

Date of issuance: May 7, 2019

**Sanctions Board Decision No. 120
(Sanctions Case No. 508)**

**IDA Credit No. 4847-GH
Ghana**

Decision of the World Bank Group¹ Sanctions Board imposing (i) a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 508 (the “Respondent Firm”), together with certain Affiliates, with a minimum period of ineligibility of three (3) years and five (5) months beginning from the date of this decision; and (ii) a sanction of debarment on the individual respondent in Sanctions Case No. 508 (the managing director of the Respondent Firm, hereinafter referred to as the “Individual Respondent”), together with certain Affiliates, for a period of nine (9) months beginning from the date of this decision.² These sanctions are imposed on the Respondent Firm for fraudulent practices, and on the Individual Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board convened as a panel composed of J. James Spinner (Chair), Alejandro Escobar, and Mark Kantor to review this case. A hearing was held on March 6, 2019, at the World Bank Group’s headquarters in Washington, D.C. at the request of the Respondent Firm and the Individual Respondent (together, the “Respondents”), and in accordance with Section III.A, sub-paragraph 6 of the Sanctions Procedures. The World Bank Group’s Integrity Vice Presidency (“INT”) participated in the hearing through its representatives attending in person. The Respondents were represented by their outside counsel and the Individual Respondent, all attending in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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:

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 either of the Respondents. See infra Paragraph 67.

- i. Notice of Sanctions Proceedings issued by the World Bank’s Acting Suspension and Debarment Officer (the “Acting SDO”) to the Respondents on February 23, 2018 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) submitted by INT to the Acting SDO (undated);
- ii. Explanation submitted by the Respondents to the Acting SDO on March 28, 2018 (the “Explanation”);
- iii. Response submitted by the Respondents to the Secretary to the Sanctions Board on May 29, 2018 (the “Response”);
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on July 6, 2018 (the “Reply”);
- v. Additional submission filed by the Respondents with the Secretary to the Sanctions Board on February 21, 2019 (the “Additional Submission”); and
- vi. INT’s comments on the Additional Submission filed by INT with the Secretary to the Sanctions Board on March 1, 2019 (the “INT’s Comments”).

3. On February 23, 2018, 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 two specified Affiliates of the Respondent Firm and any other entity that is an Affiliate directly or indirectly controlled by either of the Respondents, from eligibility³ 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 the sanction of debarment with conditional release for each of the Respondents, together with any other entity that is an Affiliate directly or indirectly controlled by either of the Respondents.⁵ For the Respondent Firm and its specified Affiliates, the Acting SDO initially recommended a minimum period of ineligibility of three (3) years and four (4) months, after which period the 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, 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 the Respondent Firm has been sanctioned, and (ii) adopted and implemented an effective integrity compliance program in a manner

³ The full scope of ineligibility effected by a temporary suspension is set out 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 in the capacity as administrator of trust funds funded by donors, has provided financing in the form of a loan, credit or grant and governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. See Sanctions Procedures at Section II(e).

⁵ This includes two specified Affiliates identified in the Notice as controlled by the Respondent Firm.

satisfactory to the Bank. For the Individual Respondent, the Acting SDO initially recommended a minimum period of ineligibility of three (3) years, after which period the Individual Respondent may be released from ineligibility only if he has, in accordance with Section III.A, subparagraph 9.03 of the Sanctions Procedures, demonstrated to the ICO that he has (i) taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned, (ii) completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and (iii) adopted and implemented an effective integrity compliance program with respect to any entity that is an Affiliate directly or indirectly controlled by him in a manner satisfactory to the Bank. Upon review of the Respondents' Explanation, the SDO revised the recommended minimum periods of ineligibility to two (2) years for each of the Respondents and specified Affiliates of the Respondent Firm.

II. GENERAL BACKGROUND

4. This case arises in the context of the Oil and Gas Capacity Building Project (the "Project") in the Republic of Ghana (the "Recipient"), which sought to (i) improve management and regulatory capacity while enhancing transparency, and (ii) strengthen local technical skills in the Recipient's emerging oil and gas sector. On April 11, 2011, IDA and the Recipient entered into a financing agreement (the "Financing Agreement") to provide the equivalent of approximately US\$38 million for the Project. The Project became effective on May 20, 2011, and closed on June 30, 2015.

5. In November 2012, the relevant implementation unit for the Project (the "PIU") issued bidding documents for the Procurement of Petroleum Laboratory Goods and Equipment for Kwame Nkrumah University of Science and Technology ("KNUST") comprising ten lots. In January 2013, the Respondent Firm entered into a consortium agreement with another entity (together, the "KNUST Consortium") for purposes of bidding for the KNUST tender. On January 19, 2013, the KNUST Consortium submitted a bid for four lots in the KNUST tender. On April 19, 2013, the PIU and the KNUST Consortium signed contracts for Lots 2, 4, and 7 (the "KNUST Contracts").

6. In June 2013, the PIU issued bidding documents for the Procurement of Goods and Equipment for Oil and Gas Technical Capacity Building in Selected Technical Training Institutions ("COTVET") comprising four lots. In July 2013, the Respondent Firm entered into another consortium agreement for purposes of bidding for the COTVET tender (the "COTVET Consortium"). On July 26, 2013, the COTVET Consortium submitted a bid for all four lots in the COTVET tender. The PIU and the COTVET Consortium signed contracts for Lots 1 and 4 on November 11, 2013, and Lot 2 on December 27, 2013 (the "COTVET Contracts").

7. INT alleges that the Respondent Firm engaged in a fraudulent practice by submitting four falsified manufacturer authorization letters ("MALs") in connection with the KNUST and COTVET tenders in order to comply with the requirements of the respective bidding documents. INT further alleges that the Respondents engaged in a fraudulent practice by failing to disclose an agent in relation to the COTVET Consortium's bid for the COTVET tender.

III. APPLICABLE STANDARDS OF REVIEW

8. *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.

9. *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.

10. *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.

