17] In the Cases addressed in this decision, the Sanctions Board finds the Respondent Firm and the Respondent General Manager should receive proportionately lighter sanctions than the Respondent Partner to reflect their lesser role in the misconduct, as well as their greater cooperation. First, the Respondent Partner took the lead through its recruiter to contact the Consultant, request his participation, and authorize use of his CV for the Proposal. Second, INT cites the greater willingness of the Respondent Firm and the Respondent General Manager, as compared to the Respondent Partner, to accept responsibility for their actions, cooperate with INT and implement an appropriate compliance program.

3. Determination of appropriate sanctions for the Respondent Firm and the Respondent General Manager

59. Considering the full record and all the factors discussed above, the Sanctions Board hereby determines the Respondent Firm and the Respondent General Manager, together with any entity that is an Affiliate the Respondent Firm or the Respondent General Manager directly or indirectly controls, shall be, and hereby declares they are, ineligible (i) to be awarded a contract for any Bank-Financed Projects, (ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects, for a period of one (1) year. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent Firm for fraudulent practices as defined in Paragraph 1.22(a)(ii) of the May 2004 Consultant Guidelines. The period of ineligibility shall begin retroactively on May 30, 2011.

[17] See, e.g., Sanctions Board Decision No. 4 (2009) at paras. 8-12; Sanctions Board Decision No. 41 (2010) at para. 87; Sanctions Board Decision No. 45 (2011) at paras. 62, 66.

SANCTIONS CASE NO. 146

VI. PRINCIPAL CONTENTIONS OF THE PARTIES IN SANCTIONS CASE NO. 146

A. INT's Principal Contentions in the 146 SAE

60. INT asserts the record of documentary evidence shows the Respondent Partner knowingly or recklessly submitted the Consultant's CV with a forged signature as part of the Proposal, and that this misrepresentation was made with the intent to influence the selection process for the Contract by misleading MDF officials as to the Consortium's roster of consultants.

61. INT contends the determination of an appropriate sanction should take into account one aggravating factor and one mitigating factor. INT asserts "[t]he nature of [the Respondent Partner]'s fraudulent act" as an aggravating factor, stating the Respondent Partner is responsible not only for the forged CV submitted with the Proposal it signed directly, but also for the forged Commitment Letter submitted by the Respondent General Manager on behalf of the Consortium. INT asserts as a mitigating factor the Respondent Partner's cooperation with INT's investigation, as evidenced by the Respondent Partner's response to INT's show-cause letter.

B. The Respondent Partner's Principal Contentions in the 146 Explanation and 146 Response

62. The Respondent Partner relies primarily upon the following assertions:

i. The conditions in West Bank and Gaza made it difficult to communicate with potential consultants, and so the Respondent Partner relied completely on its Consortium partner, the Respondent Firm, to handle all contacts with the Consultant and finalize and deliver the Proposal.

ii. The Respondent Partner thought it had the Consultant's approval to sign and submit his CV; it had no intent to commit fraud.

iii. The Respondent Partner's history of clean business practices, including in numerous international projects, and voluntary remedial measures – including ending the contract of its Director of Consulting involved in the matter, instituting "strict instructions" to review and directly validate all proposals, and ending all business relations with the Respondent Firm – warrant withdrawal or mitigation of the EO's recommended sanction.

C. INT's 146 Reply

63. In its Reply, INT contends the Respondent Partner has failed to carry the shifted burden of proof to show it is more likely than not its conduct did not amount to fraudulent practices. INT relies primarily on the following assertions.

i. The Respondent Partner does not contest "it submitted a CV containing a forged signature."

ii. The Consultant asserts he never gave the Respondent Partner authorization to use his signature.

iii. The "[Respondent Partner's] representatives admit that they signed the key consultant's name and submitted the CV to the MDF."

iv. The Respondent Partner is responsible for the fraud even if it did rely on the Respondent Firm as its Consortium partner.

v. The political situation in Gaza at the time of submitting the Proposal does not excuse the Respondent Partner's fraudulent act.

64. In terms of sanctions, INT contends the Respondent Partner's arguments for mitigation are unfounded, unpersuasive or already taken into account in the EO's recommended sanction of debarment with the possibility of conditional release after three years. INT therefore asks the Sanctions Board to impose the EO's recommended sanction.