11. *Applicable definitions of fraudulent practices:* The Financing Agreement provided that the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 1, 2006, and May 1, 2010) (the “May 2010 Procurement Guidelines”) would apply. The bidding documents for the KNUST and COTVET tenders referenced the applicability of the World Bank’s Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers (January 2011) (the “January 2011 Procurement Guidelines”), and set out a definition of “fraudulent practice” consistent with the common definition in the May 2010 and January 2011 Procurement Guidelines. Paragraph 1.14(a)(ii) of the May 2010 Procurement Guidelines and Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines define the term “fraudulent practice” as “any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.” A footnote to this definition clarifies that the term “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

12. *Fraud allegation 1:* INT alleges that, as part of the bids of the KNUST Consortium and the COTVET Consortium, the Respondent Firm knowingly submitted four falsified MALs, which were later repudiated by the purported issuers and signatories. According to INT, the Respondent Firm submitted these falsified documents in order to meet tender requirements and qualify for the award of the KNUST and COTVET Contracts.

13. *Fraud allegation 2:* INT alleges that the Respondents knowingly or recklessly omitted to disclose the Respondent Firm's agreement to pay an agent in connection with the COTVET tender.

14. *Sanctioning factors:* INT asserts that aggravation is warranted with respect to the Respondent Firm for repeated pattern of conduct and management's role. INT submits as mitigating factors the Respondents' cooperation and voluntary restraint, though undercut by the Respondents' purportedly false statements; and the Respondent Firm's limited adoption of a corporate compliance program.

B. The Respondents' Principal Contentions in the Explanation and the Response

15. *Due process:* The Individual Respondent asserts that INT did not name him as a respondent in the show-cause letter; and that the Individual Respondent "has not, until [these sanctions proceedings], been on notice of potential allegations against him in his personal capacity, nor has he had the opportunity to present his response to those allegations to INT."

16. *Fraud allegation 1:* The Respondent Firm accepts responsibility for the submission of the MALs identified in the SAE and acknowledges that they are inauthentic.

17. *Fraud allegation 2:* The Respondent Firm argues that INT presents insufficient evidence to show that the Respondent Firm failed to disclose an agent in the bid for the COTVET tender. The Respondent Firm asserts that it engaged the services of an individual to perform business development activities (the "Business Development Consultant") not with respect to the bids in either the KNUST or COTVET tenders, but rather in relation to other potential projects in the country of the Recipient. According to the Respondent Firm, it used documents referencing the KNUST or COTVET Contracts to manage the company's cash flow and make payments to the Business Development Consultant for activities unrelated to the KNUST or COTVET tenders. As for the Individual Respondent, he argues that INT presents insufficient evidence of his direct involvement in the alleged misconduct. The Individual Respondent also asserts that, absent any culpability of the Individual Respondent in the alleged misconduct, alternative theories of liability do not apply in this case.

18. *Sanctioning Factors:* The Respondent Firm opposes INT's assertion of aggravation on the basis of repeated pattern of conduct and management's role. The Respondent Firm seeks mitigation for internal action against responsible individuals, compliance program, cooperation with INT's investigation, admission and acceptance of responsibility, voluntary restraint, period of temporary suspension served, passage of time, lack of harm, lack of prior history of misconduct, and collateral consequences of debarment. The Individual Respondent requests mitigation on the basis of minor role, internal action against responsible individuals, compliance program, cooperation, voluntary restraint, period of temporary suspension served, passage of time, lack of harm, lack of prior history of misconduct, and collateral consequences of debarment.

C. INT's Principal Contentions in the Reply

19. With respect to the Individual Respondent's due process concern, INT asserts that the Individual Respondent has received ample opportunity to contest his culpability, including by

submitting the Explanation and Response, and requesting a hearing. With regard to the merits, INT argues that the Respondent Firm's explanation that the company had paid the Business Development Consultant with KNUST and COTVET revenues for unrelated business development services implies a new set of misrepresentations. INT reiterates its allegation regarding the Respondent Firm's failure to disclose the Business Development Consultant in the COTVET Consortium's bid and reasserts the Individual Respondent's culpability for the misconduct. With respect to the sanctioning factors, INT reiterates those discussed in the SAE and adds that the Respondent Firm deserves some mitigation for admission of wrongdoing and acceptance of responsibility, and that both Respondents deserve some mitigation for the passage of time. INT also submits that the periods of temporary suspension served should be considered in the determination of sanctions. However, INT contends that no mitigation should be granted to (i) the Respondent Firm for its other asserted remedial measures; (ii) the Individual Respondent for his asserted minor role; and (iii) the Respondents for lack of harm, lack of prior misconduct, or any collateral consequences of debarment.

D. The Respondents' Principal Contentions in Their Additional Submission

20. On February 21, 2019, the Respondents requested that the Sanctions Board Chair admit into the record the Additional Submission detailing the compliance measures implemented by the Respondent Firm. In the Additional Submission, the Respondents reported on the progress of the Respondent Firm's compliance program, including the engagement of an external consultant to develop key aspects of the program, the distribution of the Respondent Firm's Code of Conduct to its employees, and the hiring of an ethics officer. On February 22, 2019, the Sanctions Board Chair admitted the Additional Submission into the record and invited INT to comment.

E. Principal Contentions in INT's Comments

21. In INT's Comments, filed in response to the Sanctions Board Chair's invitation, INT argues that the timing of the enhancement of the Respondent Firm's compliance program diminishes the mitigating credit that they deserve for such efforts. INT also argues that the Respondent Firm's compliance program and implementation efforts remain nascent, and do not correspond with the plans that the Respondents have articulated in the Response. Further, INT asserts that the policies appear to be "off-the-shelf canned materials," rather than crafted specifically for the Respondent Firm; and contain information gaps that raise questions about their scope, implementation, and efficacy.