VII. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS IN SANCTIONS CASE NO. 146

65. The Sanctions Board considers first whether the Respondent Partner's representatives engaged in a fraudulent practice by submitting the Proposal with a forged CV. Next, the Sanctions Board considers whether the Respondent Partner may be held liable for its representatives' acts in such submission. Finally, the Sanctions Board considers what sanctions, if any, should be imposed on the Respondent Partner.

A. Evidence of Fraudulent Practice in Submission of the Proposal and CV

66. INT bears the initial burden to show representatives of the Respondent Partner (i) made a misrepresentation or omission of facts (ii) that was knowing or reckless (iii) in order to influence the selection process or execution of the Contract, thereby engaging in a fraudulent practice as defined under the May 2004 Consultant Guidelines.

1. "Misrepresentation of facts"

67. The record shows it is more likely than not the Proposal contained a misrepresentation of facts. The Proposal attached the Consultant's CV, with his apparent signature on the line for "Signature of staff member or authorized representative of the staff," and his name printed in the blank for "Full name of authorized representative." There was no indication another party had signed his name on his behalf. It is undisputed the CV was signed not by the Consultant, however, but by the Respondent General Manager. Further, the record shows the Consultant did not authorize anyone to sign on his behalf or submit his CV with the Proposal. The Proposal therefore misrepresented the Consultant's signature and agreement to be included in the Proposal.

2. "Knowing or reckless"

68. INT alleges the Respondent Partner acted knowingly or at least recklessly in submitting the Proposal with the forged CV. The Respondent Partner, on the other hand, asserts it had "no intent [and gave no] instructions to commit any of the alleged fraudulent actions" and it did not knowingly submit any forged document to MDF. Instead, the Respondent Partner asserts, it "delegated all contacts" with the Consultant to the Respondent Firm and the Respondent General Manager, and "completely trusted and depended on" the Respondent Firm as its Consortium partner to handle the final organization and submission of the Proposal due to the difficult conditions existing in West Bank and Gaza at the time.

69. Regardless of the Respondent Partner's purported broad assignment of responsibility to the Respondent Firm and the Respondent General Manager, the Respondent Partner itself admits it was responsible specifically for the Consultant's recruitment, having assigned its own recruiter the task of finding consultants in Gaza, where the Consultant was located. The recruiter agrees, confirming he served at the Respondent Partner's request as the point of contact with the Consultant. Moreover, the Proposal containing the forged CV was signed and submitted jointly by the Respondent Partner, through its Director of Consulting, as well as the Respondent Firm, through the Respondent General Manager.

70. The record reflects the recruiter stated that while he believed he had secured the Consultant's oral authorization to participate in "proposals pertaining to [the Respondent Partner]," he knew he was not able to "get[] his signature on the proposal document as needed." The recruiter further stated "common practice requires informing [a consultant] of the usage of his . . . CV before submitting any proposal," although he says it was not possible in this case due to the ongoing situation in Gaza. The Consultant, on the other hand, told INT he had given no open commitment either to the Respondent Partner, its recruiter or others; and he had given the recruiter only an "initial acceptance" for a different bid, with an explicit condition to get his approval and signature in advance.

71. The record does not specify precisely what the recruiter communicated to the Respondent Partner about the Consultant's willingness to participate in the Respondent Partner's proposals and under what circumstances. By its own admissions in response to INT's show-cause letter, however, the Respondent Partner knew it did not have the Consultant's actual signature on the CV – which is what the Proposal purported to include – or his written authorization for someone else to sign on his behalf. Moreover, the Respondent Partner admits it made no attempt to verify his willingness to be included in the Proposal, instead relying on its recruiter's representation that the Consultant's previous oral agreement with the recruiter to take part in the Project would suffice as authorization to sign and use the Consultant's CV in the Proposal.

72. The Respondent Partner's lack of diligence in this respect stands in contrast to its written representation in the Proposal, which read: "We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification." The lack of diligence

also contrasts with the explicit provisions in the RFP that (i) all bids must include CVs of the professional staff who would work under the Contract, "signed by the staff themselves or by the authorized representative of the Professional Staff"; and (ii) a bidder may be disqualified if "it is established that Professional staff were offered in the [P]roposal without confirming their availability." Finally, the failure to confirm the Consultant's approval for use of his CV contrasts with what the Respondent Partner's own recruiter described as "common practice." On this record, the Sanctions Board finds sufficient evidence to show it more likely than not the Respondent Partner acted knowingly or at least recklessly in submitting the Proposal with a forged signature on the Consultant's CV.

3. "In order to influence a selection process"

73. The Sanctions Board finds it more likely than not the use of the Consultant's forged CV in the Proposal was intended to influence the selection process for the Contract. As the RFP explicitly required bidders to submit signed CVs for all proposed professional staff, the Proposal would presumably have been subject to disqualification had the Consultant's signed CV not been included with the Proposal.

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

74. The Sanctions Board next considers the Respondent Partner's liability for the acts of its Director of Consulting, who signed and submitted the Proposal on behalf of the Respondent Partner; and the Respondent General Manager, who represented the Consortium with respect to MDF.

75. The Sanctions Board has previously recognized the potential liability of an employer for the acts of its employees under the doctrine of respondeat superior, including in multiple cases of forgery or other fraudulent practices.[18] In such cases, the Sanctions Board has placed particular emphasis on whether the record includes evidence showing the employer "at any time implemented any controls reasonably sufficient to prevent or detect the fraudulent practices alleged."[19] Where an employer asserted it simply relied upon the honesty of its employees, and failed to implement any controls such as "a basic 'four-eye-principle' (i.e., a review by someone other than the individual who forged each Authorization . . .)," for example, and the Sanctions Board found no evidence supporting a "rogue employee" or any other defense, it ultimately found the employer should be held responsible for the actions of its employees acting on its behalf.[20]

76. The Sanctions Board first considers the Respondent Partner's potential liability for the acts of its Director of Consulting, who signed and submitted the Proposal on behalf of the Respondent Partner. The record indicates the Director of Consulting acted as the

[18] See, e.g., Sanctions Board Decision No. 31 (2010) at para. 24; Sanctions Board Decision No. 36 (2010) at para. 39; Sanctions Board Decision No. 37 (2010) at para. 41; Sanctions Board Decision No. 39 (2010) at para. 56; Sanctions Board Decision No. 44 (2011) at para. 52.

[19] Sanctions Board Decision No. 37 (2010) at para. 42; see also Sanctions Board Decision No. 36 (2010) at para. 39.

[20] Sanctions Board Decision No. 39 (2010) at paras. 56, 58.

Respondent Partner's authorized representative for the Contract and within the course and scope of his employment in representing the Respondent Partner in the Consortium; preparing and submitting the Proposal "in association with" the Respondent Firm; and signing the Proposal with the written declaration that all the information therein was true. The Respondent Partner does not contest its liability for the actions of its Director of Consulting, nor does it assert it exercised any supervision or controls to prevent or detect the type of fraudulent practices at issue. Accordingly, the Sanctions Board finds the Respondent Partner vicariously liable for the Director's acts in signing and submitting the Proposal with a forged CV.

77. The Sanctions Board next considers the Respondent Partner's potential liability for the acts of the Respondent General Manager – who was employed by the Respondent Firm, not by the Respondent Partner. The record shows it was the Respondent General Manager who actually forged the signature on the Consultant's CV and attached it to the Proposal. Regardless who carried out the actual forgery, the Respondent Partner is liable for using the forged CV because it signed and jointly submitted the Proposal attaching the CV, with the declaration that all the information contained in the Proposal was true. Moreover, the record indicates the Respondent General Manager signed and attached the CV upon the instructions of the Respondent Partner. Thus the Respondent Partner cannot disclaim responsibility for the actual forgery and inclusion of the CV in any event. As the Sanctions Board has previously held, a "respondent cannot carry out through an agent . . . any conduct that would be sanctionable if carried out directly by the respondent."[21]

78. The same principles apply to the Respondent General Manager's later actions in submitting the fraudulent Commitment Letter on behalf of the Consortium during negotiations. The Respondent Partner authorized the Respondent General Manager to act on its behalf as the Consortium's representative for purposes of MDF negotiations, and does not posit it sought to monitor or supervise him in that capacity. For purposes of determining sanctions, as INT asserts and is discussed further below, the Respondent Partner therefore may be held responsible for the Respondent General Manager's misconduct in regard to the Commitment Letter as an aggravating factor.[22]

C. Determination of Appropriate Sanctions

1. General framework for determination of sanctions

79. Where the Sanctions Board determines it is more likely than not 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 possible sanctions set out in Section 9.01 are: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with

[21] Sanctions Board Decision No. 45 (2011) at para. 41.