F. Presentations at the Hearing

22. At the hearing, INT stated that the Respondent Firm does not contest the allegation that employees of the company submitted four fraudulent MALs in connection with the bids for the KNUST and COTVET tenders. Further, INT argued that the Business Development Consultant served as an agent for the COTVET Consortium, as evidenced by, inter alia, the description of the services reflected in the agency agreement and the amount of payments made to the Business Development Consultant. INT next argued that the Individual Respondent is culpable for omitting to disclose the agency relationship with the Business Development Consultant. Specifically, INT asserted that knowledge may be inferred from the Individual Respondent's repeated approvals of,

and signatures on, the agency agreement, the COTVET bid, the COTVET Contracts, and the authorization of payments made to the Business Development Consultant; the relatively small size of the Respondent Firm; and the substantial amounts of the payments made to the Business Development Consultant. Finally, while many of the sanctioning factors were addressed in INT's Reply, INT highlighted its assertion that the Respondent Firm engaged in two distinct fraudulent practices that warrant multiplication of the base sanction, and that the Respondent Firm's asserted compliance measures were belated and incipient.

23. The Respondent Firm emphasized that it is a small, young, closely-held company. It reiterated its admission with respect to having submitted four falsified MALs but disputed the second allegation of fraud. The Respondent Firm contended that the agency agreement with the Business Development Consultant and the invoices in the record are ambiguous, so that no conclusion can be drawn as regards their relationship with either the KNUST or COTVET tenders. Lastly, the Respondent Firm argued that it provided extensive cooperation during INT's investigation, it had suffered from its voluntary restraint and temporary suspension, and a considerable amount of time had passed from the termination of its settlement negotiations with INT up to the issuance of the Notice.

24. The Individual Respondent asserted that he did not fully devote his time to the Respondent Firm, as he had also served as a director of the Respondent Firm's partner in the KNUST Consortium and the COTVET Consortium. The Individual Respondent next contended that INT's reliance on the agency agreement and his signature on the bid for the COTVET tender is misplaced, considering that the agency agreement was concluded months before the invitation to bid. The Individual Respondent further argued that his signature on the agency agreement was not in the "signature box" of the document, but rather on the bottom of the pages. The Individual Respondent explains that he signed the agency agreement in connection with the invoice issued by the Business Development Consultant in 2014 only for "remittance purposes," long after the COTVET Consortium's bid had been submitted. According to the Individual Respondent, there is no evidence that he had any knowledge of the Respondent Firm's relationship with the Business Development Consultant for the COTVET tender at the time of bid submission.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

25. The Sanctions Board will first consider the due process issue. The Sanctions Board will next consider whether it is more likely than not that the alleged fraudulent practices occurred, and if so, whether either 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. Due Process

26. The Individual Respondent asserts that INT did not name him as a respondent in the show-cause letter, which alleged misconduct only with respect to the Respondent Firm, and its KNUST Consortium and COTVET Consortium partner. The Individual Respondent argues that, as a result, he "has not, until [these sanctions proceedings], been on notice of potential allegations against him in his personal capacity, nor has he had the opportunity to present his response to those allegations to INT." INT argues that the Individual Respondent has received ample opportunity to contest his

culpability, including by submitting an Explanation and Response, and requesting a hearing in this case. The Sanctions Board finds that the Individual Respondent was sufficiently informed of the allegations against him when he received the Notice, which includes the SAE that detailed INT's allegations. The Individual Respondent has also been afforded ample opportunity to be heard and respond to these allegations, as evidenced by his submission of the Explanation and the Response, and his participation in the oral hearing in this case. Further, while a show-cause letter would ordinarily inform respondents of the allegations against them, and give them an opportunity to respond to those allegations,⁶ the applicable Sanctions Procedures do not require INT to issue show-cause letters to respondents prior to initiating sanctions proceedings.⁷ In these circumstances, the Sanctions Board finds no unfairness or fundamental procedural flaw that affected the Individual Respondent's ability to mount a meaningful response to INT's allegations.

B. Evidence of Fraudulent Practices

27. In accordance with the definition of "fraudulent practice" under the May 2010 and January 2011 Procurement 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 submission of falsified MALs

a. Act or omission, including a misrepresentation

28. INT states that the KNUST Consortium and the COTVET Consortium submitted bids for the KNUST and COTVET tenders that included four false MALs. In past decisions finding that the respondents submitted forged documents, the Sanctions Board has relied primarily on written statements from the parties named in or supposedly issuing these documents, as well as the respondents' own admissions.⁸ In this case, the Respondent Firm "acknowledges that certain MALs outlined in the SAE, which its personnel procured and submitted in connection with the KNUST and COTVET tenders, were not authentic documents." The Respondent Firm "accepts responsibility for submitting these MALs, which it learned . . . were created by an inadequately trained and supervised . . . employee." In addition, the record contains written communications from the purported issuers of the subject MALs, each denying issuance of these documents. Considering the totality of the record, including the Respondent Firm's own statements, the Sanctions Board finds that it is more likely than not that the employees of the Respondent Firm

⁶ Sanctions Board Decision No. 96 (2017) at para. 46.

⁷ Sanctions Board Decision No. 81 (2015) at para. 34.

⁸ See, e.g., Sanctions Board Decision No. 61 (2013) at para. 21 (finding misrepresentation on the basis of written denials of authenticity by the purported issuers and signatories of the documents at issue, as well as the additional indicia of falsity on the face of the documents and the respondents' tacit acknowledgement that the documents are inauthentic); Sanctions Board Decision No. 79 (2015) at para. 21 (finding misrepresentation based on written denials of authenticity by the purported issuer as well as a statement by the respondent's counsel, during the Sanctions Board hearing, that the document in question was false).

engaged in a misrepresentation by submitting falsified MALs in its bids for the KNUST and COTVET tenders.

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

29. INT alleges that the Respondent Firm knowingly generated or obtained the falsified MALs since there is no evidence that they came from another source. In the past, the Sanctions Board has found sufficient evidence of knowledge in cases of alleged fraud where the respondents directly admitted to having acted knowingly.⁹ As discussed in the previous paragraph, the Respondent Firm “acknowledges that that certain MALs outlined in the SAE . . . were not authentic documents” that were “created by an inadequately trained and supervised . . . employee.” The Respondent Firm “accepts that it failed to provide sufficient training and guidance to and oversight of the individuals involved. Considering the record as a whole, including the Respondent Firm’s statements, the Sanctions Board finds that it is more likely than not that employees of the Respondent Firm acted knowingly in submitting the falsified MALs.