[22] See id. at para. 43 (holding the respondent liable for collusion in a bid submitted through an agent where the agent was authorized to participate and act in the tender on behalf of the respondent, and the respondent failed to monitor or supervise the actions of the agent with regard to the tender at issue).

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.

80. 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.[23] The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented.[24]

81. 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 Sanctioning Guidelines. While the Sanctioning Guidelines themselves state they are not intended to be prescriptive in nature, they provide a point of reference to help illustrate the types of considerations potentially relevant to a sanctions determination. They further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after three years.

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

2. Factors applicable in Sanctions Case No. 146

83. Section 9.02 of the Sanctions Procedures identifies a number of factors potentially relevant in this case, which the Sanctions Board addresses in turn below.

a. Severity of the misconduct

84. Section 9.02(a) of the Sanctions Procedures requires consideration of "the severity of the misconduct" in determining a sanction. Section IV.A.1 of the Sanctioning Guidelines cites a "Repeated Pattern of Conduct" as an example of severity.

85. INT asserts the Respondent Partner's fraudulent misconduct should be considered as more severe because it included not only the Proposal submitted directly by the Respondent Partner, but also the Commitment Letter submitted by the Respondent General Manager on behalf of the Consortium. INT does not explain the asymmetry in its assertions that the Respondent Partner may be held accountable for both fraudulent submissions (only one of which it signed directly), but the Respondent Firm and the Respondent General Manager should be held accountable for only one (when in fact they signed both). The Sanctions Board, however, has found the co-signature and submission of the fraudulent Proposal by the Respondent Firm and the Respondent General Manager constitute an aggravating factor in Sanctions Case No. 145. Likewise, the Sanctions Board finds the Respondent General Manager's submission of the fraudulent Commitment Letter

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

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

on behalf of the Consortium – which included the Respondent Partner – may be considered an aggravating factor here.

b. Voluntary corrective action

86. Section 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party . . . took voluntary corrective action." Section V.B of the Sanctioning Guidelines suggests such voluntary corrective actions may include cessation of misconduct, internal action against a responsible individual, establishment or improvement and implementation of an effective compliance program, and restitution or financial remedy. The Sanctioning Guidelines suggest a reduction is warranted only where the corrective action apparently "reflects genuine remorse and intention to reform," rather than "a calculated step to reduce the severity of the sentence." The respondent bears the burden of presenting evidence to show voluntary corrective actions.[25]

87. The Respondent Partner asserts it has voluntarily taken a number of specific corrective actions, thereby warranting withdrawal or mitigation of any sanction imposed. INT does not clearly support or reject the specific assertions of corrective action, stating, "Although the establishment or improvement of corporate compliance is a mitigating factor, [the Respondent Partner] only expresses regret about the allegations, not the actual wrongdoing." It is not clear from INT's argument whether it agrees the Respondent Partner took corrective actions, but believes mitigation should be limited by the failure to admit misconduct; or whether it disputes the Respondent Partner took corrective actions.

88. The Sanctions Board finds some mitigating credit appropriate, although limited by the lack of more concrete supporting evidence. First, with regard to internal action against the responsible individual, the Respondent Partner asserts it ended its contract with its former Director of Consulting, who was responsible for preparing and supervising the Proposal. Second, with regard to implementation of an effective compliance program, the Respondent Partner asserts it has "institute[d] strict instructions" to bidding staff "to strictly scrutinize and validate all documents," "issue[d] detailed instructions to follow the specific requirements" of RFPs, "develop[ed] specialized groups of qualified consultants and staff members" to prepare bids, and "establish[ed] direct contact networks with the consultants participating in and/or nominated for different projects." Finally, the Respondent Partner maintains that after it became aware of the incidents at issue, it formally decided to end "all relations with [Respondent Firm] for this or any other projects." Though the Respondent Partner does not specifically mention its relationship with its recruiter, its statement it would establish direct contact networks with consultants for future projects suggests it would no longer use the recruiter as an intermediary.[26]

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[25] See Sanctions Board Decision No. 45 (2011) at paras. 72-74 (considering the respondent did not carry its burden to show voluntary corrective actions where the first claimed action was unrelated to the misconduct and the second action was a bare assertion the respondent agreed to draft and implement a compliance program in the future).