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

30. The Sanctions Board has consistently held that, where the record demonstrates that a misrepresentation was made in response to a tender requirement, the intent to obtain a benefit or avoid an obligation may be inferred.¹⁰ Here, the bidding documents for the KNUST and COTVET tenders explicitly required the submission of MALs from bidders that do not manufacture or produce the goods they offer to supply. As the Respondent Firm’s submission of falsified MALs was in response to this requirement, the Sanctions Board finds that it is more likely than not that the Respondent Firm’s staff did so in order to establish the eligibility of the KNUST Consortium and the COTVET Consortium, with the intent to obtain the KNUST and COTVET Contracts.

2. Fraud allegation 2: Alleged failure to disclose an agent

a. Act or omission, including a misrepresentation

31. INT alleges that the Respondents failed to disclose the Respondent Firm’s agency relationship with the Business Development Consultant with respect to the COTVET Contracts. The Respondent Firm asserts that, although the Business Development Consultant was compensated for work provided to the company, his services were not rendered in relation to either

⁹ See, e.g., Sanctions Board Decision No. 46 (2012) at para. 24 (finding that the misrepresentation was made knowingly, where the respondent’s employee who forged the signature on the bid document admitted that he knew he was not authorized to sign on behalf of the purported signatory); Sanctions Board Decision No. 49 (2012) at paras. 22, 24-25 (finding that the misrepresentation was carried out knowingly where the respondent and its affiliate admitted to creating and using forged documents).

¹⁰ See, e.g., Sanctions Board Decision No. 74 (2014) at para. 29; 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; Sanctions Board Decision No. 114 (2018) at paras. 40-42.

the KNUST or COTVET bids. According to the Respondent Firm, it had used certain documents that reference the KNUST or COTVET Contracts only “in an attempt to manage [its] rolling cash flow and to make payments” to the Business Development Consultant for activities unrelated to the KNUST or COTVET tenders. The Individual Respondent contends that he played no role in preparing the bid documents, which he signed only as required by his position in the company.

32. The Sanctions Board has previously found misrepresentation where the respondents failed to disclose any agency relationships, as well as agency commissions paid or to be paid to any agents, contrary to the disclosure obligations in the bidding documents.¹¹ In the present case, the bidding documents for the COTVET tender created an obligation of disclosure. Specifically, the bidding documents included a bid submission form, which provided a place for a bidder to disclose “commissions, gratuities, or fees [that] have been paid or are to be paid with respect to the bidding process or execution of the Contract,” including the recipient’s details, and the reason for and amount of payment. In its bid submission form, which was signed by the Individual Respondent, the COTVET Consortium identified one agent, but omitted to disclose the name of, and the payments made or to be made to, the Business Development Consultant. If the Business Development Consultant was an agent, then this omission is contrary to the disclosure obligation under the COTVET bidding documents.

33. The record reveals that, on April 20, 2013, the Respondent Firm and the Business Development Consultant entered into an agency agreement, which was signed by the Individual Respondent. Under this agency agreement, the Business Development Consultant was tasked “to handle [the] proposal” for a tender that references the KNUST tender number, but bears a description similar to Lot 2 of the COTVET tender. The Sanctions Board notes that, at the time of the signing of this agency agreement, the KNUST Consortium had already submitted its bids for, and had in fact successfully obtained, the KNUST Contracts. Further, the record contains invoices and corresponding wire transfers consistent with payment for services rendered in connection with Lot 2 of the COTVET tender. The most salient example is the following. The Business Development Consultant issued an invoice dated March 25, 2014, in the amount of US\$21,112 to the Respondent Firm for “Being Agency Commission” in relation to services that match the description of Lot 2 of the COTVET tender. The Individual Respondent’s signature appears on this invoice. On April 2, 2014, the Respondent Firm made a wire transfer to the Business Development Consultant in the amount of US\$21,112 for “BEING AGENCY COMMISSION.” These facts lead the Sanctions Board to conclude that it was more likely than not that the Business Development Consultant was engaged for, and paid on the basis of, services rendered in connection with Lot 2 of the COTVET tender.

34. The Sanctions Board finds the Respondent Firm’s defense unpersuasive. Specifically, the Respondent Firm argues that the Business Development Consultant’s services were unrelated to

¹¹ See, e.g., Sanctions Board Decision No. 83 (2015) at para. 50 (where a predecessor firm failed to disclose its agency agreement with, or subsequent payments to, its marketing consultant by certifying the absence of an agency agreement and commissions in its financial proposal, and by not making any such disclosures at any time); Sanctions Board Decision No. 92 (2017) at paras. 68-70 (where the respondent firm engaged and paid commissions to a marketing agent, but failed to disclose such payments contrary to the disclosure obligations under the bidding documents).

the KNUST or COTVET tenders, and that the company used documents that referenced the KNUST or COTVET Contracts for purposes of managing its cash flow and remitting payments to him – actions which, it should be noted, would also seem inappropriate. As discussed above, the agency agreement, and the invoices issued by, and the corresponding payments made to, the Business Development Consultant constitute sufficient evidence to show that the Respondent Firm more likely than not had a commission agent relationship with the Business Development Consultant for the COTVET tender. The Respondent Firm’s assertions are unsupported and, therefore, do not satisfactorily rebut the evidence in the record.

35. Considering the totality of the record, the Sanctions Board finds that it is more likely than not that the employees of the Respondent Firm, including the Individual Respondent, made a misrepresentation by failing to disclose its agency relationship with the Business Development Consultant in connection with the COTVET tender.

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

36. INT alleges that the Individual Respondent signed the agency agreement with the Business Development Consultant and, on behalf of the Respondent Firm, omitted to disclose the Business Development Consultant in the bid for the COTVET tender. INT asserts that the Respondent Firm’s payments to the Business Development Consultant demonstrate an effort to conceal the Business Development Consultant’s involvement in the COTVET tender that, in turn, reveal a knowing or reckless omission of facts. The Respondent Firm does not address this element. The Individual Respondent argues that INT has not provided evidence showing that, at the time that he signed the bid submission form, he knew or should have been aware that the document had an omission.

37. The record supports a finding that employees of the Respondent Firm, including the Individual Respondent, acted at least recklessly in failing to disclose the Respondent Firm’s agency relationship with the Business Development Consultant in the bid for the COTVET tender. In assessing recklessness, the Sanctions Board may consider whether circumstantial evidence indicates that a respondent was, or should have been, aware of a substantial risk – such as harm to the integrity of the World Bank’s procurement process due to false or misleading bid documents – but nevertheless failed to act to mitigate that risk.¹² Where circumstantial evidence is insufficient to infer subjective awareness of risk, the Sanctions Board has measured a respondent’s conduct against the common “due care” standard of the degree of care that the proverbial “reasonable person” would exercise in the circumstances.¹³ In other words, the question is whether the respondent knew or should have known of the substantial risk.¹⁴

38. As discussed in Paragraph 33, the Individual Respondent’s signature appears on the agency agreement and on the invoice dated March 25, 2014, both of which described the Business

¹² See, e.g., Sanctions Board Decision No. 82 (2015) at para. 31.

¹³ Id.

¹⁴ Id.

Development Consultant's services as relating to Lot 2 of the COTVET tender while referencing the KNUST tender number. In addition, the other invoices issued by, and evidence of wire transfers made to, the Business Development Consultant all bore inconsistent details and amounted to significant sums. Based on the discrepancies apparent on these documents, together with the timing of the invoices and wire transfers, and considering the quantum of the payments made to the Business Development Consultant, the Individual Respondent should have been aware of a substantial risk of misrepresentation regarding the Respondent Firm's relationship with the Business Development Consultant. The record shows that the Respondent Firm's employees, including the Individual Respondent, failed to take precautions commensurate with that risk. For instance, the Individual Respondent signed the agency agreement and the invoices despite the red flags apparent from the above-mentioned circumstances. Indeed, the Respondents acknowledge that the Respondent Firm's accounting practices and internal controls were lacking at the time of the misconduct.

39. The Individual Respondent argues in his defense that he "was only peripherally involved in reviewing bids for both the KNUST and COTVET tenders," as the Respondent Firm assigned the responsibilities of bid preparation and submission, and post-contract execution to two other employees. At the hearing, the Individual Respondent further argued that, since his signature on the agency agreement appears only at the bottom of the page rather than on the space reserved for the "Authorized Signatory," there is "no contemporaneous evidence that shows [his] knowledge of the relationship with [the Business Development Consultant] for this project at the time of the bid." According to the Individual Respondent, he signed the agency agreement and the invoice dated March 25, 2014, only "for remittance purposes, long after the bid was submitted." The Sanctions Board does not find these arguments persuasive. By relying completely on the employees purportedly responsible for bid preparation and contract execution, the Individual Respondent acted recklessly when he signed relevant documents and approved substantial payments to the Business Development Consultant despite the existence of red flags discussed in Paragraph 38 above. Further, even assuming that the Individual Respondent had in fact belatedly signed the agency agreement in connection with the payment of the Business Development Consultant's invoices, he still acted recklessly and took a substantial risk of misrepresentation by failing to first verify the Respondent Firm's relationship with the Business Development Consultant as reflected in the bid for the COTVET tender that he had earlier signed.

40. In light of the above, and the record as a whole, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees, including the Individual Respondent, acted recklessly in failing to disclose the Respondent Firm's commission agent relationship with the Business Development Consultant.

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

41. As noted above, the Sanctions Board has consistently decided that, where the record demonstrates that a misrepresentation was made in response to a tender requirement, the intent to

obtain a benefit or avoid an obligation may be inferred.¹⁵ Here, the bidding documents for the COTVET tender explicitly required disclosure of any commission agent relationships. The failure of the Respondent Firm's employees, including the Individual Respondent, to make such disclosure with respect to the Business Development Consultant relates directly to the requirements under the COTVET tender. In these circumstances, the Sanctions Board finds that it is more likely than not that the Respondents engaged in an omission of facts in order to obtain a financial or other benefit.

C. The Respondent Firm's Liability for the Acts of Its Employees

42. 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.¹⁶ In the present case, the record supports a finding that the Respondent Firm's staff engaged in the fraudulent practices in accordance with the scope of their respective duties and with the purpose of serving the interests of the company. For instance, evidence shows that employees of the Respondent Firm responsible for submitting the falsified MALs did so in order to satisfy the requirements of the KNUST and COTVET tenders. Moreover, the Individual Respondent's reckless failure to disclose the Respondent Firm's agency relationship with the Business Development Consultant occurred within the course and scope of his employment in the company. There is no indication in the record that any of the employees, including the Individual Respondent, acted for any purpose other than serving the Respondent Firm. Lastly, the Respondent Firm does not present, and the record does not provide any basis for, a rogue-employee defense. Thus, the Sanctions Board finds the Respondent Firm liable for the sanctionable practices carried out by its employees.

D. Sanctioning Analysis

1. General framework for determination of sanctions

43. 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.

¹⁵ See, e.g., Sanctions Board Decision No. 61 (2013) at para. 28; 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.

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

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.

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.¹⁷ 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.¹⁸

45. 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.

46. 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. Plurality of sanctionable practices

47. As the Sanctions Board finds that the Respondent Firm engaged in multiple counts of misconduct, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding "Cumulative Misconduct." The Sanctioning Guidelines provide in relevant part:

Where the respondent has been found to have engaged [in] factually distinct[] incidences of misconduct (*e.g.*, corrupt practices and collusion in connection with the same tender) or in misconduct in different cases (*e.g.*, in different projects or in contracts under the same project but for which the misconduct occurred at significantly different . . . times), each separate incidence of misconduct may be considered separately and sanctioned on a cumulative basis. In the alternative, the fact that the respondent engaged in multiple incidences of misconduct may be considered an aggravating factor under Section IV.A.1 ["Repeated Pattern of Conduct"] below. (emphasis in original)

48. Where respondents engaged in unrelated sanctionable practices, the Sanctions Board has considered the gravity of each allegation separately and determined that a distinct base sanction

¹⁷ See, *e.g.*, Sanctions Board Decision No. 40 (2010) at para. 28.