[26] See Sanctions Board Decision No. 2 (2008) at para. 7 (according mitigating credit for a respondent firm's termination of the employee who perpetrated the forgeries at issue, and implementation of corporate compliance measures to prevent recurrence of such misconduct).

c. Cooperation

89. 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 suggests cooperation may take the form of assistance with INT's investigation, an internal investigation, acceptance of responsibility, or voluntary restraint.

90. The Sanctions Board finds cooperation warranting a limited degree of mitigation. The Respondent Partner cooperated with INT's investigation by replying to INT's show-cause letter. It does not accept responsibility for misconduct, however, instead arguing all responsibility lies with the Respondent Firm. The Sanctions Board has previously found that where a respondent cooperated, but "never admitted culpability or responsibility for misconduct, either in the course of the investigation or the present sanctions proceedings," the respondent was entitled to only "a limited degree of mitigation."[27]

d. Period of temporary suspension already served

91. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by the sanctioned party. The Respondent Partner has been temporarily suspended since the EO issued the 146 Notice on March 22, 2011.

e. Other considerations

92. Under Section 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider "any other factor" it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice."

93. *Proportionality:* The Sanctions Board has previously recognized the merits of imposing greater sanctions on respondents that played a greater role in the sanctionable practice at issue, and lesser sanctions on other respondents that more readily accepted responsibility or cooperated with INT.[28] In the Cases addressed in this decision, the Sanctions Board finds the Respondent Firm and the Respondent General Manager should receive proportionately lighter sanctions than the Respondent Partner to reflect their lesser role in the misconduct, as well as their greater cooperation. First, the Respondent Partner took the lead through its recruiter to contact the Consultant, request his participation, and authorize use of his CV for the Proposal. Second, INT cites the greater willingness of the Respondent Firm and the Respondent General Manager, as compared to the Respondent Partner, to accept responsibility for their actions, cooperate with INT, and implement an appropriate compliance program.

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[27] Sanctions Board Decision No. 45 (2011) at para. 66. See also Sanctions Board Decision No. 37 (2010) at paras. 30, 32, 45; Sanctions Board Decision No. 39 (2010) at para. 60; Sanctions Board Decision No. 40 (2010) at para. 28.

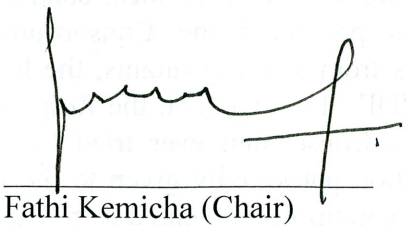
[28] See, e.g., Sanctions Board Decision No. 4 (2009) at paras. 8-12; Sanctions Board Decision No. 41 (2010) at para. 87; Sanctions Board Decision No. 45 (2011) at paras. 62, 66.

94. *Local Conditions:* The Respondent Partner asserts as the most serious mitigating factor the "very critical and difficult political and security situation" in Gaza in 2007. It asserts the situation made it impossible to reach local experts directly to obtain their consent and signatures, thereby requiring the Respondent Partner to depend entirely on the Respondent Firm and the Respondent General Manager. Even if true, the Sanctions Board does not consider difficult local conditions an excuse for fraudulent behavior. Had local conditions prevented the Consortium from timely obtaining proper approvals and signatures from any consultants, the Respondent Partner should have communicated this fact to MDF. In any event, the Respondent Partner presents no evidence the Respondent Partner or Consortium ever tried to contact the Consultant directly or verify the oral authorization purportedly given to the recruiter before submitting the Proposal, let alone that local conditions prevented them from succeeding in such effort.

3. Determination of appropriate sanction for the Respondent Partner

95. Considering the full record and all the factors discussed above, the Sanctions Board hereby determines the Respondent Partner, together with any entity that is an Affiliate the Respondent Partner directly or indirectly controls, shall be, and hereby declares it is, ineligible (i) to be awarded a contract for any Bank-Financed Projects, (ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, after a minimum period of ineligibility of two (2) years, the Respondent Partner 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. The ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of this declaration of ineligibility to the other MDBs that are party to the Cross-Debarment Agreement so 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. This sanction is imposed on the Respondent Partner for fraudulent practices as defined in Paragraph 1.22(a)(ii) of the May 2004 Consultant Guidelines. The period of ineligibility shall begin on the date this decision issues.



Fathi Kemicha (Chair)

On behalf of the
World Bank Group Sanctions Board

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Hassane Cissé
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