¹⁸ See Sanctions Board Decision No. 44 (2011) at para. 56.

should be applied to each distinct count,¹⁹ even where all misconduct related to the same project or contract.²⁰ By contrast, the Sanctions Board applied aggravation rather than a separate sanction for multiple sanctionable practices in a case where the counts of misconduct were closely interrelated, with the fraud intended to prevent the discovery of the corrupt practices, the investigation into which was later obstructed.²¹ The record in this case reflects that the Respondent Firm engaged in two separate and unrelated fraudulent practices in connection with the KNUST and COTVET tenders. Specifically, the submission of falsified MALs was unrelated to the failure to disclose the commission agent relationship with the Business Development Consultant. In these circumstances, the Sanctions Board finds that each count of fraud was distinct from, and not merely a means of furthering, the other count. Accordingly, the Sanctions Board concludes that the plurality of the Respondent Firm's sanctionable practices warrants multiplication, rather than aggravation, of the base sanction for the Respondent Firm.

3. Factors considered in the present case

a. Severity of the misconduct

49. 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 repeated pattern of conduct and management's role in the misconduct as examples of severity.

50. *Repeated pattern of conduct*: INT asserts that aggravation is warranted for the Respondent Firm's submission of multiple forged MALs from different firms, across two bids in two tenders, and six months apart; and failure to disclose the Business Development Consultant as an agent. The Respondent Firm argues that the MAL submissions formed part of a single scheme and thus do not deserve aggravation. As discussed in Paragraph 48, the Respondent Firm engaged in two distinct fraudulent practices that warrant multiplication of the base sanction for the Respondent Firm. Thus, the remaining issue is whether the submission of fraudulent MALs warrant aggravation for repetition. In past cases, the Sanctions Board has applied aggravation where the misconduct related to multiple contracts and/or projects,²² but has declined to apply aggravation where the sanctionable conduct was attributed to a "single scheme"²³ or a "single course of

¹⁹ See, e.g., Sanctions Board Decision No. 102 (2017) at para. 66 (applying cumulative sanctions where the respondent engaged in distinct corrupt and fraudulent practices).

²⁰ See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151 (applying cumulative sanctions where the respondents engaged in multiple distinct counts of misconduct, all relating to the same project); Sanctions Board Decision No. 97 (2017) at para. 66 (applying cumulative sanctions where the respondents engaged in fraudulent and corrupt practices relating to the same project and contract).

²¹ Sanctions Board Decision No. 60 (2013) at para. 143.

²² See, e.g., Sanctions Board Decision No. 72 (2014) at para. 56 (applying aggravation for repetition where misrepresentations were made months apart and appeared in separate bids related to two contracts under different projects).

²³ See, e.g., Sanctions Board Decision No. 63 (2014) at para. 97 (declining to apply aggravation for repetition where respondents made multiple corrupt payments pursuant to a single scheme under the same contract).

action.”²⁴ In this case, the Sanctions Board finds that the fraudulent MALs were submitted for two contracts under the same Project and this conduct formed part of a single course of action. Consistent with precedent, the Sanctions Board declines to apply aggravation on this basis.

51. *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.²⁵ INT alleges that aggravation of the Respondent Firm’s sanction is warranted for the involvement of the Individual Respondent, as the Respondent Firm’s managing director, in the failure to disclose the Business Development Consultant as an agent in the COTVET bid. The Respondent Firm argues that aggravation on this basis requires evidence of direct participation, and that the Individual Respondent played only a peripheral role in bid preparation. As detailed in Paragraphs 38-39 above, the Individual Respondent recklessly signed the COTVET bid that failed to disclose the agency relationship with the Business Development Consultant despite having also signed the agency agreement with him. In these circumstances, the Sanctions Board finds that aggravation is warranted with respect to the Respondent Firm for the Individual Respondent’s involvement in the fraudulent practice.

b. Minor role

52. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent “played a minor role in the misconduct.” Section V.A of the Sanctioning Guidelines states that mitigation may be warranted where “no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct.” The Sanctions Board has declined to grant mitigation where the respondent firm’s managing director repeatedly signed and approved submission of falsified bid documents without verification and controls.²⁶ The Individual Respondent seeks mitigation for his “lack of demonstrated involvement,” arguing that he played only a peripheral role in bid preparation. INT opposes any mitigation, arguing that the Individual Respondent was instrumental in the misrepresentation of the Business Development Consultant’s role in the COTVET bid, considering that the Individual Respondent reviewed, approved, and signed the bid for submission. As discussed in Paragraphs 38-39 above, the Individual Respondent recklessly misrepresented the commission agent relationship with the Business Development Consultant and thereby personally participated in the misconduct. On the

²⁴ See, e.g., Sanctions Board Decision No. 79 (2015) at para. 39 (declining to apply aggravation for repetition where documents constituting the respondent’s fraudulent misrepresentations were prepared in a single course of action before being submitted, in two batches in the same week, in several bid packages for contracts under the same project).

²⁵ See, e.g., Sanctions Board Decision No. 102 (2017) at para. 69.

²⁶ See, e.g., Sanctions Board Decision No. 54 (2012) at paras. 25, 37-38

basis of this record and consistent with precedent,²⁷ the Sanctions Board thus declines to apply mitigation under this factor.

c. Voluntary corrective action

53. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies several examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of those actions to be considered as potential indicia of the respondent's genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.²⁸

54. *Internal action against responsible individual:* Section V.B.2 of the Sanctioning Guidelines states that mitigation may be appropriate where “[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative.” The Sanctioning Guidelines add that “[t]he timing of the action may indicate the degree to which it reflects genuine remorse and intention to reform, or a calculated step to reduce the severity of the sentence.” The Sanctions Board has previously declined to apply mitigation where the respondent failed to substantiate its stated action with evidence.²⁹ In this case, the Respondents assert that they have terminated the employee who created the fraudulent MALs, as well as his supervisor for his lack of oversight. The Respondent Firm also claims that none of the employees involved in the preparation of the KNUST and COTVET bids are currently employed by the company. INT opposes any mitigation on the ground that the Respondent Firm failed to provide evidence that it has terminated the referenced employees. Considering that the Respondents do not provide and the record does not contain evidence of the asserted termination, the Sanctions Board does not find mitigation warranted under this factor.

55. *Effective compliance program:* Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent's “[e]stablishment or improvement, and implementation of a corporate compliance program.” The Sanctions Board has granted mitigation where the respondent's asserted compliance measures appeared to address the type of misconduct at issue³⁰ and/or at least some of the elements set out in the World Bank

²⁷ See, e.g., Sanctions Board Decision No. 54 (2012) at paras. 25, 37-38 (declining mitigation where the respondent firm's managing director repeatedly signed and approved the submission of falsified bid documents without verification and controls); Sanctions Board Decision No. 79 (2015) at para. 41 (declining mitigation where the respondent's senior manager signed the bids with the false certificates despite the evident lack of any verification or controls).

²⁸ See, e.g., Sanctions Board Decision No. 63 (2014) at para. 104.

²⁹ See, e.g., Sanctions Board Decision No. 61 (2013) at para. 41; Sanctions Board Decision No. 68 (2014) at para. 39; Sanctions Board Decision No. 95 (2017) at para. 45.

³⁰ See, e.g., Sanctions Board Decision No. 71 (2014) at para. 94.

Group's Integrity Compliance Guidelines (the "Integrity Compliance Guidelines").³¹ The Sanctions Board has also taken into account the timing of an asserted compliance program as an indication of good faith or a genuine interest to reform (i.e., when implemented prior to the issuance of the Notice).³² In this case, the Respondent Firm seeks mitigation for its efforts in implementing a corporate compliance program and introducing control measures directly relating to the fraudulent misconduct. The Individual Respondent also requests mitigation under this factor for, *inter alia*, having led the Respondent Firm's "revised agent engagement processes." INT asserts that the Respondents deserve some mitigation for their efforts to enhance the Respondent Firm's corporate compliance program. However, INT points out that the Respondents only retained their outside compliance program consultant more than two years after the Respondents indicated in the response to the show-cause letter that they would implement reforms. According to INT, the timing suggests that the compliance initiatives were driven more by a desire for sanction mitigation than by genuine remorse or intent to reform.

56. As discussed in Paragraph 21, INT argued, *inter alia*, that the Respondent Firm's compliance measures remain nascent, and the policies and information contain significant information gaps. The Sanctions Board notes that, without prejudice to any future assessment that the ICO may conduct, the Respondents' asserted compliance measures appear to address the types of misconduct at issue in this case and most of the principles set out in the Integrity Compliance Guidelines. For instance, the Respondent Firm's revised Code of Conduct includes a section on fraud that specifically prohibits the recording of inaccurate accounting entries; and the Compliance Responsibility Structure Policy establishes a formal procedure to investigate misconduct, and articulates the roles and responsibilities of the company's Ethics Officer. However, the record shows that the Respondents began implementing the Respondent Firm's compliance program only in June 2018. Accordingly, the Sanctions Board applies only partial mitigating credit on this ground.

d. Cooperation

57. 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." Sections V.C. of the Sanctioning Guidelines identifies a respondent's assistance with INT's investigation, admission or acceptance of guilt or responsibility, and voluntary restraint as examples of cooperation.

58. *Assistance and/or ongoing cooperation:* Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance to INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance

³¹ See, e.g., Sanctions Board Decision No. 56 (2013) at para. 69 (finding that the asserted compliance measures addressed, at least in part, some of the elements suggested in the Integrity Compliance Guidelines); Sanctions Board Decision No. 71 (2014) at para. 94 (finding that the asserted compliance measures appeared to address most of the principles set out in the Integrity Compliance Guidelines).

³² See, e.g., Sanctions Board Decision No. 60 (2013) at para. 130; Sanctions Board Decision No. 63 (2014) at para. 107; Sanctions Board Decision No. 71 (2014) at para. 94.

in an investigation,” as well as “the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” The Sanctions Board has granted mitigation where the respondent met with INT on several occasions and provided relevant information and documentation,³³ or replied to INT’s show-cause letter and follow-up inquiries.³⁴ INT argues that the Respondents deserve mitigation for their cooperation, but limited by their untruthful interview statements. The Respondents deny giving false statements to INT and instead seek full mitigating credit for providing INT with extensive access to company records and personnel during INT’s 11-day investigation, and responding to the show-cause letter. The record shows that the Respondents assisted INT during its 11-day audit, allowing INT access to the Respondent Firm’s records and personnel, and providing INT with documents. The Individual Respondent, along with other employees of the Respondent Firm, participated in two interviews with INT. Further, the Respondents gave a detailed response with several attachments to INT’s show-cause letter. The Sanctions Board finds that the Respondents’ efforts to cooperate with INT, taken as a whole, warrants mitigation.

59. *Admission/acceptance of guilt/responsibility:* Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent’s admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance should be given more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. The Sanctions Board has considered the timing and investigative value of admissions, as well as their scope (i.e., whether the admission related only to the conduct alleged or also accepted responsibility).³⁵ The Respondent Firm seeks mitigation for admitting to, and accepting responsibility for, the submission of fraudulent MALs. INT asserts that the Respondent Firm deserves only some mitigation for its belated admission. The Sanctions Board notes that, while the Respondent Firm explicitly admitted that its employees prepared and submitted the fraudulent MALs, and that it accepts full responsibility for its employees’ actions, this admission and acceptance of responsibility came only in the Response. Considering the belated timing of the Respondent Firm’s admission, the Sanctions Board finds that the Respondent Firm deserves limited mitigating credit under this factor.

60. *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. In past cases, the Sanctions Board’s decision to apply or deny mitigation has depended on whether or not the respondents’ asserted voluntary restraint was corroborated by relevant evidence.³⁶ The Respondents request mitigation for their voluntary restraint from the issuance of the show-cause letter on August 21, 2015. INT asserts that the

³³ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 58; Sanctions Board Decision No. 92 (2017) at para. 122.

³⁴ See, e.g., Sanctions Board Decision No. 66 (2014) at para. 42; Sanctions Board Decision No. 92 (2017) at para. 122.

³⁵ See generally, Sanctions Board Decision No. 60 (2013) at para. 134; Sanctions Board Decision No. 61 (2013) at para. 47; Sanctions Board Decision No. 99 (2017) at paras. 33-34; Sanctions Board Decision No. 116 (2019) at para. 30.

³⁶ See Sanctions Board Decision No. 73 (2014) at para. 50 (denying mitigation where the respondent did not provide evidence of a policy or practice of voluntary restraint); Sanctions Board Decision No. 102 (2017) at para. 80 (applying mitigation where the respondent provided contemporaneous evidence of its withdrawal from nine bids).

Respondents deserve only some mitigation, considering that the Respondent Firm “continued its voluntary restraint without informing INT; after its settlement discussions (and its cooperation with INT) ceased; and with the knowledge that INT would soon be seeking World Bank sanctions against it – giving it a neutral business reason to reposition its contracts away from Bank-financed projects.” The record includes a letter dated September 4, 2015, signed by the Individual Respondent, informing INT of the Respondent Firm’s decision to voluntarily refrain from bidding on Bank-financed projects beginning on the date of INT’s show-cause letter. The Respondents likewise confirmed at the hearing that this voluntary restraint remains effective. Accordingly, the Sanctions Board finds that mitigation is warranted for the Respondents’ voluntary restraint.

e. Periods of temporary suspension

61. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the Respondents’ respective periods of temporary suspension. The Respondents have been suspended since the issuance of the Notice on February 23, 2018. The Sanctions Board notes that the length of the sanctions proceedings and the periods of temporary suspension were prolonged by approximately six months due to the Respondents’ requests for postponement of the hearing, which was rescheduled from its original date in September 2018.³⁷

f. Other considerations

62. 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.”

63. *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.³⁸ 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.³⁹ Here, the Respondents seek mitigation under this factor, asserting that at the time of the submission of the Response, over five years have lapsed since the Respondent Firm submitted its bid for the KNUST tender, over four and a half years since it submitted its bid for the COTVET tender, and over three years since INT began investigating this matter. INT asserts that the Respondents deserve only some mitigation since the Respondents overstate their claims of prejudice and the events at issue were barely two years old

³⁷ See Sanctions Board Decision No. 98 (2017) at para. 67.

³⁸ 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).

³⁹ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71; Sanctions Board Decision No. 83 (2015) at para. 102.

at the time of INT's inquiry. The record shows that, at the time of the issuance of the Notice, approximately five years have elapsed since the KNUST Consortium and the COTVET Consortium submitted their respective bids for the KNUST and COTVET tenders, and more than three years have passed since the Bank appears to have first become aware of potential misconduct. The Sanctions Board finds that mitigation is warranted under these circumstances.

64. *Lack of harm:* The Respondents request mitigation on the ground that no harm to the Project was caused by the alleged misconduct. The Sanctions Board has consistently held that the absence of harm to the project is not a ground for mitigation, but a neutral fact.⁴⁰

65. *Absence of past misconduct:* The Respondents seek mitigation based on the lack of prior history of misconduct. INT opposes mitigation on this basis. The Sanctions Board has repeatedly held that, while a record of past sanctionable misconduct may merit treatment as an aggravating factor, its absence is considered a neutral fact.⁴¹ Therefore, the Sanctions Board declines to apply any mitigating credit on this basis.

66. *Collateral consequences of debarment:* The Respondents asserts that they deserve mitigation for the significant adverse effects of the Respondent Firm's voluntary restraint and temporary suspension, and for effects that a sanction would bring on the Individual Respondent's ability to effectively discharge his duties. Consistent with precedent,⁴² the Sanctions Board does not find mitigation to be justified for the collateral consequences of debarment on the Respondents.

E. Determination of Appropriate Sanctions

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

- i. the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm,⁴³ 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;⁴⁴ (ii) be a nominated sub-contractor, consultant, manufacturer

⁴⁰ See, e.g., Sanctions Board Decision No. 71 (2014) at para. 85; Sanctions Board Decision No. 73 (2014) at para. 45; Sanctions Board Decision No. 79 (2015) at para. 40; Sanctions Board Decision No. 88 (2016) at para. 61.

⁴¹ See, e.g., Sanctions Board Decision No. 117 (2019) at para. 44.

⁴² See, e.g., Sanctions Board Decision No. 79 (2015) at para. 56; Sanctions Board Decision No. 92 (2017) at para. 131.

⁴³ The Sanctions Board did not make any findings as to which entities, if any, are controlled Affiliates.

⁴⁴ 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.

or supplier, or service provider⁴⁵ 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 five (5) months beginning from the date of this decision, the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, may be released from ineligibility only if the Respondent Firm 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. This integrity compliance program should include providing the Individual Respondent and other members of the Respondent Firm's senior management with training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics. This sanction is imposed on the Respondent Firm for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the May 2010 Procurement Guidelines and Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines; and

- ii. the Individual Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Individual Respondent,⁴⁶ shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;⁴⁷ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁴⁸ of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects for a period of nine (9) months beginning from the date of this decision. This sanction is imposed on the Individual Respondent for a fraudulent practice as defined in Paragraph 1.14(a)(ii) of the May 2010 Procurement Guidelines and Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines.

68. The Respondents' ineligibility shall extend across the operations of the World Bank Group. The Bank will provide notice of the declaration of the Respondent Firm's 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

⁴⁵ 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.

⁴⁶ The Sanctions Board did not make any findings as to which entities, if any, are controlled Affiliates.

⁴⁷ See supra n.45.

⁴⁸ See supra n.46.

determine whether to enforce the declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.⁴⁹



J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Alejandro Escobar
Mark Kantor

⁴⁹ 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>).